

(2004) 08 P&H CK 0032

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax A. No. 12 of 2004

H.M.T. Ltd., Tractors
Division

APPELLANT

Vs

Commissioner of
Income TaxRESPONDENT

Date of Decision: Aug. 12, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 203, 260A, 272A(2)
- Income Tax Rules, 1962 - Rule 31

Citation: (2005) 274 ITR 544

Hon'ble Judges: N.K. Sud, J; A.K. Goel, J

Bench: Division Bench

Advocate: Pardeep Kapoor, for the Appellant; A.S. Tewatia, for the Respondent

Final Decision: Allowed

Judgement

N.K. Sud, J.

The assessee has filed this appeal u/s 260A of the Income Tax Act, 1961 (for short "the Act"), against the Order of the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal"), dated July 22, 2003. The Tribunal has allowed the Revenue's appeals against the Order of the Commissioner of Income Tax (Appeals) dated July 25, 2002, for the financial years 1995-96 and 1996-97 and upheld the levy of penalty u/s 272A(2)(g) of the Act.

2. On January 13, 2004, counsel for the assessee was asked to explain as to how one appeal was maintainable against the Order of the Tribunal in two appeals for different assessment years. Counsel submitted that the present appeal be treated for the assessment year 1995-96. Accordingly, we proceed to decide the same.

3. The assessee had deducted tax at source out of payments made to eight contractors. Under the provisions of Section 203 read with Rule 31 of the Income

Tax Rules 1962, it was required to issue tax deduction certificate in Form No. 16A to the said parties within the prescribed time. However, the said forms were issued late as per details given below :

S1 No.	Name of the contractor	Due date of issue of Form No. 16 A	Date of issue	Delay For
1.	Hansraj Rahul Kumar	31-8-1995	17-6-1996	28
2.	H.C.L. Ltd.	30-9-1995	--do--	25
3.	Y.R. Kaura and Co.	31-3-1996	--do--	7
4.	Forbes Gokak Ltd.	31-10-1995	--do--	22
5.	Gannon Dunkerley and Co. Ltd.	30-4-1996	--do--	4
6.	Sharma Electric Works	--do--	--do--	4
7.	Vilas Transport Co.	--do--	--do--	4
8.	Royal Clearing Agency	--do--	--do--	4
Total Nos. of days of default				10

4. The Assessing Officer required the assessee to explain as to why penalty u/s 272A(2)(g) of the Act be not levied on account of the above mentioned default. The assessee furnished a written submission, inter alia, contending as under :

1. That the annual TDS return was filed duly in time, i.e., on June 27, 1997, for the financial year 1996-97 along with Form No. 16A and the TDS duly deposited in time.

2. That the delay in issuing the Form No. 16A was due to the reason that the HMT, Pinjore, is a branch of HMT Limited, a Government of India undertaking which is a big organisation having about 5000 employees and has to submit the branch audited accounts in time to the head office for compilation of annual accounts of HMT Limited and for further submission to the Government of India well in time. Due to this reason most of the staff remain busy in the job of finalisation of work which is to be completed by May 31 of each year pertaining to the concerned financial year ending on March 31. Further large number of certificates involving TDS of crores of rupees are to be issued by the disbursing officials.

3. That there is no mala fide and intentional delay on the part of disbursing officials and the organisation concerned officials do not draw any benefit by making such delays,

4. That we have always been submitting the returns and depositing the tax well in time and we have not received any grievances from any employees, contractor or dealer for late issue of certificate or for any loss incurred by them.

5. The assessee also placed reliance on certain decisions of the Tribunal in various cases to show that the default was merely technical in nature as there was no loss of revenue involved at all and even the contractors had not raised any grievance about late issue of the certificates. This explanation did not find favour with the Assessing

Officer, who levied a penalty of Rs. 1,03,900 which is equal to Rs. 100 per day for failure of 1039 days.

6. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Shimla, who accepted the explanation of the assessee. He observed that the appellant is a Government undertaking having more than 5000 persons requiring to be issued tax deduction certificates on Form No. 16/16A and there is a delay in issuing the certificates in only eight cases. He, therefore, held that there was no mala fide intention in delaying the issue of the said forms nor was there any loss of revenue involved in the matter. Accordingly, he allowed the appeal and cancelled the penalty.

7. The Revenue filed an appeal before the Tribunal against the cancellation of penalty by the Commissioner of Income Tax (Appeals) which has been allowed vide the impugned order.

8. Mr. Pardeep Kapoor, learned counsel for the appellant, contended that a perusal of the Order of the Tribunal shows that it has reversed the findings of the Commissioner of Income Tax (Appeals) mainly on the ground that the Commissioner of Income Tax (Appeals) had wrongly accepted the explanation of the assessee that it had to issue tax deduction certificates to 5000 persons whereas Order of the Tribunal clearly showed that the tax had been deducted in respect of eight persons only. He pointed out that it had duly been explained by the assessee that it was only a branch of HMT Limited, which had more than 5000 employees. The Tribunal has failed to appreciate that tax deduction certificates were to be issued not only to eight persons, but also to the employees as well as to the creditors as the tax at source is deducted out of the salary and interest as well. He further pointed out that the default, if any, was purely technical or venial in nature involving no loss of revenue and, therefore, no penalty is exigible in view of the law laid down by the apex court in [Hindustan Steel Ltd. Vs. State of Orissa](#). He also highlighted the fact that none of the contractors had raised any grievance against the delay in issuing tax deduction certificates which are required by them only for filing their Income Tax returns, due date for which was much beyond June 7, 1996, when the certificates were issued.

9. Mr. A.S. Tewatia, learned counsel for the Revenue, on the other hand, supported the Order of the Tribunal.

10. Having heard learned counsel for the parties and having perused the orders of the authorities below, we are satisfied that it is not a fit case for levy of penalty.

11. It is not disputed that the assessee is a branch of a big Government of India undertaking, HMT Limited, having thousands of employees. It has been correctly pointed out that it has to issue tax deduction certificates not only in respect of payments to eight contractors, but also to its employees and creditors in respect of tax deducted out of salary as well as interest. Thus, there was no contradiction in the

explanation furnished by the assessee that it had to issue certificates to more than 5000 persons. The Tribunal while reversing the findings of the Commissioner of Income Tax (Appeals) appears to have been swayed by the fact that tax had been deducted only in respect of eight contractors and thus the assessee was to issue only eight certificates.

12. In the present case the tax deducted at source had been paid in time and the necessary return in respect of the same was duly filed in time with the Income Tax Department. No loss of revenue has occurred on account of late issue of tax deduction certificates. None of the contractors has raised any grievance on account of late supply of the certificate. Keeping in view these facts and especially that the default is merely technical or venial in nature, we are satisfied that it is not a fit case for the levy of penalty. For this purpose, we find support from the observations of the Supreme Court in [Hindustan Steel Ltd. Vs. State of Orissa](#), which read as under (page 29) :

An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

13. In view of the above, we set aside the Order of the Tribunal and restore the Order of the Commissioner of Income Tax (Appeals).

14. The appeal stands allowed.