HC deletes penalty for late issuance of TDS certificate as deductor was unaware of frequent amendments in Rule 31

Summary – The High Court of Gujarat in a recent case of Excel Industries Ltd., (the Assessee) held that For issuing TDS certificate belatedly under a bona fide belief that a consolidated TDS certificate was to be issued to deductees after closing of relevant financial year, no penalty was to be levied.

Facts

- For the relevant assessment years, penalty orders under section 272A(2)(g) came to be passed by the Assessing Officer for late issuance of TDS certificate.
- The Commissioner (Appeals) as well as the Tribunal set aside penalty order.
- On revenue's appeal:

Held

- As can be seen from the order passed by the Assessing Officer under section 272A(2) read with section 272A(3)(c), penalty has been imposed for each day of delay in issuance of the TDS certificate. The Commissioner (Appeals) upon appreciating the material on record has found that there was a reasonable cause for delay of issue of TDS certificates since the forms were new and were not readily available. The tax deducted at source had been paid in time and the necessary returns had been duly filed in time.
- No loss of revenue had occurred on account of late issuance of TDS certificates and that none of the contractors/deposit holders had raised any grievance on account of late receipt of TDS certificates. Keeping in view the above facts, the Commissioner (Appeals) found that the default was merely technical or venial in nature and therefore, no penalty ought to have been levied.
- As can be seen from the impugned order, the Tribunal was of the opinion that the default in question had been committed by the assessee under a bona fide belief that the certificates in question were required to be issued after the closing of the relevant financial years and hence, a consolidated certificate was issued to the deductee. According to the Tribunal, instead of holding that the default was merely technical or venial in nature, the failure on the part of the assessee was because of a reasonable cause. Placing reliance on the provisions of section 273B, the Tribunal held that no penalty was imposable on the assessee under section 272A (2)(g).
- From the findings recorded by the Tribunal, it appears that rule 31 of the Income-tax Rules, 1962 which prescribes that a certificate of deduction of tax at source by any person deducting the tax shall be in Form 16, came to be substituted on a number of occasions and under the old provision, the requisite certificate was required to be issued by the revenue on an application by the deductor,

but later on, that rule was substituted. Moreover, under the old rule, the requisite certificate was to be issued on a particular time period on each deduction of tax at source during one financial year.

- Having regard to the difficulty in compliance of rule 31 of 1962 rules, a provision was inserted that where more than one certificate is required to be furnished to a deductee during a financial year, then the person deducting the tax i.e., the deductor may, on a request from such payee/deductee, can issue within one month from the close of the financial year, a consolidated certificate of tax deducted during whole of such financial year.
- The Tribunal, accordingly, found that in view of frequent amendments in rule 31 of the Income-tax Rules, the assessee being a deductor was under a bona fide belief that the said provisions have been followed for the year under consideration. It is in the above backdrop that the Tribunal has upheld the order of the Commissioner (Appeals) deleting the penalty imposed by the Assessing Officer.
- In the aforesaid factual background it may be germane to refer to the provisions of section 273B which provides that notwithstanding anything contained in the provisions referred to therein (which include section 272A, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions, if he proves that there was reasonable cause for the said failure. As is apparent from the findings recorded by the Tribunal, which findings have not been dislodged by the appellant by showing any material to the contrary, the assessee has proved that there was a reasonable cause for the failure in complying with the provisions of section 272A(2)(g). Once reasonable cause has been established by the assessee, no penalty under section 271A(2)(g) could have been imposed on the assessee. The Tribunal was, therefore, wholly justified in upholding the deletion of penalty by the Commissioner (Appeals).
- In the absence of any infirmity in the impugned order passed by the Tribunal, the same does not give rise to any question of law, much less, a substantial question of law, so as to warrant interference. The appeals being devoid of merit are accordingly summarily dismissed.