

Ignorance of compliance provision couldn't be said to be reasonable cause to delete penalty: ITAT

Summary – The Hyderabad ITAT in a recent case of Karvy Computershare (P.) Ltd., (the Assessee) held that where there was clear obligation on part of assessee to comply with provisions of section 92E, mere ignorance and bona fide belief could not be considered as reasonable cause to delete penalty levied upon assessee under section 271BA for non-furnishing of report as required under section 92E

Where assessee had filed relevant information during assessment proceedings as soon as it was brought to notice and accordingly Assessing Officer completed assessment without making any adjustment, assessee having complied with provisions of section 92D(3), penalty under section 271G was to be deleted

Facts

- The assessee was engaged in providing registry services to various companies and mutual funds.
- During scrutiny proceedings, the Assessing Officer noticed that the assessee did not furnish report in Form No. 3CEB as required under section 92E read with rule 10E. As there was non-compliance, penalty proceedings under section 271BA were initiated by way of issue of notice.
- In response to the notice, the assessee submitted that: (i) He was under the impression that separate compliance under section 92E is not required once approval was obtained for payment of royalty. Even in the assessment proceedings, the report could not be filed due to paucity of time and as the assessee had doubts about the legal validity of the reports. Further, the transactions were disclosed in the financial reports. (ii) The details were available in audit report under section 44AB. (iii) The assessee was paying royalty since assessment years 2004-05 and the previous officers were accepting the non-filing of report in Form 3CEB. (iv) The relevant details were filed when called for and no adjustment is also made to ALP. Therefore, the mistake is only technical in nature and there is no revenue loss.
- The Assessing Officer however held that: (a) Statute casts clear obligation on the assessee to furnish report in Form No. 3CEB within 'due date'. This obligation is compulsory. (b) The assessee cannot decide for itself that report in form 3CEB is not necessary. (c) If the case were not to be selected under scrutiny, the fact that Form No. 3CEB was not filed could not have been noticed. (d) The adjustment to ALP is not a criterion to determine whether there is default or not. (e) The argument that earlier officers were accepting the case without filing of report in Form 3CEB is not acceptable. (f) The argument that all the details are available as the case is audited under section 44AB and evidence is in record is also devoid of merit. (g) The assessee can escape from the levy of penalty, if he can establish reasonable cause. In the instant case, no such reasonable cause is established by the assessee except stating that no adjustment was made to ALP. Thus, the Assessing Officer held that this was a fit case for levy of penalty under section 271BA and accordingly, levied penalty.
- On appeal, the Commissioner (Appeals) confirmed the penalty levied by the Assessing Officer under section 271BA.

- On second appeal:

Held

- The assessee has pleaded that the non-submission was not intentional but *bona fide* belief and ignorance of Finance Manager in complying the provision under section 92E. Mere ignorance and *bona fide* belief that will not be considered as reasonable cause to delete the penalty. It is clearly the obligation on the part of the assessee to comply with the provisions of section 92E. Hence, the action initiated by the Assessing Officer in levying penalty under section 271BA is proper in these cases. Accordingly, the order of the Commissioner (Appeals) in confirming the penalty levied by the Assessing Officer is confirmed.
- In the result appeals for both assessment years under consideration are dismissed.