

## Commissioner of Income Tax (TDS) Vs Executive Engineer

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 19, 2009

**Acts Referred:** Income Tax Act, 1961 "Section 203, 260A, 272A

**Citation:** (2010) 320 ITR 494 : (2009) 184 TAXMAN 379

**Hon'ble Judges:** Daya Chaudhary, J; A.K. Goel, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

1. The revenue has preferred this appeal u/s 260A of the Income Tax Act, 1961 ("the Act") against the order dated 22-12-2008 of Income Tax

Appellate Tribunal, Delhi Bench "B" passed in ITA No. 509/Del./2008 for the assessment year 2004-05, proposing to raise following substantial

questions of law:

(i) Whether the Id. Income Tax Appellate Tribunal is justified in deleting the penalty u/s 272A(2)(g) on the ground that there is no loss of revenue

and the fault committed by the assessee is only of Technical and Venial in the nature?

(ii) Whether on the facts and circumstances of the case, the Id. Income Tax Appellate Tribunal is right in law in deleting the penalty ignoring the

mandatory provisions of Section 272A(2)(g) wherein the Legislature has used the word "Shall"?

2. The assessee is a department of Haryana Government. It committed default in issuing TDS certificates u/s 203 of the Act. The Assessing Officer

initiated penalty proceedings and levied penalty u/s 272A(2)(g) of the Act. The stand of the assessee was that it was under bona fide belief that

TDS certificates were to be issued and submitted with the annual return. On that account, there was delay. No loss was caused to the revenue as

the deduction of tax had already taken place. The Assessing Officer did not accept this plea. On appeal, the CIT(A) accepted the explanation of

the assessee and deleted the penalty, which order has been affirmed by the Tribunal. The Tribunal observed:

3. We have considered the facts of the case and rival submissions. We find that the tax was properly deducted and paid in time in the treasury.

Thus, the revenue did not suffer in any manner insofar as collection of tax is concerned. There were delays in issuing certificates to the payees, for

which a satisfactory explanation has been furnished. The payee has not raised any grievance in this matter. Therefore, the default, if any, is technical

and venial in nature, not justifying the levy of penalty.

3. We have heard learned Counsel for the appellant.

4. The basis for imposing penalty is a mere technical violation and having regard to facts and circumstances, the CIT(A) as well as the Tribunal

found valid explanation for the technical violation.

5. No substantial question of law arises.

6. The appeal is dismissed.