IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

Before Sh. N. K. Saini, AM And Smt. Beena A. Pillai, JM

ITA Nos. 6491 to 6494/Del/2013 : Asstt. Year : 2010-11

Income Tax Officer, TDS Rohtak	Vs	The Executive Engineer, Panchayati Raj, Jhajjar
(APPELLANT)		**(RESPONDENT)**
PAN No. RTKPO1586E		

Assessee by : Sh. Naveen Gupta, Adv.
Revenue by : Sh. S. K. Jain, Sr. DR

Date of Hearing : 20.10.2015		**Date of Pronouncement : 04.11.2015**

ORDER

Per Bench:

These four appeals by the department are directed against the common orders dated 15.10.2013 of ld. CIT(A), Rohtak for the assessment year 2010-11.

2. Common issues are involved in these appeals which were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. The common grounds raised in these appeals read as under:

"1. On the facts and circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the penalty u/s 272B of the I.T. Act without any cogent reason.

2. On the facts and circumstances of the case, Ld. CIT(A) has erred in law and facts by deleting the penalty by holding that assessee PR has filed correction statement immediately on receipt of show cause notice generated by the system, ignoring the fact that assessee PR did not file any correction statement in response to the show cause notice issued by this office.

3. On the facts and circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the penalty u/s 272B of the I.T. Act ignoring the facts that the assessee PR has quoted invalid PAN in violation of sub-section (5B) of section 139A of the I.T. Act.

4. The appellant craves leave to add or amend any grounds of appeal before the appeal is heard."

4. The only grievance of the department in these appeals relates to the deletion of the penalties levied by the AO u/s 272B Income Tax Act, 1961 (hereinafter referred to as the Act). Facts of the case in brief are that the AO from the e-quarterly statement of TDS returns filed by the assessee noted that PAN in respect of 99 deductees was found to be invalid/missing. Accordingly, penalty proceedings u/s 272B of the Act were initiated. The AO levied the penalty of Rs. 9,90,000/- for the four

quarters and similar penalties amounting to Rs. 70,000/-, Rs.13,40,000/-, Rs. 15,60,000/- and Rs. 7,40,000/- were imposed for default in respect of 7, 134, 156 and 74 deductees.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted that the assessee deducted tax correctly and filed statement in Form No. 24Q as such there was sufficient compliance for the provisions of Section 139 of the Act. It was further stated that quarterly returns were filed by the assessee timely and only 18 invalid PANs of deductees out of total 195 were neither element of ñMens Reaò nor there was a guilty mind. It was further submitted that the AO failed to appreciate the fact that it was not the intention of the assessee to derive any benefit whatsoever by filing the wrong PANs. It was stated that the PANs were corrected after ascertaining the same from the respective deductees. The reliance was place on the judgment of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Vs State of Orissa (1972) 83 ITR 26.

6. The ld. CIT(A) after considering the submissions of the assessee deleted the penalties by observing in para 4 of the impugned order as under:

> *"4. I have considered the issue and the written submission. From the facts, it is evident that the appellant filed TDS correction statement immediately on receipt of show cause*

notice generated by the system and a copy of acknowledgement was sent to the AO. The appellant received the final show cause notice of penalty beyond the specified date of compliance. Since the invalid/missing PANs have been made good by filing correction statements well before the issue of final penalty notice, the penalty is cancelled in view of the case law relied upon by the appellant the grounds of appeal are allowed. Since the facts for other appeals are similar, the penalty imposed in these appeals is also cancelled."

7. Now the department is in appeal. The ld. DR strongly supported the order of the AO and further submitted that the assessee either did not furnish the PAN or furnished the incorrect PAN in respect of the deductees. Therefore, the penalty u/s 272B of the Act was rightly levied by the AO and the ld. CIT(A) was not justified in deleting those penalties.

8. In his rival submissions the ld. Counsel for the assessee reiterated the submission made before the authorities below and further submitted that the assessee corrected the mistakes in the PAN. Therefore, the penalty was rightly deleted by the ld. CIT(A). The reliance was placed on the following case laws:

- *CIT(TDS) Vs Superintendent of Police (2012) 349 ITR 550 (P&H)*
- *ITO(TDS) Vs Executive Engineer (2015) 69 SOT 421 (Del-Trib.)*

It was further submitted that the assessee furnished the statement of tax deducted at source in Form No. 24Q timely and the tax was deducted correctly, so there was no mistake of the assessee because the PAN number which were supplied by the deductees were mentioned and where inspite of best efforts the PAN number could not be got the same could not be furnished but it was beyond the control of the assessee. Therefore, there was no malafide mistake and penalty u/s 272B was not leviable. The reliance was placed on the following case laws:

- *CIT and Another Vs GAIL (India) Ltd. (2013) 356 ITR 711 (All)*
- *Om Prakash Subhash Kumar Vs ITO (2012) 144 TTJ 38 (Del-Trib.)*

It was also submitted that the AO levied the penalty in respect of each of the deductees whereas the penalty if at all leviable was to be levied only on the basis of the return of TDS and not in respect of individual deductee. The reliance was placed on the decision of the Hon'ble Delhi High Court in the case of CIT-TDS Vs DHTC Logistics Ltd. (2014) 41 Taxmann.com 439 (Del).

9. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is not in dispute that the assessee deducted the tax correctly and deposited the same in time. The assessee also filed the return in Form No. 24Q in time, so there was a sufficient compliance by

the assessee and the mistake in respect of the PAN of the deductees which was noted by the AO, was rectified whenever the assessee received the information about the correct PAN. In the present case, the PAN collected by the assessee were those which the deductees informed, so there was no fault of the assessee and there was also no failure to comply with the provisions of Section 139A of the Act. On a similar issue the Hon'ble Jurisdictional High Court in the case of CIT (TDS) Vs Superintendent of Police (2012) 349 ITR 550 held as under:

> *"The assessee quoted invalid permanent account numbers for 196 deductees. The error was due to wrong quoting of permanent account numbers by the deductees to the assessee. The assessee rectified the mistake by furnishing the correct permanent account numbers as soon as it came to its notice. The revised permanent account numbers and the revised statement were filed. The tax was deducted and deposited in time in the Government treasury."*

It has been further held as under:

> *"That there was nothing to show that the findings recorded by the Commissioner (Appeals) and the Tribunal were erroneous in any manner. On appreciation of the entire matter, the Commissioner (Appeals) and the Tribunal examined the explanation of the assessee and came to the conclusion that there was sufficient cause shown which would be a question of fact in the given facts and circumstances. Thus, there was no substance in the argument raised by the Revenue that there was no*

reasonable cause on the part of the assessee to furnish inaccurate permanent account numbers in Form 24Q."

10. In the present case also whatever was the mistake which the AO pointed out in the PAN numbers of the deductees, was corrected by the assessee, therefore, the penalty levied by the AO u/s 272B of the Act was rightly deleted by the ld. CIT(A). On a similar issue the Hon'ble Allahabad High Court in the case of CIT & Another Vs GAIL (India) Ltd. (2013) 356 ITR 711 held as under:

"The penalty under section 272B of the Income-tax Act, 1961, will not ordinarily be imposed unless the assessee has either acted deliberately in defiance of law or was guilty of conduct which is contumacious, dishonest or acted in conscious disregard to its obligation. The penalty under section 272B cannot be imposed merely because it is lawful to do so. It can be imposed for failure to perform statutory obligation. The imposition of penalty for failure to perform a statutory obligation. The imposition of penalty for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially, after considering the explanation of reasonable cause submitted by the assessee and on a consideration of all the relevant circumstances."

It has further been held as under:

"That it was the statutory obliteration of the contractors, who received certain amounts from the assessee, from which tax was deducted under the provisions of Chapter XVII-B, to intimate their permanent account numbers to the

assessee. It is the specific stand of the assessee that certain contractors had not intimated their permanent account numbers and for that reason they could not be mentioned in Form 16A issued to such contractors. Section 139A(5B) makes it obligatory for every person deducting tax under Chapter XVII-B to quote the permanent account number of the person to whom such sum or income or amount has been paid by him. Thus, reading both the provisions together, namely, section 139(5A) and section 139A(5B) the deductor may be at fault under section 139A(5B) if he does not quote the permanent account number of the persons to whom the amount has been paid, despite the intimation of permanent account number by such person to the deductor under section 139A(5A). There was nothing on record to show that the contractors to whom certain amounts were paid by the assessee, had intimated their permanent account number to the assessee as required under section 139A(5A). Therefore, the assessee had explained with reasonable cause under section 273B as to why the assessee could not satisfy the provisions of section 272B."

11. In the present case also the assessee quoted the PAN numbers which were provided by the deductees, so if there was any mistake in the PAN numbers that was not on account of the assessee and moreover the mistake was rectified when the correct PAN numbers were furnished by the deductees and this fact has been appreciated by the ld. CIT(A) who categorically stated that since the valid/missing PANs have been mad good by filing correct statement well before the issue of final penalty notice. The said observation of the ld. CIT(A) was not rebutted. We, therefore, do not see any infirmity in the impugned order of the ld.

CIT(A) and accordingly do not see any merit in these appeals of the department.

12. In the result, the appeals of the department are dismissed.

(Order Pronounced in the Court on 04/11/2015)

Sd/-	**Sd/-**
(Beena A. Pillai)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 04/11/2015

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR