

Penalty for delay in filing TDS return to be levied from date of deposit of TDS instead of due date of filing return

Summary – The Cuttack ITAT in a recent case of N.K. Media Ventures (P.) Ltd., (the Assessee) held that where assessee filed quarterly e-TDS returns belatedly because TDS could not be deposited in time due to non-availability of funds, penalty under section 272A(2)(k) could be levied only from date of paying tax to Central Government

Facts

- The assessee filed the quarterly e-TDS statements in Form Nos. 24Q and 26A for different quarters for the financial year 2007-08. The said e-TDS statements were filed much later than the due dates for which proceedings under section 272A(2)(k) were initiated. The assessee contended that the TDS returns could not be filed in time because the TDS was not deposited in time due to non-availability of funds.
- The said explanation was not found reasonable by the Assessing Officer, therefore he imposed the penalty. The penalty was levied from due date to the actual date of filing the quarterly return.
- The Commissioner (Appeals) confirmed the penalty order.
- On second appeal :

Held

- Looking to the facts and circumstances of the case, it was found that the Assessing Officer imposed the penalty under section 272A(2) (k) in respect of assessment years. 2008-09, 2009-10, 2010-11 and 2011-12. Penalty has been levied for not submitting the quarterly returns for tax deducted at source within the prescribed time limit. Section 206 relates to collection of tax and not TDS, whereas section 133 related to other provisions and not TDS. Since clause (k), which requires a person to deliver or cause to be delivered copy of the statement within time specified under section 200(3). Under the provisions of section 200(3), read with rule 31A, a person deducting tax at sources is required to prepare a statement in the prescribed form and deliver the same to the prescribed Income-tax authority after paying the tax deducted to the credit of the Central Government.
- Thus, under the provisions of section 200(3), read with rule 31A, a quarterly statement of TDS in Form No. 26Q is required to be filed by the assessee by 15th July, 15th Oct., 15th January & 15th June (last quarter of the year. In all these cases, there was delay as indicated by Assessing Officer in his order. The penalty has therefore been levied at the rate of 100/- per day of default starting from the due date to the date of filing the quarterly return. The case of the assessee is that it had deducted the TDS at the time of crediting amounts in the books of account but the payment could

not be made due to financial difficulties and since the payments had not been made the TDS returns could not be filed as the same required date relating to payment of TDS.

- Penalty under section 272A(2)(k) can be levied only from the date of payment of tax as the statement under section 200(3) is required to be filed only after payment of tax to the Central Government. The assessee therefore can file the return only after paying the tax to the Central Government. The quarterly returns of TDS require filing of date relating to payment of taxes and therefore such returns could be filed only after paying the tax to the Central Government. Therefore penalty has to be levied for delay only from the date of paying the tax to the Central Government.
- As regards the default in not paying the tax to the Central Government in time or for non-deducting the tax at source, there are other provisions for ensuring compliance. In case the assessee fails to deduct the tax at source or after deducting fails to pay the same to the Central Government the assessee is deemed to be in default under section 201(1) and is liable for penalty. The assessee is also liable to pay interest for the period of default till the payment of tax under section 201(1A).
- Therefore the period for levying the penalty had to be counted from the date of payment of tax because the delay in filing the return till the date of payment of tax was already explained on the ground that the assessee could not pay the taxes for which separate penal provisions exist. The assessee has also explained the reasons for not paying the tax to the Central Government in time which was because of financial difficulties.
- The assessee has filed the copies of profit & loss account and balance sheet to substantiate the claim that it was incurring losses and there were substantial liabilities on account of creditors. Once the delay in payment of tax is explained satisfactorily, penalty under section 272A(2)(k) cannot be levied for the period till payment of tax. Hence, the order of the Assessing Officer has to be modified. The Assessing Officer is directed to levy the penalty under section 272A(2)(k) only for the delay in payment of tax by the assessee. The order of Commissioner (Appeals) is modified accordingly.
- In the result, appeal of the assessee is partly allowed in terms of the order above.