

Assessee couldn't escape penalty by stating that he was unaware of provision requiring filing of TDS return

Summary – The Chandigarh ITAT in a recent case of Central Scientific Instruments Organization., (the Assessee) held that Even where assessee deducted TDS and deposited same with Central Government within prescribed time, but failed to file statements in Form 26Q in time, penalty under section 272A(K) was to be levied

Facts

- The assessee had filed quarterly TDS returns after the respective due dates in respect of all the four quarters for relevant assessment years.
- The Assessing Officer sought explanation from assessee, issued show-cause notice with regard to levy of penalty for abnormal delay for filing TDS return.
- The assessee in its reply, submitted that the assessee claimed before the Assessing Officer at the penalty stage that due to family problem of accountant he could not devote proper time. He further submitted that since there was no loss to the revenue due to delay of filing return, penalty proceedings should not be invoked.
- The Assessing Officer not satisfied with the explanation of the assessee and worked out the amount of penalties under section 272A(2)(k) equal to the amount of TDS in respect of each of quarters.
- The Commissioner (Appeals) upheld the penalty order.
- On appeal:

Held

- The Assessing Officer has mentioned the details of due date of filing of the TDS returns and the date of filing of the TDS returns and the delay in filing of TDS returns. In assessment year 2009-10 the delay in filing of returns in prescribed form for all the four quarters was of 6463 days. In assessment year 2010-11 similarly the delay in filing the prescribed returns for all the four quarters is of 4966 days and in assessment year 2011-12 the delay in filing the returns in prescribed form for all the four quarters is of 3474 days. Thus, there is huge and abnormal delay in filing the TDS returns. The assessee claimed in the reply before the Assessing Officer that the assessee was not aware of the provision of filing of the TDS returns and as and when it came to the notice of PR, the returns in the prescribed form have been filed. Section 200(3) is reproduced by the Commissioner (Appeals) in his findings. However, it would be relevant to go through the entire section 200 for the clarification.
- Section 200 is inserted in Chapter XVII of the Income-tax Act, which deals with collection and recovery of tax and various provisions are provided for deduction of the tax at source. Section 200(1) provides that 'any person deducting any sum in accordance with Chapter XVII shall pay within the prescribed time, the sum so deducted to the Central Government or as the Board directs'. Sub-

section (2) of section 200 similarly provides that 'any person being 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'. The assessee (PR) in the reply before the Assessing Officer has specifically stated that TDS for all the above years have been deducted and paid to the Government. Therefore, the assessee says that he has complied with the provisions of sections 200(1) and (2). The assessee (PR) has, however, says that he was not aware to comply with the provisions of section 200(3) Act and it is claimed during the course of arguments that the assessee was not aware of the provisions of law and also relied upon the judgment of Supreme Court on the proposition that there is no presumption that every person knows the law. The explanation of the assessee is afterthought and clearly false. When the assessee is able to comply with the provisions of sub-sections (1) and (2) of section 200, there is no reason to belief that the assessee was not aware of sub-section (3) of the same section 200 of the Income-tax Act. Sub-section (3) of section 200 clearly provides for filing of the statement as prescribed in law after deduction of the TDS. This provision was inserted into the Act with effect from 1-4-2005 and the appeals under reference relate to several years thereafter. Therefore, the claim of the assessee cannot be accepted that the assessee was not aware of the provisions of law for filing the TDS returns within the prescribed time. It is also unbelievable that the assessee was not aware of sub-section (3) of section 200. The contention of the assessee is, therefore, rejected.

- Section 273B provides that 'no penalty shall be imposable on the person or 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'. This is the only exception provided in favour of the assessee under the Act. The assessee, however, in the present case has merely contended that since the assessee was not aware of the provisions of law, therefore, no return of TDS was filed. It could not be treated as any cause what to say of reasonable cause in favour of the assessee. In case, the explanation of the assessee is accepted, then it would give an open licence to all the concerned persons to flout the provisions of income-tax laws in the garb of denying the relevant provisions of law. Therefore, there is no reasonable cause existed in favour of the assessee.
- It may also be noted here that on consideration the above provisions, it is clear that the question of direct loss of revenue can never occur if the specified statement is not filed within the prescribed time. If the explanation of the assessee is accepted that there was no loss to the revenue due delay therefore no penalty would be imposed on any person and it would go against the intention of the Legislature and the relevant provisions would also go redundant. The court also note here that the assessee in the statement of facts filed with appeal stated that grievance letter was received from the department alleging that the assessee had deducted tax at source but that was not reflected, in the 26AS statement. It would, therefore, proves that in case of non-filing of the TDS returns, the persons on whose behalf taxes have been deducted would also suffer for no fault of them because they would not get benefit of taxes at source. Therefore, in all the assessment years under appeals,

large number of persons would have suffered for acts and omission of the assessee for not filing the TDS returns within the time.

- Considering discussion in the light of the findings of the Commissioner (Appeals), the other decisions of the Tribunal relied upon by the counsel for assessee cannot be given preference in favour of the assessee.
- Thus the assessee has miserably failed to prove if there was any reasonable cause for failure to comply with the provisions of law. In the absence of any cause to explain delay in filing of the TDS returns within the time prescribed in law, there was no error in the orders of the authorities below in levying and confirming the penalties against the assessee. The appeals of the assessee have no merits and are accordingly dismissed.