आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1999/Mum/2017

(**निर्धारण वर्ष /** Assessment Year : 2011-12)

The Board of Control for Cricket In India, Wankhede Stadium, "D" Road, Churchgate, Mumbai 400020	**बनाम**/ v.	ACIT (TDS) 2 R.No. 701, 7th Floor, Smt. K.G. Mittal Ayurvedic Hospital Bldg., Charni Road, Mumbai-400002
स्थायी लेखा सं./ PAN: AAATB0186A		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri. Nitesh Joshi Shri. Anil Sathe
Revenue by :	Shri. D.G Pansari , DR

सुनवाई की तारीख **/Date of Hearing : 05.09.2018**
घोषणा की तारीख **/Date of Pronouncement : 05.10.2018**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by assessee, being ITA No. 1999/Mum/2017, is directed against appellate order date 10.01.2017 passed by learned Commissioner of Income Tax (Appeals)-60, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2011-12, the appellate proceedings had arisen before learned CIT(A) from penalty order dated 16.12.2011 passed by learned Assessing Officer (hereinafter called "the AO") u/s 272A(2)(k) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2011-12.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *"1. The learned Commissioner of Income Tax (Appeals) erred in confirming the penalty of Rs.46,200/- without appreciation of factual matrix.*
>
> *2. The learned Commissioner of Income Tax (Appeals) did not appreciate that the appellant had reasonable cause for the delay in filing the statement under section 200(3).*
>
> *3. The learned Commissioner of Income Tax (Appeals) has failed to consider the fact that there was no loss of revenue to the department on account of delay in filing the quarterly return statements, and the default was technical in nature. Further, the appellant is regular in depositing the TDS to the credit of the Central Government within the due dates specified by the Act and the Rules.*
>
> *4. The learned Commissioner of Income Tax (Appeals) erred in confirming the penalty considering the same as Technical in nature without appreciating the fact that the appellant had filed their future returns before the due date.*
>
> *5. The Appellant craves leave to add alter or amend any of the grounds of appeal at any time before or at the time of hearing."*

3. The AO observed that the assessee has not filed quarterly statement of income-tax deducted at source (TDS returns) within the time specified u/s 206/206C of the 1961 Act read with Rule 37 of the Income-tax Rules,1962 for financial year 2010-11 (AY 2011-12) . The assessee was show-caused by the AO as to why penalty u/s 272A(2)(k) of the 1961 Act should not be imposed. The assessee in response submitted acknowledgment of TDS quarterly returns filed with the Department for the financial year 2010-11 but the assessee did not gave any reasons/justifications for delay in filing of quarterly TDS returns. The AO levied penalty u/s. 272 A(2)(k) of Rs. 46,200/- detailed as hereunder vide orders dated 16.12.2011 :-

TDS Return	*Periodicity*	*Due date*	*Date of filing*	*Delay by days*	*TDS amount*	*Penalty (in Rs.)*
24Q	*Q1*	*15.07.2010*	*7.3.2011*	*235*	*2324013*	*23500*
24Q	*Q2*	*15.10.2010*	*9.03.2011*	*145*	*3357245*	*14500*
24Q	*Q3*	*15.01.2011*	*9.03.2011*	*53*	*6236068*	*5300*
24Q	*Q4*	*15.05.2011*	*13.06.2011*	*29*	*9662026*	*2900*
						46200

4. Aggrieved by the penalty of Rs. 46,200/- levied by the AO u/s. 272A(2)k) of the 1961 Act, the assessee filed first appeal with learned CIT(A) . Before the Ld. CIT(A) , the assessee submitted that notice dated 07.12.2011 calling for reason for delay in filing TDS return was only received by assessee on 13.12.2011 while the penalty was levied within 3 days vide order dated 16.12.2011 passed by the AO u/s. 272A(2)(k) of the 1961 Act. The assessee submitted that delay in filing of TDS quarterly returns took place because data was to be collected by the Board from various locations spread all over the country which required lot of time. There were practical difficulties such as non availability of staff in respective offices due to official travels etc, non availability of PAN etc. . It was submitted that there are more than 200 employees spread across various locations across country of whom data was to be collected which took substantial time and led to delay in filing of quarterly TDS returns while the income-tax deducted at source on Salaries paid to employees were deposited in time with Government Treasury. It was submitted that this is merely a technical breach as taxes were duly paid in time to the credit of Central Government within prescribed time. The assessee also submitted that provisions of Section 272A(2)(k) of the 1961 Act are subject to provisions of Section 273B of the 1961 Act. It was submitted that the assessee has gradually improved in filing of TDS returns in time and subsequently quarterly TDS returns were either filed in time within due date or small delay took place. The assessee relied upon decision

of Lucknow Tribunal in the case of PNB v. ACIT (2011) 140 TTJ 0622 (Lko.) to contend that penalty levied by the AO u/s 272A(2)(k) of the 1961 Act be deleted. However, the explanation submitted by assessee did not found favour with Ld. CIT(A) who dismissed the appeal of the assessee vide appellate order dated 10-01-2017 and confirmed the penalty levied by the AO u/s 272A(2)(k) of the 1961 Act.

5. Aggrieved by the appellate order dated 10.01.2017 passed by learned CIT(A), the assessee has now come in appeal before the tribunal . The assessee has filed paper book containing 46 pages . It is claimed that two written replies/submissions were given before Ld. CIT(A) , both date 03.01.2017 which are placed in aforesaid paper book filed with the tribunal. The assessee has submitted that it is mainly because of large number of employees more than 200 spread all over country for which collection of data took long time as well as that e-filing of TDS return was new at that stage which has led to these delays in filing of quarterly TDS returns in form no. 24Q with Revenue beyond the prescribed time. Attention was drawn to second reply date 03.11.2017 which is in continuation of the first reply again dated 03.01.2017 placed in paper book filed with the tribunal, wherein the assessee has explained that for financial year 2012-13, 2013-14 and 2014-15 which are subsequent to impugned year under consideration before the tribunal , the delay in filing of quarterly TDS return in form no 24Q/26Q as well 27Q has almost been eliminated and TDS returns was filed mostly in time . It's submitted that income-tax which were deducted at source were all paid in time to the credit of Central Government even in this year under consideration before the tribunal and no prejudice has been caused to the Revenue because of this late filing of TDS return which was claimed to be merely due to the new system of e-filing of the TDS return which was at the initial stages and several technological modifications were carried out by Revenue from time to time in enabling software for filing these e-returns causing lot of technical glitches, confusion and

inconvenience to tax-payers leading to delays. The assessee relied upon the tribunal decision in the case of Argus Golden Trades India Ltd. v. JCIT reported in (2017) 50 CCH 0071(Jaipur-Tribunal) , decision in the case of Nav Maharashtra Vidyalaya v. Addl. CIT reported in (2016) 74 Taxmann.com 240 (Pune-Tribunal).

6. The Ld. DR on the other hand relied upon the decision of the authorities below and submitted that there is a delay in filing of quarterly TDS returns in form no. 24Q beyond time prescribed by statute and penalty was rightly levied by authorities below u/s. 272A(2)(k) of the 1961 Act.

7. We have considered rival contentions and perused the material on record including cited case laws, order of authorities below and paper book filed before us. We have observed that the assessee has during the financial year 2010-11 (AY 2011-12) deposited the income-tax deducted at source(TDS) on Salaries paid to employees within prescribed due date to the credit of Central Government but the statement of deduction of income-tax at source u/s 200(3) being quarterly TDS returns in form no 24Q with respect to Salaries paid to employees were filed late beyond the time stipulated under Rule 31A of the Income-tax Rules, 1962 which ultimately triggered levying of penalty amounting to Rs. 46,200/- u/s 272A(2)(k) of the 1961 Act by the AO which was later confirmed by learned CIT(A). The details of filing of quarterly TDS returns in form no. 24Q for all the four quarters of previous year 2011-12 by the assessee are as under:-

TDS Return	*Periodicity*	*Due date*	*Date of filing*	*Delay by days*	*TDS amount*	*Penalty (in Rs.)*
24Q	*Q1*	*15.07.2010*	*7.3.2011*	*235*	*2324013*	*23500*
24Q	*Q2*	*15.10.2010*	*9.03.2011*	*145*	*3357245*	*14500*
24Q	*Q3*	*15.01.2011*	*9.03.2011*	*53*	*6236068*	*5300*
24Q	*Q4*	*15.05.2011*	*13.06.2011*	*29*	*9662026*	*2900*
						46200

We have observed that the assessee has given explanation as to late filing of statement of quarterly TDS returns in form 24Q for the year under consideration as having employed more than 200 employees spread all over several locations across country making it difficult to collate the information to prepare these quarterly returns in time as these employees were travelling on official duties . It is also claimed that the PAN of all the employees was made mandatory in e-filing of statement of quarterly TDS returns without which the said e-TDS returns could not be filed/uploaded onto the Revenue's server/system. Secondly, it is also explained that due to new system of e-filing of TDS returns in form no. 24Q introduced by Department which was in the initial stages and in which several modifications in the formats/software's/system of e-filing of quarterly TDS return were made by Revenue from time to time apart from technical glitches in the working of Revenue's software/servers which caused these delays in filing of quarterly TDS returns in form no 24Q for financial year 2011-12 . It is also explained that for subsequent periods , these delays were substantially reduced and ultimately all statement of quarterly TDS returns in form no. 24Q , 26Q and 27Q were filed in time. The assessee has placed on record its conduct in filing TDS returns mostly in time for financial year 2012-13, 2013-14 and 2014-15 in form no. 24Q, 26Q and 27Q in the paper book filed with tribunal. In various judicial precedents, the tribunal has discussed these difficulties faced by the tax-payer in switching over from manual system of filing statement of income-tax deduction at source returns. The assessee has rightly relied upon the decision of tribunal in the case of Argus Golden Trades India Ltd. v. JCIT (supra) , decision in the case of Nav Maharashtra Vidyalaya v. Addl. CIT (supra) as well PNB v. Addl. CIT (2011) 140 TTJ 622 (Lko.) to prove its contentions that tribunal had also acknowledged the difficulties faced by tax-payers in e-filing of TDS returns. For completeness , it is important to

reproduce relevant extract of these three decisions of the tribunal to understand the difficulties faced by the tax-payer in the initial years of e-filing of TDS returns . The decisions in the case of Argus Golden as well Nav Maharashtra are incidentally for the same AY i.e. AY 2011-12 with which we are presently seized of in this appeal.

Hon'ble Pune-tribunal has elaborately dealt with levy of Penalty u/s 272A(2)(k) of the 1961 Act read with Section 273B of the 1961 Act in the case of Nav Maharashtra Vidalaya(supra) . The AY in this appeal was also AY 2011-12 which is presently before us and the difficulties faced by the tax-payers in AY 2011-12 were elaborately discussed by Pune-tribunal and thereafter Penalty levied by Revenue u/s 272A(2)(k) were deleted in those case where income-tax deducted at source was deposited in time but only filing of statement of quarterly deduction of income-tax at source was delayed beyond prescribed time and rightly so with which we also concur while deciding this appeal, wherein Pune-tribunal held as under:-

> ***"17.*** *We have heard the rival contentions and perused the record. In this bunch of appeals, the issue which arises for adjudication is against the levy of penalty under section 272A(2)(k) of the Act for late filing of TDS statements / returns. In this regard, reference is being made to the relevant provisions of the Act. Under Chapter XVII of the Act, duty is upon the person making certain payments to deduct tax at source under the respective sections. The said tax deducted at source is due to be the income received by the deductee as per section 198 of the Act. Section 199 of the Act further provides that where any deduction is made under the Chapter and paid to the Central Government, then the same is to be treated as payment of tax on behalf of the person from whose income such deduction is made.*
>
> ***18.*** *Section 200 of the Act lays down the duty of the person deducting tax, which reads as under:-*
>
> > *"200. (1) Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.*
> >
> > *(2) Any person being an 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.

(2A) In case of an office of the Government, where the sum deducted in accordance with the foregoing provisions of this Chapter or tax referred to in sub-section (1A) of section 192 has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, who is responsible for crediting such sum or tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

***Provided** that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority. "*

***19.** Under section 200(1) of the Act, it is provided that any person deducting any sum in accordance with the provisions of the Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Under section 200(2) of the Act, any person being an employer, as referred to in sub-section (1A) of section 192 of the Act shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs. Under sub-section (2A) of the Act, it is provided that where the sum has been deducted in accordance with foregoing provisions of the Chapter, by the office of the Government, then duty is upon the Treasury Officer or the Drawing & Disbursing Officer or any other person, to deliver or cause to be delivered to the prescribed income tax authorities, or to the person authorized by such authority,*

statement in such form, verified in such manner, setting forth such particulars within such time as may be prescribed. Under section 200(3) of the Act, similar responsibility is on any person deducting any sum on or after first day of April, 2005 in accordance with foregoing provisions of the Chapter, including any person as an employer referred to in section 192(1A) of the Act. The onus is upon such person that he shall after paying the tax to the credit of Central Government within prescribed time, prepare such statement for such period as may be prescribed and deliver or cause to be delivered to the prescribed income tax authority or any person so authorized, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be provided. The duty is upon a person deducting any sum in accordance with various provisions under the Chapter and also upon an employer who is making deduction out of the payments made to the employees, then sub-section (3) requires that the deductor is to prepare a statement for such period as may be prescribed, which is to be delivered to the prescribed authority, in such form and verified and setting forth such particulars as may be prescribed. The said statement is to be delivered within such time as may be prescribed.

20. *In other words, any deductor deducting any sum on or after first day of April, 2005 in accordance with the provisions of Chapter has the following duties i.e. after paying the tax deducted at source credit to the Central Government, the TDS statements within prescribed time shall be prepared and filed. Rules 31A of the Rules provide the time limit for deposit of the tax deducted statement as per section 200(3) of the Act. The TDS statements are to be deposited quarterly i.e. quarter ending 30th June, 30th September, 31st December and 31st March of each financial year and the due date for furnishing the TDS statements is 15th July for the first quarter, 15th October for the second quarter, 15th January for the third quarter and 15th May of the immediately following financial year for the fourth quarter i.e. 31st March. The said statements could be furnished either in paper form or electronically. However, subsequent to the amendment by IT (Sixth) Amendment Rules, 2010 with retrospective effect from 01.04.2010, it was provided that furnishing of statements electronically in accordance with the format and standards prescribed became mandatory. The deductor in the said statement of tax deducted at source was compulsorily required to quote its tax deduction and Collection Account Number i.e. TAN number. Further, quote its Permanent Accountant Number except in the case where the deductor was office of Government and also quote PAN number of all the deductees. Further, the deductor was required to furnish the particulars of tax paid to the Central Government including Book*

Identification Number or challan indication number as the case may be. He was also required to furnish the particulars of amount paid or credited on which tax was not deducted.

21.** In view of various provisions of the Act, as pointed out above, the substitution was made by Income Tax (Sixth) Amendment Rules, 2010 and was applicable for the financial year 2010-11.* ***Since e-compliance of TDS returns was introduced in the said financial year, there was time and again amendments/corrections in order to make system of filing TDS returns user-friendly. The learned Authorized Representative for the assessee has pointed out that there were about 18 amendments / corrections in this regard. In the present set of appeals before us admittedly, there was default in furnishing e-TDS statements late for the respective quarters by different assessee, but all relating to assessment year 2011-12. The question which arises for adjudication before us is whether in such cases where e-TDS was made compulsory for the instant assessment year and where the software was not user-friendly and required amendments at the end of the Government itself from time to time and the compliance being a complex procedure introduced for the first time and where originally the deductors were not in default in depositing the paper TDS returns, does the assessee deductor have reasonable cause for not furnishing the said e-TDS returns in time. In this regard, reference is to be made to the provisions of section 273B of the Act, where it has been provided that in case a person establishes or proves that he had reasonable cause for the failure to comply with the provisions of various sections provided in section 273B of the Act, then no penalty shall be imposable on such person for the said failure. *Reading of section 273B of the Act shows that under it, the Section refers to along with many other sections clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A of the Act. What is relevant for adjudication before us is section 272A(2) of the Act, since penalty has been levied for default in furnishing e-TDS returns under section 272A(2)(k) of the Act. Since section 273B of the Act covers the cases of levy of penalty under section 272A(2) of the Act, then in line with the provisions of said section in case a person establishes its case of reasonable cause for not complying with the provisions of said section, then the section provides that such a person shall not be liable to the penalty imposable for the said failure i.e. under section 272A(2) of the Act. The CIT(A) in the case of several assessee before us has wrongly come to the conclusion that the provisions of section 273B of the Act do not cover the defaults under section 272A(2)(k) of the Act. We reverse the finding of CIT(A) in this regard.*

22. *Now, coming to the case of reasonableness put up before us by different assessee. The first plea raised by all the assessee is that where the compliance to the provisions of the Act was complicated and difficult and in the absence of any technical support in this regard, default if any, in furnishing the TDS returns late should be condoned. Another plea raised by some of the assessee was that where the tax deducted at source was not paid in time, e-TDS returns as such could not be filed and hence, the assessee was prevented by reasonable cause in not filing e-TDS returns in time and as such, no merit in levy of penalty. Another plea raised before us is that charging of fees for each day of default and then, restricting the same to the tax deducted at source was not correct. One another aspect of reasonableness was that in case the returns for quarter 1 was filed belatedly, then the returns for consequent quarters also got delayed for no default and as such, no penalty was leviable for such quarters. Different learned Authorized Representatives appearing before us has made reference to the decisions of various Benches of Tribunal. On the other hand, the learned Departmental Representative for the Revenue has placed reliance on the ratio laid down by the Hon'ble Allahabad High Court in Raja Harpal Singh Inter College's case (supra) and Chandigarh Bench of Tribunal in Central Scientific Instruments Organization's case (supra). One last aspect pointed out by the learned Authorized Representative for the assessee was that the CIT(A) has acknowledged that there was reasonable cause in not furnishing e-TDS returns in time. However, no benefit of the same was given to the assessee because the CIT(A) was of the view that the provisions of section 273B of the Act do not cover penalty leviable under section 272A(2)(k) of the Act.*

23. *First of all, we shall deal with the last submission of the assessee that under the provisions of section 273B of the Act, the provisions of section 272A(2)(k) of the Act are referred and in case the person establishes its case of reasonable cause, then no penalty is to be leviable for such defaults. The case put up by the assessee was that where tax was deducted at source and merely because e-TDS statements / returns were not filed in time does not result in any loss of revenue and hence, no merit in levy of penalty under section 272A(2)(k) of the Act. The claim of deduction of tax deducted at source, its payment to the Treasury to the Government and thereafter, the credit to be allowed to the deductee of tax deducted from his account, all work on the principle that the tax is collected and deposited in the account of the Government as income is earned. In other words, the said provisions of tax deducted are advance payments of tax as you earn the income. Taxes are deducted by the deductor out of payments due to the deductee and such tax deducted is the income of deductee. The credit for tax deduction at source would*

be allowed to the deductee only after the tax deducted at source is deposited in the credit of the Government and the deductor files the compliance report in this regard by way of e-TDS returns. Thus, it is obligatory upon the person deducting tax to deposit the tax deducted at source and also to furnish statement declaring tax deduction made from the account of various deductees. Earlier provisions were to be complied with manually by filing the TDS returns in paper form. However, as per IT (Sixth) Amendment Rules, 2010 with retrospective effect from 01.04.2010, the deductor was asked to file e-TDS statements for which infrastructure was provided and it was required that the assessee complies to the said filing of e-TDS returns. ***However, since assessment year 2011-12 was the first year of introduction of such facilities of e-TDS returns, there were certain hindrances which were taken care of by the authorities by way of various amendments introduced in this behalf. The case of the assessee on the other hand, is that they were small taxpayers and in the absence of technical guidance provided and because of technical hitches, the TDS returns could not be filed in time. Most of the assessee before us have paid the tax deducted at source to the Treasury within time frame but have defaulted in filing e-TDS statements.*** *In some of the cases, there is default in payment of tax deducted at source and consequently, delay in filing the e-TDS returns. The question which arises is whether in the abovesaid scenario, can the provisions of section 273B of the Act can be applied in order to decide the issue of levy of penalty under section 272A(2)(k) of the Act.*

24. *The Hon'ble Punjab & Haryana High Court in HMT Ltd. v. CIT [2005] 274 ITR 544/[2004] 140 Taxman 606 had held that where the tax deducted at source had been paid in time and the necessary returns in respect thereto were filed in time with the Income Tax Department, on mere late issue of tax deduction certificate, there was no loss to the Revenue and the delay in furnishing the tax deduction certificate was held to be merely technical or venial in nature and penalty levied under section 272A(2)(k) of the Act was deleted. It may be clarified herein that earlier under section 272A(2)(k) of the Act, penalty was leviable where the tax deduction certificate was not issued in time. However, by Finance (No.2) Act, 2004 w.e.f. 01.04.2005, it has been provided that where a person fails to deliver or cause to be delivered copy of statement within time specified in section 200(3) of the Act or the proviso to section 206C(3) of the Act, then he shall pay by way of penalty sum of Rs.100/- for every day of default. It is further provided under the said sub-section that the amount of penalty for failure shall not exceed the amount of tax deductible or collectable, as the case may be. It is further*

provided that no penalty shall be levied under clause (a) for failure to furnish the statement under section 200(3) of the Act or proviso to section 206C(3) of the Act, on or after first day of July, 2012.

25. *The learned Departmental Representative for the Revenue has placed strong reliance on the ratio laid down by the Hon'ble Allahabad High Court in Raja Harpal Singh Inter College's case (supra) for the proposition that where the e–TDS statement was not filed in time, then penalty under section 272A(2)(k) of the Act has been held to be leviable. In the facts of the said case before the Hon'ble High Court, the assessee was deducting the tax at source but had not filed the e-TDS returns for five successive assessment years starting from 2008-09 to 2012-13. The assessee failed to furnish any explanation before the Assessing Officer for the said default and only on the last date, it was pointed out that since the Principal of college had joined recently, it would take some time to collect the records for filing the e-TDS statements. The assessee however, failed to comply with notice and the Assessing Officer held the assessee to be liable for levy of penalty under section 272A(2)(k) of the Act. Before the CIT(A), the assessee for the first time offered an explanation that prior to joining regular Principal in the college on 25.01.2010, only officiating Principal had been working, who did not have idea of e-TDS statements and requirement of filing the same. The Tribunal noted that the appellate authority had accepted the explanation offered by the assessee and imposed penalty only from 01.04.2010 though regular Principal had joined the college on 25.01.2010. The Tribunal dismissed the appeal of assessee as no explanation was furnished for non-furnishing TDS statements in time. The Hon'ble High Court thus, in this regard observed that the requirement of filing e-TDS statements in time could not be overlooked. In such circumstances, the Hon'ble High court held that it cannot be urged by the Counsel for the assessee that no penalty could have been imposed for non-filing e-TDS returns in time since it had not resulted in any loss to the Revenue. The Hon'ble High Court further took note of the fact that before the Assessing Officer, no explanation was offered. However, an explanation was offered before the appellate authority, which was taken into consideration and the penalty amount was suitably reduced as the case of appellant that regular Principal assumed charge on 25.01.2010, was accepted and the penalty was imposed after that date. The appeal of the assessee in this regard was thus, dismissed.*

26. *Applying the said ratio laid down by the Hon'ble Allahabad High Court in Raja Harpal Singh Inter College's case (supra), there is no merit in the plea of the learned Departmental Representative for the Revenue that the Hon'ble High Court has laid down the proposition that in every case of default in filing the*

e-TDS statements in time, penalty under section 272A(2)(k) of the Act is leviable. The Hon'ble High Court in an appeal filed by the assessee dismissed the plea of assessee that no penalty is leviable but has upheld the orders of authorities below, wherein the CIT(A) had restricted the levy of penalty from the date of 1st April, 2010 in respect of e-TDS statements to be filed for assessment years 2008-09 to 2012-13, since the assessee had explained that regular Principal had assumed charge on 25.01.2010. In other words, the Hon'ble High Court has accepted the explanation offered by the assessee regarding reasonableness of cause of delay in furnishing e-TDS returns late partially. Admittedly, the default in filing the said e-TDS returns have not been accepted in full but taking into consideration the reasonableness of explanation, the penalty chargeable under section 272A(2)(k) of the Act has been restricted i.e. suitably reduced in the case of appellant as held by the Hon'ble High Court.

27. *Another reliance placed upon by the learned Departmental Representative for the Revenue is on the ratio laid down by the Chandigarh Bench of Tribunal in Central Scientific Instruments Organization's case (supra). In the facts of the said case, the assessee had filed TDS returns in Form No.26Q belatedly after expiry of 10 years from prescribed time limit and the assessee had submitted that he was unaware of provisions of section 200(3) of the Act. The assessee had deposited the tax to the Central Government at relevant time, however, the assessee failed to furnish TDS returns. The delay in filing the returns in prescribed form for all four quarters was 6463 days in assessment year 2009-10 and in assessment year 2010-11 for all four quarter was 4966 days and in assessment year 2011-12, the delay was 3474 days. In view of the factual aspects of the case, where the delay is so huge and in the absence of any explanation of the assessee, we find no merit in the reliance placed upon on such decision by the learned Departmental Representative for the Revenue.*

28. *On the other hand, various Benches of Tribunal have time and again held that where there was case of reasonableness, there was no merit in levying the penalty under section 272A(2)(k) of the Act. Thus, in order to adjudicate the issue before us,* ***we accept the case of reasonable cause as relevant to section 273B of the Act put up by the assessee in the respective cases in the appeals before us, which admittedly relate to different quarters of assessment year 2011-12. Where for the first time, there was requirement of e-TDS furnishing of TDS statement and since there were certain complications in e-filing of TDS returns because of system failure, which admittedly, was amended 18 times by the Department, the delay in furnishing the said returns late***

could not be attributed to the assessee. The onus was upon the authorities to provide platform for easy compliance to newly introduced provisions of the Act. Where such facilities could not be provided by the authorities and the technical support not being available to small assessees, who are in appeal before us, then the delay in furnishing the e-TDS returns late should be liberally construed. Hence, there was practical difficulty on the part of assessee to comply with newly introduced requirement of e-TDS filing of TDS statements, being technical delay and not venial in nature, merits to be considered as reasonable cause for non-levy of penalty as per the requirements of section 273B of the Act. We hold so. *In this bunch of appeals, there are cases where the assessee has defaulted in not depositing tax deducted at source in time, in such cases, the returns were delayed because of default on behalf of the deductor. In such cases, penalty under section 272A(2)(k) of the Act is leviable. However, the same is to be restricted from the date of payment of TDS to the date of filing e-TDS statements since e-TDS statements cannot be filed without payment of TDS to the credit of Central Government. Similar ratio has been laid down by the Chandigarh Bench of Tribunal in Ashirwad Complex case (supra). Accordingly, we hold so.*

29. *Another issue raised in some of the appeals is that where all quarterly returns relating to assessment year 2011-12 were filed on one date i.e. there was default in furnishing the returns for each of the quarters late, the case of the assessee was that because of overlapping default, penalty at best should be restricted to quarter No.1 and no penalty should be levied for the subsequent quarters. We find merit in the above plea of the assessee and accordingly, we direct the Assessing Officer to restrict the penalty leviable to first quarter which is in default and for the overlapping default, no penalty is to be levied under section 272A(2)(k) of the Act. We direct the Assessing Officer to verify the claim of assessee in this regard and work out the penalty accordingly.*

30. *The issue arising in other appeals before us is identical and following our directions in the paras hereinabove, the Assessing Officer in the case of individual assessee has to verify the claim of assessee and work out penalty, if any, leviable accordingly after affording reasonable opportunity of hearing to the assessee.*

31. *In the result, all the appeals of assessee are allowed as indicated above."*

Similarly, we have observed that Hon'ble Jaipur tribunal also considered the difficulties faced by the tax-payers in filing quarterly e-TDS returns and penalty u/s 272A(2)(k) stood deleted in the case of Argus Golden Trades India Limited(supra). The said appeal as decided by Jaipur-tribunal was also for AY 2011-12, wherein tribunal held as under:-

> ***"7.*** *On merits, it is noted that during the financial year 2010-11 which is under consideration before us, there was a change which was brought about in filing of e-TDS returns wherein there was a necessity to mention 100% valid Permanent Account Numbers of the payee to whom the payment has been made and TDS done in such payment in the e-TDS return and thereafter only the e-TDS return can be validated and uploaded in the IT system. The same has been the position of the CBDT vide its notification dated 31.5.2010. The assessee has submitted that since there were large number of deductees scattered throughout the country, a fact not disputed by the Revenue, it took them some time to collect the PANs of these deductees and thereafter, it was able to upload the e-TDS returns in the IT system maintained by the Revenue. Further, the taxes have deducted and deposited at the prescribed rate with delay of few days. Hence, there is no loss to the Revenue which is caused due to the delay in filing of the e-TDS returns which is totally unintentional. Further, our attention was drawn to the decision of the Coordinate Benches in case of Collector Land Acquisition (supra), Branch Manager (TDS), UCO Bank (supra) and Branch Manager SBI (supra) wherein non availability of PAN was held to be a reasonable cause for delay in filing of the e-TDS return. Given the pecularity of the facts in the present case where there was a change effected in the IT system for mandatory requirement of PANs of all deductees before the returns can be validated and uploaded, the fact that there were large number of deductees spread throughout the country and efforts were made by the assessee to obtain their PANs numbers, the fact that taxes have been deducted and deposited, hence no loss to the Revenue, we find that assessee has a reasonable cause for delayed filing of its e-TDS returns in terms of section 273B and the penalty under section 272(A)(K) is hereby deleted."*

The Hon'ble Lucknow-tribunal in the case of Punjab National Bank(supra) also deleted the penalty levied by Revenue u/s 272A(2)(k) of the 1961 Act appreciating the difficulties faced by the tax-payer in e-filing of TDS returns, by holding as under:

"4. I have heard the rival submissions and have also perused the materials available on record. Shri R.N. Shukla, advocate, learned counsel for the assessee submitted that the assessee is a nationalised bank. During the financial year 2007-08, the assessee has filed its quarterly statements of TDS returns in Form No. 24Q and Form No. 26Q through e-TDS as per provisions of sub-s. (3) of s. 200 of the IT Act, 1961 read with r. 31A of the IT Rules, 1962. He further submitted that the whole of the due tax amount was deducted and it was paid to the credit of Government in time. He also brought to my notice that the quoting of deductee PANs in e-TDS statements has become mandatory from 1st Oct., 2007. According to the learned counsel for the assessee, to ensure better compliance in quoting of PAN in the e-TDS statements, IT Department has mandated that statements with less than specified percentage of quoting of deductee PAN will not be accepted. A press release about the same has been issued by the Ministry of Finance. Shri R.N. Shukla, learned counsel for the assessee submitted that to incorporate the above changes, a new file validation utility (FVU) version 2.110 has been released. Shri R.N. Shukla, learned counsel for the assessee further submitted that due to above-mentioned rules, it is not possible to file e-TDS return without the availability of PAN because the new FVU version 2.110 does not validate the return until and unless 70 per cent of the deductee records in the statement for Form No. 26Q and 90 per cent for Form 24Q for all the four quarters are structurally valid PAN. This threshold limit for PAN quoting has been further enhanced to 85 per cent for Form No. 24Q and 95 per cent for Form No. 26Q without which the TDS return will not be accepted. Shri R.N. Shukla, learned counsel for the assessee submitted that the assessee had no alternative but to collect the PAN of the deductee by individually contacting them to comply the statutory requirement because even the 40 per cent PANs of the deductees were not available with the assessee. Collection of PAN from the deductees was not an organizational problem because the assessee has no statutory power to collect the PAN, except to request the individual deductee to supply the PAN. However, the bank is authorized under r. 114B of the IT Rules, 1962 to make the time deposits by accepting the declaration in Form No. 60 in those cases where the PAN is not available. Shri R.N. Shukla, learned counsel for the assessee further pointed out that knowing the statutory requirement of PAN, the assessee tried his best and contacted personally with the deductees and after collecting the PAN filed the e-TDS statements in Form Nos. 24Q and 26Q. According to the learned counsel for the assessee, there was sufficient cause which prevented the assessee from filing the e-TDS return within the limitation period. Even otherwise, default committed by the assessee was technical and venial for which no penalty should have been imposed. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd.* v. *State of Orissa* [1972] 83 ITR 26 .

4.1 There is no dispute that the quarterly statements were filed, of course, late by certain days. There is also no dispute that the tax was deducted and was paid to the credit of Government in time. I find substance in the above submissions of Shri R.N. Shukla, learned counsel for the assessee that quarterly statements could not be filed for the reasons which were beyond the control of the assessee. The act of the assessee cannot be said to be intentional or wilful and therefore, penalty should not have been imposed because the

assessee was prevented by sufficient cause. It is seen that the non-filing of the quarterly statements does not involve any revenue loss and is a mere technical default. Even otherwise, in my opinion, there was only a technical and venial breach of the provisions contained in r. 31A of the IT Rules, 1962 requiring the assessee to submit quarterly statements of deduction of tax under sub-s. (3) of s. 2,00 of the Act within the time prescribed in the said rule. In my opinion, the assessee did not derive any benefit whatsoever by not filing the quarterly TDS statements in time as the amount of TDS was duly deposited in the Government treasury within the prescribed time. Such delay has not caused any loss to the Revenue. Considering the relevant facts of the present case, the default committed by the assessee can be treated as a technical default as the tax was deducted as well as paid in time and even in connection with the filing of the quarterly statements, the assessee has complied with, when the default was brought to his notice. Thus, for technical default or venial breach of the provisions of the Act, no penalty under s. 272A(2)(k) of the Act can be validly imposed. While holding so, I am fortified by the decision of the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd.* (*supra*), wherein the Hon'ble Supreme Court held as under :

> "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."

In view of the above, I am of the opinion that there was no justification in imposing the penalty under s. 272A(2)(k) of the Act on the assessee and therefore, I cancel the same.

5. In the result, the appeal is allowed.

There are several other appeals decided by tribunal wherein under similar circumstances, the penalty levied by Revenue u/s 272A(2)(k) stood deleted. The provisions of Section 272A(2)(k) are subject to provisions of Section 273B of the 1961 Act and the cause shown by the assessee as outlined above in the instant case before us is a reasonable cause. It is undisputed that the income-tax so deducted at

source by the assessee on the salaries paid to employees was deposited in time to the credit of Central Government . The statement of income-tax deducted at source i.e. quarterly TDS return in form no. 24Q for all the four quarters of the financial year 2010-11 were filed late beyond time stipulated under law. We are fully aware that Hon'ble High Court's have upheld the constitutional validity of late fee as prescribed u/s. 234E of the Act for delay in filing of TDS returns as it is a fee paid to Revenue for extra work been done in giving credit to those tax-payers who suffers because of non filing of TDS returns by the deductors in time. At the same time, we cannot also ignore the fact that it was for the Revenue to have allowed smooth switchover from manual to e-filing system of filing TDS returns. The onus and burden was on revenue to provide necessary infrastructure so that tax-payer did not face any inconvenience in filing e-TDS returns. But as it is emerging from the historical factual matrix, the public at large faced lot of inconvenience in initial stage of switchover from manual to e-filing system of TDS returns due to several glitches as cited in preceding para's of this order. We have also noted the conduct of the assessee for subsequent periods wherein the TDS returns were e-filed in form no. 24Q, 26Q as well 27Q by the assessee mostly in time for financial year 2012-13, 2013-14 and 2014-15 , for which e-filing details are reproduced as here under:-

	24Q			26Q			27Q	
F.Y. 2012-13	DUE DATE	DATE OF FILING		DUE DATE	DATE OF FILING		DUE DATE	DATE OF FILING
Ql	15/07/2012	17/07/2012		15/07/2012	16/07/2012		15/07/2012	16/07/2012
Q2	15/10/2012	15/10/2012		15/10/2012	15/10/2012		15/10/2012	15/10/2012
Q3	15/01/2013	12/01/2013		15/01/2013	12/01/2013		15/01/2013	12/01/2013
Q4	15/05/2013	15/05/2013		15/05/2013	15/05/2013		15/05/2013	15/05/2013

	24Q			26Q			27Q	
F.Y. 2013-14	DUE DATE	DATE OF FILING		DUE DATE	DATE OF FILING		DUE DATE	DATE OF FILING
Ql	15/07/2013	13/07/2013		15/07/2013	13/07/2013		15/07/2013	13/07/2013
Q2	15/10/2013	15/10/2013		15/10/2013	15/10/2013		15/10/2013	15/10/2013
Q3	15/01/2014	13/01/2014		15/01/2014	13/01/2014		15/01/2014	13/01/2014
Q4	15/05/2014	15/05/2014		15/05/2014	15/05/2014		15/05/2014	15/05/2014

	24Q			26Q			27Q	
F.Y. 2014 - 15	DUE DATE	DATE OF FILING		DUE DATE	DATE OF FILING		DUE DATE	DATE OF FILING
Ql	15/07/2014	15/07/2014		15/07/2014	15/07/2014		15/07/2014	15/07/2014
Q2	15/10/2014	14/10/2014		15/10/2014	14/10/2014		15/10/2014	14/10/2014
Q3	15/01/2015	13/01/2015		15/01/2015	13/01/2015		15/01/2015	13/01/2015
Q4	15/05/2015	15/05/2015		15/05/2015	15/05/2015		15/05/2015	15/05/2015

The assessee has also enclosed acknowledgement copy of TDS returns filed for the aforesaid three financial years from 2012-13, 2013-14 and 2014-15 which are placed in paper book filed with the tribunal / page no. 11 to 46. The Ld DR did not controvert the above filing of TDS returns in form no. 24Q, 26Q and 27Q for financial year 2012-13, 2013-14 and 2014-15 wherein TDS returns were mostly filed in time as could be evidenced from the above chart. Thus, based on our above discussions outlined in details and conduct of the assessee keeping in

view income-tax deducted at source were deposited in time and only filing of the TDS return was delayed in the initial years of switchover from manual system to e-filing of quarterly TDS returns, thus, we are of the considered view that the penalty of Rs. 46,200/- as is levied by AO and as confirmed by the Ld. CIT(A) u/s 272A(2)(k) in the instant case is not sustainable in the eyes of law as the assessee has shown a reasonable cause falling within parameters of Section 273B of the 1961 Act and we hereby order deletion of the penalty of Rs. 46,200/- levied by the AO u/s 272A(2)(k) of the 1961 Act as was confirmed by learned CIT(A) by setting aside the orders of the authorities below. The assessee succeeds in this appeal. We order accordingly.

8. In the result , the appeal of the assessee in ITA no. 1999/Mum/2017 for AY 2011-12 is allowed.

Order pronounced in the open court on 05.10.2018.

आदेश की घोषणा खुले न्यायालय में दिनांकः 05.10.2018 को की गई

Sd/-	Sd/-
(MAHAVIR SINGH)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, dated: 05.10.2018

Nishant Verma
Sr. Private Secretary

copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI