

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “ए” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री आर. के. पांडा, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI R.K. PANDA, AM

Sl. No.	ITA/CO No.	Name of Appellant	Name of Respondent	Asst. Year
1	832/PN/2016	Nav Maharashtra Vidyalaya, Shivnagar, Tal. Jawali, Dist. Satara – 415 020 PAN :AAAAS1296H	Addl. CIT(TDS), Range, Pune	2011-12
2	264/PN/2016	Vishwa Shakti Construction Pvt. Ltd., Vinod Bhavan, Near Civil Hospital, Subhash Road, Parbhani PAN : AABCV9250B	JCIT, TDS Range, Nashik	2011-12
3	266/PN/2016	New Rameshwar Construction Co., Shanti Niketan Colony, Ganakhed Road, Parbhani – 431 401 PAN: AAHFN0049B	JCIT, TDS Range, Nashik	2011-12
4	224/PN/2016	Vivek Chandrakant Kulkarni, Laxmi Narsinha Complex, Nutan Colony, Aurangabad – 431001, Maharashtra PAN : ABGPK0418F	JCIT, TDS Range, Nashik	2011-12
5	112/PN/2016	M/s. Chaitanya Enterprises, 215/216, 1 st Floor, Apna Bazar, Building No.3, Jalna Road, Aurangabad- 431003 PAN : AAFFC4907K	JCIT, TDS Range, Nashik	2011-12
6	114/PN/2016	M/s. Kasliwal Empire, 215/216, 1 st Floor, Apna Bazar, Building No.3, Jalna Road, Aurangabad - 431003 PAN : AAKFK5606J	JCIT, TDS Range, Nashik	2011-12
7	115/PN/2016	M/s. Kasliwal Tarangan, 215/216, 1 st Floor, Apna Bazar, Building No.3, Jalna Road, Aurangabad - 431003 PAN : AAIFK5908M	JCIT, TDS Range, Nashik	2011-12
8	116/PN/2016	M/s. Kasliwal Nest, 215/216, 1 st Floor, Apna Bazar, Building No.3, Jalna Road, Aurangabad - 431003 PAN : AAJFK5915H	JCIT, TDS Range, Nashik	2011-12
9	234/PN/2016	M/s. Jain Pharmaceuticals Shop No.16, AMC Market, Behind Sadiya Talkies, New Dalalwadi Road, Aurangabad – 431 001 PAN :AAEFJ4965F	JCIT, TDS Range, Nashik	2011-12
10-11	724/PN/2016 & 725/PN/2016	Traveltime Car Rental Pvt. Ltd., Shop No.4, Silvan Height, Anand Park, Aundh, Pune – 411007 PAN : AACCT4425H	Addl. CIT (TDS) Range, Pune	2011-12 (Qr-1) (26Q) 2011-12 (Qr-3) (26Q)

12	121/PN/2016	Rudrani Healthcare Services Ltd., Anandmayee Marg, Udgir – 413517, Dist. Latur PAN : AAECR8157Q	JCIT, TDS Range, Nashik	2011-12
13	152/PN/2016	M/s. Plus Teletech Pvt. Ltd., Khatod Complex, Nirala Bazar, Aurangabad PAN : AAACP6739N	JCIT, TDS Range, Nashik	2011-12
14	570/PN/2016	Udaygiri Multispeciality Hospital Pvt. Ltd., Sahajeevan Colony, Shehal Road, Udgir - 413517, Dist. Latur PAN : AABCU0406G	JCIT, TDS Range, Nashik	2011-12
15	118/PN/2016	Netaji Subhash Chandra Bose College, 1, NSB College, Tarasingh Market, Nanded – 431601	JCIT, TDS Range, Nashik	2011-12
16	862/PN/2016	Prakash Udhavrao Chavan, H.No.1-20-128, Shriniwas Orthopaedics, Near Hingoli Gate, Nanded – 431 602	JCIT, TDS Range, Nashik	2011-12
17- 18	870/PN/2016 & 871/PN/2016	Director of Social Welfare (Commissions) MS Pune, Social Welfare Office, Building, 3, Church Road, Near Photozinco Press, Pune – 411 001	Addl. CIT (TDS) Range, Pune	2011-12 (Qr-1) 2011-12 (Qr-2)
19	416/PN/2016	Janaseva Nagari Sahakari Bank Ltd., No.220, Kusumnagar, Pardi Road, Bhoom, Dist. Osmanabad – 413 504 PAN : AAAAJ2774M	JCIT, TDS Range, Nashik	2011-12
20- 23	259/PN/2016 to 262/PN/2016	Garrison Engineer (Project) MH, Kirkee, Santaji, Ghorpade Road, Kirkee, Pune – 411005	Addl. CIT (TDS) Range, Pune	2011-12 (Qr-3) 2011-12 (Qr-4) 2011-12
24	275/PN/2016	M/s. Bapat & Sons, 2 nd Floor, Shree Durga, New Osmanpura, Opp. Sant Eknath Rang Mandir, Aurangabad – 431 005 PAN : AACFB9823G	JCIT, TDS Range, Nashik	2011-12
25	838/PN/2016	The Principal, Jawahar Navodaya Vidyalaya, Pimple Jagtap, Post. Karandi, Tal. Shirur, Dist. Pune – 412 208	Addl. CIT (TDS) Range, Pune	2011-12
26	43/PN/2016	J.K. Qualitech Pvt. Ltd., Late Ramgopalji Rathi Marg, Udyog Bhavan, Latur – 413 512 PAN : AAAAH2410C	JCIT, TDS Range, Nashik	2011-12
27	472/PN/2016	The Parbhani District Central Co- op. Bank Ltd., Jawaharlal Nehru Road, Tal. & Dist. Parbhani – 431 401 PAN : AAAAT6996R	JCIT, TDS Range, Nashik	2011-12

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte – Sl. Nos.1-3
Shri S.N. Puranik – Sr. Nos.4-9
Shri Pramod N. Jadhav – Sr. Nos.10 & 11
Shri Suhas P. Bora – Sr. Nos.12-14
Shri Y.S. Nagla –

S/Shri Sunil Ganoo & S.C. Bathia – Sr.
Nos.17 & 18
Shri Karan Chandwani – Sl. No.19
None – Sr. Nos.20-27

प्रत्यर्थी की ओर से / Respondent by : Shri S.K. Rastogi – Sr.Nos.1-27

Heard on : 04.08.2016

28	24/PN/2016	New Sanjivani Construction Company, MZSK & Associates, Level 3, Business Bay, Plot No.84, Wellesely Road, Pune – 411001 PAN: AAGFN0556L	JCIT, TDS Range, Nashik	2011-12
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ओर से / Appellant by : Shri Nilesh Khandelwal – Sr. No.28

प्रत्यर्थी की ओर से / Respondent by : Shri S.K. Rastogi

Heard on : 08.08.2016

29	265/PN/2016	Modi Janardhan Laxmikant, Gaianannagar, Karegaon Road, Dist. Parbhani, PAN: ABUPM4272D	JCIT, TDS Range, Nashik	2011-12
30	133/PN/2016	Nagesh Purushottam Enadle, New Amrut Medical, New Renapur Naka, Prabhavati Hospital, Latur - 413512	JCIT, TDS Range, Nashik	2011-12
31	806/PN/2016	UL Electrodevices Pvt. Ltd., S.No.36, 3 rd Floor, Nirman Classic, Katraj-Kondhwa Road, Pune – 411046 PAN: AAACU2163R	Addl. CIT (TDS) Range, Pune	2011-12
32	754/PN/2016	C G Marketing Pvt. Ltd., Khandelwal Jain & Associates, Alankar Cinema Building, 1 st Floor, Above United Bank, Pune – 411001 PAN: AABCC7475M	Addl. CIT (TDS) Range, Pune	2011-12
33	669/PN/2016	Executive Engineer (C), Civil Construction Wing, All India Radio, 1085, Ganesh Khind Road, Pune – 411016 PAN: AAAJP0288R	Addl. CIT (TDS) Range, Pune	2011-12
34	623/PN/2016	Mahesh Ramnathan, Khandelwal Jain & Associates, Alankar Cinema Building, 1 st Floor, Above United Bank, Pune – 411001 PAN: ACTPR1180P	Addl. CIT (TDS) Range, Pune	2011-12
35	20/PN/2016	Ajaykumar Shrikishanji 1, Ramratan Sankul, Central Hanuman, Latur – 413531 PAN: ABIPP2411M	JCIT, TDS Range, Nashik	2011-12
36	839/PN/2016	The Head Master, Vidya Vikas Mandir, Karandi, A/P Karandi, Shirur, Pune – 412208	Addl. CIT (TDS) Range, Pune	2011-12
37	861/PN/2016	Jijamata Primary School, 1, Phule Nagar, Near Shivaji Nagar, Nanded – 431602	JCIT, TDS Range, Nashik	2011-12

38	117/PN/2016	Nagnath Gangadhar Rao Paldewar, Transport Vasant Nagar, Air Port Road, Nanded – 431605 PAN: AAGFN1344J	JCIT, TDS Range, Nashik	2011-12
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अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte – Sr. Nos.29 & 31,
Shri Vishnu Bhutada – Sr. No.30
Shri R.G. Nahar – Sr. Nos.32 & 34,
Shri Pramod N. Jadhav – Sr. No.33
Shri Rohit – Sr. No.35,
Shri Ashish Bhojane - Sr. No.36
Shri Y.S. Nagla – Sr. Nos.37 & 38

प्रत्यर्थी की ओर से / Respondent by : Shri Anil Kumar Chaware – Sr. Nos.29 - 38

Heard on : 30.08.2016

39	235/PN/2016	Ganesh Uttamrao Munde, Prop. M/s. Megha Electrical Services, Plot No.C-15, MIDC, Waluj, Aurangabad PAN: AGRPM1704C	JCIT, TDS Range, Nashik	2011-12
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अपीलार्थी की ओर से / Appellant by : S.N. Puranik - SI.No.39

प्रत्यर्थी की ओर से / Respondent by : Shri S.K. Kulkarni

Heard on : 06.09.2016

सुनवाई की तारीख / Date of Hearing :04.08.2016, 08.08.2016, 30.08.2016 & 06.09.2016	घोषणा की तारीख / Date of Pronouncement: 07.10.2016
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of appeals filed by different assessee are against respective orders of CIT(A) relating to assessment year 2011-12 against penalty levied under section 272A(2)(k) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to different assessee on similar issue of levy of penalty under section 272A(2)(k) of the Act relating to assessment year

2011-12 were heard together and are being disposed of by this consolidated order.

3. This bunch of appeals were heard on different dates and different Counsels put forward their contentions, which we shall deal in the paras hereinafter.

4. The appeals in ITA No.112/PN/2016 filed after delay of 3 days, in ITA No.114/PN/2016 filed after delay of 3 days, in ITA No.115/PN/2016 filed after delay of 3 days, in ITA No.116/PN/2016 filed after delay of 3 days, in ITA No.234/PN/2016 filed after delay of 44 days and in ITA No.235/PN/2016 filed after delay of 26 days, against which the respective assessee have filed applications for condonation of delay explaining the reasons for said delay. In view of the facts and circumstances, we condone the delay in filing the said appeals belatedly and proceed to decide the same after taking the same on record.

5. The short facts relating to the issue are that admittedly, in the present bunch of appeals, the returns required to be filed by the assessee after deducting tax at source under section 200(3) of the Act for different quarters relating to the financial year 2010-11 have admittedly, been filed late. The Assessing Officer noted that the assessee has failed to explain the delay and no cogent reasons have been offered by the individual assessee. Since the deductees do not get the credit of TDS till the time the TDS statements are uploaded by the deductors, the Assessing Officer was of the view that the assessee should have complied with the time limit prescribed under Rule 31A of the Income Tax Rules, 1962 (in short 'the Rules'). As there was failure on behalf of the person to deliver the statement within time limits specified, then the individual assessee were held to be liable to pay penalty under section

272A(2)(k), 274 r.w.s. 200(3) of the Act. The penalty was to be levied @ 100/- per day for the period of delay. In the case of M/s. Nav Maharashtra Vidyalaya in ITA No.832/PN/2016, the Assessing Officer had held the assessee liable for levy of penalty under section 272A(2)(k) of the Act at Rs.40,200/- for non-furnishing of Form No.24Q, where the due date was 15.05.2011 but the same was filed on 20.06.2012 i.e. after the delay of 402 days. In some of the cases, the Assessing Officer has held the respective assessee to have defaulted in depositing the TDS statements late for each of the quarters and consolidated order has been passed for defaults in respect of Form No.24Q/26Q for the quarters falling within the financial year 2010-11 relating to assessment year 2011-12 and has raised the consolidated demand in this regard, against which the assessee has filed an appeal before the CIT(A).

6. Before the CIT(A), the contention of the assessee i.e. Nav Maharashtra Vidyalaya was that it was a primary and secondary school functioning in the remote village of Satara district and the main reason for delay in filing the tax deduction at source returns was non-availability of expert staff who were aware of the intricacies of e-return filing and also because of no proper consultancy available with the school regarding the matter. It was explained by the assessee before the CIT(A) that it was operating in remote area of Satara district and for this particular year, there was strict requirement of e-filing statement and filing of e-TDS returns. Where the tax was deducted at source from the employees' salary and was paid in time to the Government account, however, since the assessee did not have trained staff for doing the work and also in nearby vicinity, no such staff was available and where the school was running only on the grant received from the State Government, non-compliance was for the reasons beyond the control of the school. The assessee pleaded its case of reasonable cause and application of provisions of section 273B of the

Act. Reliance in this regard was placed on the ratio laid down by Chandigarh Bench of Tribunal in Collector Land Acquisition Vs. Addl. CIT (TDS) Range (2012) 21 taxmann.com 22 (Chd.) and the Agra Bench of Tribunal in The Manager, Union Bank of India Vs. Addl. CIT, Range -3, Mathura (2012) 26 taxmann.com 347 (Agra).

7. The CIT(A) noted the provisions of quarterly submissions of TDS statements within stipulated time provided under the Act and noted the fact that the delayed submissions of TDS returns by the deductor would eventually delay the processing of returns of deductees and issue of refunds, if any, to such deductees. The CIT(A) observed that purpose and intention of penalty under section 272A(2)(k) of the Act was to penalize the decutor so as to avoid further hardship to numerous deductees, whose claim of refunds, etc. would depend on the timely furnishing of statements by the dedectors. He further observed that though the assessee had enumerated several reasons behind the impugned delay and he also noted that the same were genuine, however, the CIT(A) held that *“the said reasons may not help on simple ground that the benefit of reasonable cause as envisaged under section 273B of the Act has not been extended to the defaulted deductors”*. He further referred to the provisions of section 273B of the Act, under which it is provided that no penalty would be imposable on a person or assessee as the case may be, for any failure referred to in the said provisions, where such person proves that he had reasonable cause for the said failure. Various sections which are subject to the concession on account of reasonable cause for the failure under section 273B of the Act have been referred to by the CIT(A) at page 5 of the appellate order. He was of the view that where the section envisaged a non-obstacle clause as against section enumerated in the impugned section, it was permissible for the assessee to substantiate reasonable cause for his failure to comply with the

provisions on the basis whereof the penalty sought to be imposed upon him. He further observed that however, for penalty imposed under section 272A(2)(k) of the Act, the override effect of section 273B of the Act does not apply as the said section does not find a place in section 273B of the Act. He thus, held that the assessee was not entitled to get the benefit of section 273B of the Act. The CIT(A) thus, upheld the levy of penalty under section 272A(2)(k) of the Act as admittedly, there was failure on the part of assessee to furnish the statement for tax deducted at source within time. The case laws relied upon by the assessee were held to be not applicable and the order of Assessing Officer in this regard was upheld.

8. The assessee is in appeal against the order of CIT(A).

9. Shri Pramod Shingte, the learned Counsel pointed out that the CIT(A) had erred in holding that remedy is not available to the assessee under section 273B of the Act. Our attention was drawn to the order of CIT(A) in this regard and it was pointed out that he admits that though there is force in the contention of assessee on reasonable cause but the same cannot help the assessee since under section 273B of the Act, the said section 272A(2)(k) of the Act is not covered. He referred to the provisions of section 273B of the Act in this regard and pointed out that the same is fully covered. The next contention raised by the learned Authorized Representative for the assessee was that between the period of September, 2009 to October, 2012 when it was incumbent upon each deductor to e-TDS file the TDS statements / returns, there was some problem with working of software and 19 times, changes were made in the software. The Department at that particular time was struggling to provide online platform for e-TDS returns and for e-filing of said returns. Another compliance which had to be made was that 100% PAN of the deductees should be given, whereas

earlier, it was the requirement to furnish 85% PAN of deductees. He stressed that initially, there was manual compliance of filing of TDS returns, which was being complied with. However, when electronic filing of TDS statements became mandatory, the difficulties arose as there was no agency helping the small assessee, there was no training provided. The schools were established in remote areas and this being the first default, the same should be accepted and no penalty be levied. The learned Authorized Representative for the assessee placed reliance on the ratio laid down by Mumbai Bench of Tribunal in Oriental Bank of Commerce Vs. Addl. CIT in ITA No.7219/MUM/2014, relating to assessment year 2010-11, order dated 05.07.2016. The second contention raised by the learned Authorized Representative for the assessee was that the penalty, if any, should be restricted for the period from the date of payment of TDS where the tax was paid late to the date of filing the TDS statements, since before the payment of TDS, e-TDS returns could not be furnished. In this regard, reliance was placed on the ratio laid down by Chandigarh Bench of Tribunal in M/s. Ashirwad Complex Vs. JCIT (TDS) in ITA No.895/CHD/2013, relating to assessment year 2010-11, order dated 22.11.2013, Agra Bench of Tribunal in The Manager, Union Bank of India Vs. Addl. CIT, Range -3, Mathura (supra) and Mumbai Bench of Tribunal in Addl. CIT Vs. Karrox Technologies (P.) Ltd. (2016) 68 taxmann.com 431 (Mumbai-Tri).

10. Shri Pramod Jadhav appearing before us relied on the earlier submissions made. He further stated that the second issue which arises is that where 90% of TDS was paid in time and the balance 10% was paid during the tax audit work, then whether the assessee can be held to be liable for penalty under section 272A(2)(k) of the Act.

11. The other Counsels appearing for different assessee placed on record the charts for the respective assessee pointing out that the first plea was that no penalty is to be levied in the case of assessee for the said defaults. However, in case the penalty is to be levied, then the same should be restricted from the date of payment of TDS to the date of filing the TDS statements. In one case i.e. Vishwa Shakti Construction Pvt. Ltd., it was pointed out that where the TDS returns for four quarters were filed on one day, then the defaults being overlapping should be restricted to the default vis-à-vis one quarter and the assessee should not be penalized for all the quarters.

12. The learned Departmental Representative for the Revenue pointed out that as per provisions of section 200(3) of the Act, TDS returns had to be filed in time and where the TDS statements were not filed in time, then penalty merits to be levied. He further stated that section levying penalty has no relevance to the tax deduction under section 272A(2)(k) of the Act, where it is provided that for each day of default Rs.100/- is to be charged. He stressed that the reasonable cause of delay in furnishing the TDS statements has to be seen in each case and penalty is *qua* default and *qua* assessee. The learned Departmental Representative for the Revenue pointed out that the Hon'ble Allahabad High Court in Raja Harpal Singh Inter College Vs. Prl. CIT (2016) 70 taxmann.com 246 (Allahabad) has decided the issue against the assessee and had held that where the assessee college did not file e-TDS statements in time, then it was liable for levy of penalty under section 272A(2)(k) of the Act. Further, reliance was placed on the ratio laid down by Chandigarh Bench of Tribunal in Central Scientific Instruments Organization Vs. JCIT (TDS) (2015) 59 taxman.com 273 (Chd-Tri).

13. In rejoinder, Shri Pramod Shingte, the learned Authorized Representative for the assessee pointed out that where the penalty is to be levied for each day of default, so equating the same to the taxes paid was the real hardship. He further stressed that common thread in all the appeals listed before us was that the same related to assessment year 2011-12 and the real hardship was in this year, though the section was inserted from 2005 but in assessment year 2011-12, there were real genuine reasons for not complying with the provisions and hence, the default. He stressed that the assessee wanted to abide the law but in the absence of expert staff and new complicated compliance, the same could not be filed in time.

14. Another Counsel submitted before us that the TDS statements under section 200(3) of the Act was to be submitted after paying the tax deducted at source and the same had to be further submitted within prescribed time. However, where there was delay in payment of tax deducted at source, e-TDS returns could not be filed in time and hence, the default.

15. Shri Y.S. Nagla, the learned Authorized Representative for the assessee relied on the ratio laid down by Ahmedabad Bench of Tribunal in ACIT Vs. Lok Prakashan Ltd. in ITA No.2815/Ahd/2009, relating to assessment year 2007-08, order dated 08.01.2010, wherein the said penalty was deleted.

16. In the case of New Sanjivani Construction Company, the learned Authorized Representative for the assessee placed reliance on the ratio laid down by Mumbai Bench of Tribunal in M/s. Porwal Creative Vision P. Ltd. Vs. Addl. CIT in ITA Nos.5556 & 5557/Mum/2009, relating to assessment year s 2006-07 & 2007-08, order dated 18.03.2011.

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 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 imposed 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 Vs. Prl. CIT (supra)* and Chandigarh Bench of Tribunal in *Central Scientific Instruments Organization Vs. JCIT (TDS) (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 submissions 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 tax payers 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 above said scenario, can the provisions of section 273B of the Act 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., Tractor Division Vs. CIT (2005) 274 ITR 540 (P&H) 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 Vs. Prl. CIT (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 Vs. Prl. CIT (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 Vs. JCIT (TDS) (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 assesseees, 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 M/s. Ashirwad Complex Vs. JCIT (TDS) (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.

Order pronounced on this 7th day of October, 2016

Sd/- (R.K. PANDA)	Sd/- (SUSHMA CHOWLA)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 7th October, 2016.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-10, Pune / concerned CIT(A)
4. The CIT, (TDS), Pune / concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" /
DR, ITAT, " A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune