

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 1386/Mum/2013  
(Assessment Year 2005-06)

I.T.A. No. 1387/Mum/2013  
(Assessment Year 2006-07)

I.T.A. No. 1388/Mum/2013  
(Assessment Year 2005-06)

I.T.A. No. 1389/Mum/2013  
(Assessment Year 2006-07)

M/s. Evershine Films Private Limited Flat No. 4 Building No. 16 Oshwara Mahada Andheri West Mumbai-400 053.	Vs.	Addl. CIT(TDS) Range-1 Ayurved Prachar Sanstha Building Charni Road Mumbai-400012.
(Appellant)		(Respondent)

PAN No. AABCE4466G

Assessee by	None
Department by	Shri B.S. Bist
Date of Hearing	18.1.2017
Date of Pronouncement	18.1.2017

ORDER

Per Bench :-

The assessee has filed these appeals challenging the order passed by the learned CIT(A)-30, Mumbai confirming the penalties levied by the Assessing Officer u/s. 271C and 272A(2)(c) of the Income Tax Act for A.Y. 2005-06 and 2006-07.

2. None appeared on behalf of the assessee even though notices of hearing were sent by registered post on more than one occasion. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. We heard learned Departmental Representative and perused the record. The assessee is engaged in the business of production of feature films. A survey operation u/s. 133A of the Act was conducted at the premises of the assessee on 3.8.2006. During the course of survey, it was noticed that the assessee has not deducted tax at source from certain payments in both the years under consideration. Further the assessee has ALSO not remitted the tax, which it had deducted from certain payments. Hence, the Assessing Officer raised demand u/s. 201(1) of the Act and also levied interest u/s. 201(1) of the Act. The Assessing Officer has observed that the assessee did not prefer appeal against the demand raised u/s. 201(1)/201(1A) of the Act.

4. Thereafter, the Assessing Officer also levied penalty u/s. 271C of the Act in both the years under consideration. Since the assessee did not file at all "Annual return of TDS" prescribed under the Act, the Assessing Officer levied penalty u/s. 272A(2)(c) of the Act till the date of his respective orders passed in both the years.

5. The assessee preferred the appeals before the learned CIT(A) challenging the penalties levied under both the Sections in both the years. The learned CIT(A), however, dismissed all the appeals filed by the assessee and hence the assessee has filed these appeals before us.

6. We shall first take up the appeals filed for A.Y. 2005-06 & 2006-07 challenging penalties levied u/s. 271C of the Act. We noticed that the assessee has not offered any explanation for non deduction/non-remittance of TDS amount and hence the learned CIT(A) has confirmed the penalty. Before us also no material was placed to controvert the findings given by the learned CIT(A). Under these set of facts, we have no other option but to confirm the order passed by the learned CIT(A) in both the years confirming the penalty levied u/s. 271C of the Act.

7. With regard to appeals filed by the assessee challenging the penalty levied u/s. 272A(2)(c) for A.Y. 2005-06 & 2006-07, we noticed from the record

that the assessee did not file "Annual return of TDS", since it has not remitted the amount of TDS deducted by it. In our view non remittance of TDS amount would be a reasonable cause for non furnishing of Annual return of TDS. The question of filing of Annual return of TDS would arise, only if the assessee has deducted TDS and also remitted the same to the credit of Government. In this view of the matter, we are of the view that the learned CIT(A) was not justified in confirming the penalty levied by the Assessing Officer u/s. 272A(2)(c) of the Act. Accordingly, we set aside the order passed by the learned CIT(A) on this issue in both the years under consideration and direct the Assessing Officer to delete penalty u/s. 272A(2)(c) of the I.T. Act.

8. In the result, the appeals in ITA No. 1386 & 1387/Mum/2013 are dismissed and remaining two appeals are allowed.

Order has been pronounced in the Court on 18.1.2017.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 18/1/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai