

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 421 of 2015 (O&M)

Date of Decision: 8.2.2016

Central Scientific Instruments Organization, Chandigarh

....Appellant.

Versus

Commissioner of Income Tax (TDS), Chandigarh and another

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. M.R. Sharma, Advocate for the appellant.

**AJAY KUMAR MITTAL, J.**

1. This order shall dispose of a bunch of three appeals bearing ITA Nos. 421, 423 and 424 of 2015 as according to learned counsel for the appellant, the issue involved is identical. For brevity, the facts are being extracted from ITA No. 421 of 2015.

2. ITA No. 421 of 2015 has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 30.4.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter

referred to as “the Tribunal”) in ITA No. 54/Chandi/2015, for the assessment year 2009-10, claiming the following substantial questions of law:-

- i) Whether in the facts and in the circumstances of the case, the orders (Annexure A-1), (Annexure A-2) and (Annexure A-3) are legally sustainable?
- ii) Whether on the facts and in the circumstances of the case the ITAT is legally justified in law in upholding the order imposing penalty of ₹ 4,84,945/- u/s 272A(2)(k) of the Income Tax Act for the assessment year 2009-10 for technical default in filing returns late on the part of the appellant more so when the tax has been deducted, after deduction has been deposited in Government account in time and the requisite forms have been issued to the deductee as per the provisions of the Act?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of Tax Deducted at Source (TDS) on 10.5.2013 in Form No. 26Q for the quarters ending on 30.6.2008, 30.9.2008 and 31.12.2008. The return for the 4<sup>th</sup> quarter ended on 31.3.2009 was filed on 13.5.2013. It had deducted TDS from the payments made under Section 194C of the Act amounting to ₹ 1,46,068/-, ₹ 35,377/- ₹ 1,90,192/- and ₹ 1,89,251/- in the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarter respectively. The amount so deducted was deposited by the appellant with the Government well in

time and there was no default either under Section 201 or Section 201 (1A) of the Act. The Joint Commissioner of Income Tax (TDS) issued a show cause notice dated 24.9.2013 to the appellant for levy of penalty under Section 272A(2)(k) read with Section 274 of the Act. The appellant filed reply dated 7.10.2013 to the said show cause notice. Respondent No.2 vide order dated 21.10.2013 (Annexure A-1) levied penalty of ₹ 4,84,945/-. Feeling aggrieved, the appellant filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT (A)”] who vide order dated 31.10.2014 (Annexure A-2) affirmed the penalty order and dismissed the appeal. Being dissatisfied, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 30.4.2015 (Annexure A-4) upheld the order of the CIT(A) and dismissed the appeal. Hence, the instant appeals.

4. Learned counsel for the appellant submitted that the penalty of ₹ 4,84,945/- levied under Section 272A(2)(k) of the Act was unwarranted. Section 200(3) of the Act and Rule 31A of the Income Tax Rules, 1962 (in short “the Rules”) were referred to by the learned counsel. It was also urged that there was reasonable cause within the meaning of Section 273B of the Act on the basis of which there was justification for delay in filing the TDS returns. Moreover, the TDS was deposited within time and, therefore, there was no loss of revenue. Relying upon the judgments of this Court in **Commissioner of Income Tax (TDS) v. Executive Engineer, (2010) 320 ITR 494 (P&H)**; **HMT Ltd., Tractors Division v. Commissioner of Income Tax (2005) 274 ITR 544 (P&H)**; Rajasthan High Court in **Commissioner of Income-Tax v. Deputy Housing Commissioner, Rajasthan Housing Board (2004) 265 ITR 686 (Raj.)** and Allahabad High Court in **Commissioner of**

**Income Tax v. Accounts Officer, Telecom (2006) 281 ITR 302 (All)**, it was urged that no penalty under Section 272A(k) of the Act was exigible.

5. After hearing learned counsel for the appellant, we find no merit in the appeals.

6. It would be expedient to refer to Section 200(3) of the Act which read thus:-

**“Section 200(3)**

Any person deducting any sum on or after the 1<sup>st</sup> day of April, 2005 in accordance with the forgoing 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 authorized 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.”

Section 200 incorporated in Chapter XVII of the Act deals with collection and recovery of tax and provides for various cases relating to deduction of tax at source. Sub-section (3) of Section 200 of the Act was inserted by Finance (No.2) Act, 2004 with effect from 1.4.2005. It provides for filing of the statements as prescribed thereunder after deduction of the TDS.

7. Rule 31(2) of the Rules, which is relevant for the decision of

the controversy raised in the appeal, is in the following terms:-

**“Rule 31A(2)**

Statements referred to in sub-rule (1) for the quarter of the financial year ending with the date specified in column (2) of the Table below shall be furnished by the due date specified in the corresponding entry in column (3) of the said Table:-

1. Date of ending of the quarter - 30<sup>th</sup> June – Due date of the financial year - 15<sup>th</sup> July of the financial year.
2. Date of ending of the quarter - 30<sup>th</sup> September – Due date of the financial year - 15<sup>th</sup> October of the financial year.
3. Date of ending of the quarter - 31<sup>st</sup> December – Due date of the financial year - 15<sup>th</sup> January of the financial year.
4. Date of ending of the quarter - 31<sup>st</sup> March – Due date of the financial year - 15<sup>th</sup> May of the financial year immediately following the financial year in which deduction is made.”

Thus, TDS returns have to be filed in Form No.26Q by the due dates mentioned in the aforesaid rule.

8. The controversy herein relates to levy of penalty under Section 272A(2)(k) of the Act. According to the aforesaid provision, penalty is imposable if any person fails to deliver or cause to be delivered a copy of the statement under sub-section (3) of Section 200 within the specified time. The quantum of penalty thereunder is a sum of

one hundred rupees for every day default till the date of filing the TDS return but the same would be limited to the amount of tax deductible or collectable as the case may be. It is in following terms:-

**“272A(2). If any persons fails-**

(a) to (j)      XX    XX    XX    XX

(k)    to deliver or cause to be delivered a copy of the statement within the time specified in sub-section (3) of Section 200 or the proviso to sub-section (3) of Section 206C;

(l) & (m)      XX    XX    XX    XX.”

9.            Having noticed the relevant statutory provisions, we proceed to examine the contention relating to concept of 'no loss of revenue' for exigibility of penalty, as urged by the learned counsel for the appellant. Section 200(3) of the Act read with Rule 31A(2) of the Rules enjoins upon any person deducting tax at source to file statements of deduction of tax at source within the prescribed period specified thereunder. In our opinion, the penal provisions contained in Section 272A(2)(k) of the Act has been inserted for the purpose of compliance of filing of TDS returns in time in Form No. 26Q by due dates mentioned in Rule 31A(2) of the Rules so that the information is available with the department for utilizing by way of cross checking for proper assessment of tax in the case of the persons from whom income tax has been deducted at source and it has nothing to do with the loss of revenue. In case it is interpreted in any other manner, it would render the provision redundant. Similar contention of theory of 'no loss of revenue' raised before the CIT(A) was repelled with the following observations:-

“A plain reading of the provision clearly shows

that the question of direct loss of revenue can never occur if the specified statement is not filed within the stipulated time. The legislature has to be attributed that much intelligence that the penalty for delay in submission of the statement was provided even when there could have been no loss of revenue under any circumstances. Therefore, in such a situation to plead that since there is no loss to revenue, no penalty should be imposed would go not only against the intention of the legislature but would render the clear provisions of law otiose. It has to be borne in mind that the State compels the subjects to obey its laws at the pain of penalty for its violation. Every violation of law does not necessarily entail loss to the exchequer but still there are penal provisions to enforce the legal obligations. If there are no penal consequences for default, the question arises as to how else the law is to be enforced. It may also be mentioned that the information contained in TDS statements is utilized by the department in ensuring proper assessment of tax in the case of the persons from whose income, tax has been deducted at source. Hence, while non-filing of statement by the deductor may not entail a loss to revenue in deductor's case, it may result in loss of revenue in the case of deductees and so the contention of the Ld. Counsel that in the absence of loss to revenue, the penalty imposed has to be

cancelled is rejected.”

On appeal, the Tribunal had approved the said observations and the conclusion. Further, the Tribunal had recorded by way of example that grievance letter had also been received from one Shri Ashok Gulati by the department intimating that the assessee had deducted tax at source but it was not reflected in the 26AS statement. Thus, it shows that various persons would stand to suffer on whose behalf taxes have been deducted for not getting benefit of those taxes for no fault of their due to non-filing of statements on time. Therefore, the law enunciated in **Hindustan Steel Ltd. v. State of Orissa (1972) 83 ITR 26 (SC)** has no applicability to the present case.

10. The appellant had filed the TDS returns late as per the details given below:-

| Quarter         | Due date of filing of TDS return | Date of filing of TDS return | Delays in filing TDS returns | Amount of TDS | Amount of Penalty | Penalty restricted to |
|-----------------|----------------------------------|------------------------------|------------------------------|---------------|-------------------|-----------------------|
| 1 <sup>st</sup> | 15.07.2008                       | 10.05.2013                   | 1760                         | 1,46,068      | 1,76,000          | 1,46,068              |
| 2 <sup>nd</sup> | 15.10.2008                       | 10.05.2013                   | 1668                         | 35,377        | 1,66,800          | 35,377                |
| 3 <sup>rd</sup> | 15.01.2009                       | 10.05.2013                   | 1576                         | 1,90,192      | 1,57,600          | 1,57,600              |
| 4 <sup>th</sup> | 15.05.2009                       | 13.05.2013                   | 1459                         | 1,8,2251      | 1,45,900          | 1,45,900              |
|                 |                                  | Total                        | 6463                         | 5,60,888      | 6,46,300          | 4,84,945              |

11. There was a delay of nearly five years in filing the TDS returns/statements as is discernible from the perusal of Form No. 26Q reproduced above for the financial year 2008-09 relating to the assessment year 2009-10. No plausible explanation had been tendered by the assessee for filing the TDS returns belatedly and, therefore, the

benefit under Section 273B of the Act could not be given.

12. Moreover, the authorities below had noticed that the appellant was supposed to mandatorily file TDS returns within the prescribed time as provided under Rule 31A(2) of the Rules. Since the appellant had failed to do so, it had rightly been treated to be in default for not filing the TDS returns within the prescribed period. Further, it had also been recorded that the penalties under Section 272A(2)(k) of the Act have rightly been imposed upon the appellant in all the three financial years. The assessee had failed to explain that there was any reasonable cause or failure to comply with the provisions of law and the authorities below had concurrently concluded that there was delay in filing the TDS returns without any justifiable reason or cause.

13. Adverting to the judgments in **Executive Engineer and HMT Ltd.'s cases (supra)**, it may be noticed that these cases were decided on the basis of facts involved therein as they were relating to default in issuing certificates for deduction of tax at source and keeping in view the factual matrix, the levy of penalty under Section 272A(2)(g) of the Act was found to be inappropriate. The cases being based on individual facts involved therein, no advantage is available to the assessee-appellant therefrom. Similarly, the issue before the Rajasthan High Court and Allahabad High Court in **Rajasthan Housing Board and Accounts Officer, Telecom's cases (supra)**, shows that the pronouncements were also based on individual facts of these cases and do not come to the rescue of the appellant.

14. In view of the above, there is no error or perversity in the approach of the CIT(A) or the Tribunal or in the findings recorded by them warranting interference by this Court. Accordingly, no substantial

question of law arises in these appeals. Consequently, finding no merit in the appeals, the same are hereby dismissed.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**February 8, 2016**  
gbs

**(RAJ RAHUL GARG)**  
**JUDGE**