

Court No.39

Case :- INCOME TAX APPEAL No. - 135 of 2016

Appellant :- Raja Harpal Singh Inter College

Respondent :- Pr. Commissioner Of Income Tax

Counsel for Appellant :- Naveen Chandra Gupta

Counsel for Respondent :- S.C.

Hon'ble Dilip Gupta, J.

Hon'ble Ravindra Nath Kakkar, J.

Raja Harpal Singh Inter College¹, Singramau in District Jaunpur has filed this appeal under section 260-A of the Income Tax Act, 1961² to assail the order dated 21 January 2016 passed by the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad³ by which the appeals preferred by the College against the orders of the Commissioner of Income Tax (Appeals) partly confirming the penalty levied under section 272-A(2)(k) read with section 200(3) of the Act have been dismissed.

The questions of law that have been framed in this appeal are as follows :

“I. Whether, the Income Tax Appellate Tribunal as well as, authority below were justified to levy the penalty under Section 272A(2)(k) of the Income Tax Act on the non filing of e-TDS statement which already filed before passing the penalty order by J.C.I.T., Allahabad.

II. Whether, the Income Tax Appellate Tribunal, as well as, authority below were justified to levy the penalty under Section 272A(2)(k) of the I.T.A. without considering the explanation of the college, as well as, during the pendency of the application for extension to time dated 16.01.2013.

1 the College

2 the Act

3 the Tribunal

III. Whether, the Income Tax Appellate Tribunal, was justified to reject the appeal outrightly without going into the merit of the case, as well as, no intention and no loss of the revenue because the tax has been deposited always within time.

IV. Whether, the Income Tax Appellate Tribunal, was justified in rejecting the appeal despite the fact that in compliance of notice dated 13.12.2012 the return (statement) was filed between 08.02.2013 to 15.03.2013 and order was passed by the Joint Commissioner Income Tax (TDS) on 22.04.2013.”

The Assessing Officer, on going through the records of the College, detected that the College had failed to furnish e-TDS quarterly statements online for the Assessment Years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 and had consequently violated the provisions of section 200(3) of the Act. The present appeal relates to the Assessment Year 2008-09. Accordingly, a notice dated 12 October 2012 was issued to the appellant requiring it to ensure compliance upto 26 October 2012. The appellant, however, did not respond to the aforesaid notice. Consequently, another notice dated 13 December 2012 was issued. The appellant was reminded about the earlier notice dated 12 October 2012 in regard to the violation of the provisions of section 200(3) of the Act and the fact that the appellant had neither appeared on the date fixed nor furnished any explanation. The appellant was, therefore, given a final opportunity to furnish an explanation by 26 December 2012 failing which it was stated that the penalty order would be passed on the basis of the

materials available on record by treating that the appellant accepted the default and that it had no explanation to offer.

The appellant engaged an Advocate who appeared on 26 December 2012 but did not furnish any reasonable cause for not filing the e-TDS statements or any explanation for waiver of penalty. A prayer for adjournment was only made and the matter was adjourned for 7 January 2013. Even on that date no one appeared before the Authority nor any reply was submitted in the office. Subsequently, a letter dated 16 January 2013 was submitted by the appellant. This letter mentions that the regular Principal had joined the College on 25 January 2010 and was collecting the necessary papers and that there was no intention to violate any provision of law. It was also stated that one month's time may be given for filing the e-TDS statements. The appellant, however, did not furnish any explanation for the delay in filing the e-TDS statements and only submitted the e-TDS statements on 8 February 2013 and 9 February 2013. The Assessing Authority found that no reasonable or sufficient cause had been shown by the appellant for not filing the e-TDS statements within the time limit prescribed and as it was established that the deductor had violated the provisions of section 200(3) of the Act, the appellant was treated as an “assessee in default” and a penalty under section 272A(2)(k) of the Act at the rate of Rs.100/- per day was imposed. The details are as follows :

Financial	Form	Deductible	Due Date of	Date of	No. of	Amount	Amount
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year/s	No.	Amount	filing	Return filed	Days Delayed	@Rs.100/- per day	leviable
2007-08	24Q	2,23,647/-	15/07/2007	Not filed	2102	2,10,200/-	2,10,200/-
2008-09	24Q	1,85,939/-	15/07/2008	Not filed	1737	1,73,700/-	1,73,700/-
2009-10	24Q	5,74,761/-	15/07/2009	Not filed	1372	1,37,200/-	1,37,200/-
2010-11	24Q	8,09,208/-	15/07/2010	Not filed	1007	1,00,700/-	1,00,700/-
2011-12	24Q	7,14,349/-	15/07/2011	Not filed	642	64,200/-	64,200/-

Feeling aggrieved, the College filed an appeal before the Commissioner, Income Tax (Appeals). To explain the delay it was sought to be contended :

“It is very important to mention here that it was always submitted before the learned Joint Commissioner (TDS) in all hearings that the non filing of TDS return was just because that the post of principal was on temporary basis till the date of permanent posting from commission. All the deductions of TDS were made properly, TDS was deposited in Government account well within time. Only the return was not filed within due dates.

Again the appellant reproduced the facts for causes of non-filing of TDS return within due dates as under :-

- i) The Principal of the college Sri Triloki Nath Singh was retired on 30.06.2006;
- ii) And the senior lecturer, Pt. Moolchand Pandey was appointed as Principal on temporary basis. Mr. Pandey was basically a lecturer of Chemistry was no experience of administrative and compliance work;
- iii) Till the date of retirement of Pt. Moolchand Pandey, i.e. 28/06/2009, no proper posting was made through commission and again Sri Bhanu Pratap Singh, as lecturer of Biology was also no experience of administrative and compliance work;
- iv) And from 25/01/2010 onwards Dr Rama Kant Singh is being appointed as Principal of the College through the Service Commission.

(All the relevant supporting papers are attached herewith for your kind reference)

It is very important to mention here that on 18/12/2008, the Manager Sri Kunwar Sripal Singh was passed away suddenly and because of it, the administrative as well as financial decision/works were hampered totally. Since the payment was

released by DIOS, the deduction and deposit of TDS was done well in time in Govt. A/c but the e-filing of TDS returns could not be done timely.

Since 25/01/2010 onwards finally the Service Commission has appointed Dr. Rama Kant Singh as Principal and the compliance process for e-filing of TDS return form has been started. Since the matter pertained to 4 financial years, it took some time to recollect/arrange the data/records and finally on 08/02/2013 and 09/02/2013, the e-TDS returns had been filed before passing of order by the learned Joint Commissioner (TDS)."

The Commissioner of Income Tax dealt with the explanation and reduced the penalty for the following reasons :-

"On careful consideration of the facts of the case, it is noticed that there was no regular incumbent holding the charge of Principal since 30.03.2006 until Dr. Rama Kant Singh was appointed as the Principal on 25.01.2010. There is enough reason to be in agreement with the appellant that the lecturers holding the charge of Principal did not have administrative experience. Therefore, to my considered view, the appellant was prevented by sufficient cause to file the e-TDS statements relating to F.Ys. 2007-08, 2008-09 and 2009-10. But I hold that the new incumbent should have filed the statement relating to these years after assuming the duty. Hence, the penalty in the cases of F.Ys. 2007-08, 2008-09 and 2009-10 has to be computed w.e.f. 01.04.2010 to the date of filing of the return. The penalty for F.Ys. 2010-11 and 2011-12 is to be computed from the due date of filing to the date the returns were actually filed. It is held here that the period upto 31.03.2010 may be considered a period upto which either there was no regular incumbent or new incumbent was in the process of re-arranging the records etc."

It would, therefore, to be seen that the appellate Authority calculated the penalty with effect from 1 April 2010 as the regular Principal of the College assumed charge of the office on 25 January 2010.

The College filed an appeal before the Tribunal which was dismissed by order dated 21 January 2016. The Tribunal found that since the assessee had not filed the e-TDS statements in time, the Assessing Authority had issued a show cause notice dated 12 October 2012 for its compliance by 26 October 2012 and though sufficient time had been granted to the appellant to furnish reasonable or sufficient cause for non-filing of the e-TDS statements but no explanation was furnished. The Tribunal noted that though the assessee had been deducting tax at source but was not filing the e-TDS statements for years together and it could not be accepted that the assessee was not aware of the legal provisions regarding the filing of e-TDS statements. The Tribunal also noted that the Commissioner of Income Tax (Appeals) had reduced the penalty by calculating the same with effect from 1 April 2010 as the regular Principal had joined the College on 25 January 2010. Having found that no satisfactory explanation had been offered by the appellant for non-filing of the e-TDS statements after 1 April 2010, the Tribunal dismissed the appeals.

Sri N.C. Gupta, learned counsel for the appellant has submitted that it cannot be said that opportunity was provided to the appellant to furnish an explanation since no reply was sent to the College in response to the application dated 16 January 2013 which had been submitted by the appellant before the Assessing Authority for granting a month's time to file the statement. It is his submission that for imposing penalty, adequate opportunity

was required to be provided as is contemplated under section 272A(4) of the Act. Learned counsel also submitted that even though no explanation may have been furnished to the Assessing Authority for the delay in filing the e-TDS statements but sufficient explanation had been offered before the First Appellate Authority for not furnishing the e-TDS statements in time but as this explanation has not been considered in its correct perspective, no penalty could have been imposed upon the assessee. Learned counsel also submitted that non-filing of the e-TDS statements has not resulted in any loss to the revenue and so no penalty could have been imposed and that in similar circumstances the Tribunal had allowed ITA Nos.226 and 227/ALLD/2015 filed by another college by order dated 3 December 2015. In support of his contentions, learned counsel has relied upon the decision of the Supreme Court in **Hindustan Steel Ltd. Vs. The State of Orissa**⁴ and the decisions of Punjab and Haryana High Court in **Commissioner of Income Tax Vs. State Bank of Patiala**⁵ and **H.M.T. Ltd., Tractors Division Vs. Commissioner of Income Tax**⁶.

Sri Piyush Agarwal, learned counsel for the respondents has, however, submitted that questions of law do not arise for consideration in this appeal as the Tribunal has on a careful

4 (1972) 83 ITR 26

5 (2005) 277 ITR 315 (P&H)

6 (2005) 274 ITR 544 (P&H)

appreciation of facts, dismissed the appeals. His contention is that the penalty was correctly imposed on the assessee as the e-TDS statements were not filed in time and no satisfactory explanation was offered. Learned counsel, to support his contention, has placed reliance upon the decision of the Bombay High Court in **Rashmikant Kundalia & Anr. Vs. Union of India & Ors.**⁷.

We have considered the submissions advanced by learned counsel for the parties.

Section 200 of the Act deals with duty of persons deducting tax and the same is reproduced below :

“200. Duty of person deducting tax. (1) Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed” and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

Provided that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or

⁷ (2015) 373 ITR 268 (Bom.)

update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.”

Section 272A(2)(k) of the Act provides that if any person fails to deliver or cause to be delivered a copy of the statement within the time specified in section 200(3), then penalty of Rs.100 shall be paid for every day during which the failure continues provided that the amount of penalty for failures in relation to a statement made under section 200(3) shall not exceed the amount of tax deductible or collectible as the case may be. Sub-section (4) of section 272A provides that no order under this section shall be passed by any income tax authority referred to in sub-section (3) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

In the instant case, it is not disputed that the appellant had been deducting tax at source but had not filed the e-TDS statements in time for five successive assessment years namely 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. The Assessing Authority, in such circumstances, issued a notice dated 12 October 2012 requiring the appellant to ensure compliance by 26 October 2012 but despite service of notice, the appellant did not ensure compliance. Accordingly, another notice dated 13 December 2012 was issued granting a final opportunity to the appellant to furnish a reply by 26 December 2012. It is at this

stage that the appellant appeared through a counsel but, instead of offering any explanation for not imposing penalty, only made a request for adjourning the matter to 7 January 2013. However, on 7 January 2013 neither the appellant nor any counsel appeared nor any explanation was furnished. It is only on 16 January 2013 that an application was submitted by the Principal of the College to the Assessing Authority. It was stated in the said application that since the Principal had joined the College only on 25 January 2010, it would take some time to collect the records for filing the e-TDS statements. A request was, therefore, made for granting one month time for filing the e-TDS statements. It needs to be noted at this stage that the appellant did file the e-TDS statements on 8 February 2013/9 February 2013. The contention of learned counsel for the appellant is that since no order was passed by the Assessing Authority on this application, it cannot be said that any opportunity was given to the College to furnish explanation for the levy of penalty. This contention of learned counsel for the appellant cannot be accepted. Even if no order was passed on the application, the appellant was obliged to file the statement and offer an explanation but even after the expiry of the period prayed for in the application the appellant did not furnish any explanation for the delay in filing the e-TDS statements. The Assessing Authority, therefore, in the absence of any explanation having been offered by the appellant, levied penalty under section 272A(2)(k) of the Act.

It is only before the Commissioner of Income Tax (Appeals) that the appellant, for the first time, offered any explanation. The explanation basically was that prior to the joining of a regular Principal in the College on 25 January 2010, only officiating Principals had been working who did not have an idea that e-TDS statements were required to be filed. The Tribunal noticed that the Appellate Authority had accepted the explanation offered by the appellant and imposed penalty only from 1 April 2010 though the regular Principal had joined the College on 25 January 2010. The Tribunal, accordingly, dismissed the appeal having found that no satisfactory explanation has been furnished for non-filing of the e-TDS statements in time.

The Assessing Authority has given reasons as to why it was necessary to file the e-TDS statements in time and they are as follows :-

“The most important objective of the TDS provisions is to extend the reach of Income Tax Department so as to make tax administration more effective and efficient and to reduce opportunities for tax evasion so as to bring equity in the system. To achieve this objective, person/s in each organization, who is responsible to make certain payments required to deduct tax at source on or before making such payment and furnish e-TDS quarterly statement online before the NSDL on quarterly basis. Such provisions help in achieve above stated objective through non-intrusive method and thus improves tax compliance and collection. TDS provisions not only increase the reach of the department but also leads to creation of an audit trail that can be utilized as an effective tool against detection of tax evasion. Hence, in case of non

compliance of TDS provisions, stringent action is incorporated in the income tax law.

Penal provisions are part of tax laws and they differentiate between those who pay the taxes and adhere to tax laws as against those who do not. Thus, it not only brings equity in the tax system but also acts as an effective deterrent against possible tax evasion.”

The Bombay High Court in **Rashmikant Kundalia (supra)** also emphasised the necessity of filing e-TDS statement in time and observed :

“13. It is not in dispute that as per the existing provisions, a person responsible for deduction of tax (the deductor) is required to furnish periodical quarterly statements containing the details of deduction of tax made during the quarter, by the prescribed due date. Undoubtedly, delay in furnishing of TDS returns/statements has a cascading effect. Under the Income-tax Act, there is an obligation on the Income-tax Department to process the Income-tax returns within the specified period from the date of filing. The Department cannot accurately process the return on whose behalf tax has been deducted (the deductee) until information of such deduction is furnished by the deductor within the prescribed time. The timely processing of returns is the bedrock of an efficient tax administration system. If the Income-tax returns, especially having refund claims, are not processed in a timely manner, then (i) a delay occurs in the granting of credit of TDS to the person on whose behalf tax is deducted (the deductee) and, consequently, leads to delay in issuing refunds to the deductee, or raising of infructuous demands against the deductee; (ii) the confidence of a general taxpayer on the tax administration is eroded; (iii) the late payment of refund affects the Government financially as the Government has to pay interest for delay in granting the refunds; and (iv) the delay in receipt of refunds results into a cash flow crunch, especially for business entities.”

Thus, though it is sought to be contended by learned counsel for the appellant that non-filing of the e-TDS statements had not resulted in loss to the revenue but the requirement of filing e-TDS statements in time cannot be overlooked. The Department cannot accurately process the returns on whose behalf tax has been deducted until information of such deduction is furnished by the deductor within the prescribed time and as emphasised by the Bombay High Court “timely processing of returns is the bedrock of an efficient tax administration system”. It is, therefore, necessary for the deductor to file e-TDS statements in time so as to enable the processing of the returns in time. The Assessing Authority has also emphasised this aspect in the order dated 22 April 2013. It has been stated that filing of e-TDS statements not only increases the reach of the department but also leads to creation of an audit trail that can be utilized as an effective tool against detection of tax evasion. It is for this reason that stringent action is required to be taken for non-compliance. In such circumstances, it cannot also be urged by learned counsel for the appellant that no penalty could have been imposed for non-filing of the e-TDS statements in time as it has not resulted in any loss to the revenue.

The decision relied upon by the learned counsel for the appellant primarily are to the effect that before imposing any penalty, adequate opportunity is required to be granted. This is what also was contemplated in section 272A(4) of the Act.

We are of the opinion that adequate opportunity had been granted to the appellant but the appellant failed to utilize the opportunities that had been granted. In fact even when the appellant had appeared through a counsel, only an adjournment was sought and even thereafter no explanation was offered before the Assessing Authority. However, an explanation was offered before the Appellate Authority which was taken into consideration and the penalty amount was suitably reduced as the case of the appellant that a regular Principal assumed charge on 25 January 2010 was accepted and the penalty was imposed after that date. The decision dated 3 December 2015 of the Tribunal in ITA Nos.226 and 227, therefore does not help the appellant.

We, therefore, find that substantial questions of law that had been framed in this appeal do not arise for consideration.

The appeal is, accordingly, dismissed.

Order Date :- 16.05.2016

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(Dilip Gupta, J.)

(Ravindra Nath Kakkar, J.)