

No penalty due to delay in filing TDS return as it was first year of introduction of e-TDS return

Summary – The Pune ITAT in a recent case of Nav Maharashtra Vidyalaya., (the Assessee) held that Provisions of section 273B cover default committed under section 272A(2)(k) and, thus, in respect of assessment year 2011-12 in which strict requirement of filing e-TDS return was imposed for first time, delay caused in filing said returns by assessee for different quarters due to non-availability of expert staff who were aware of intricacies of filing e-returns, was to be liberally construed

Facts

- The assessee was running a school in a remote village with the help of grant received from the State Government. During assessment year 2011-12, there was delay on part of assessee in filing e-TDS returns for different quarters. The Assessing Officer thus imposed penalty under section 272A(2)(K)
- In appellate proceedings, the assessee pleaded case of reasonable cause and applicability of provisions of section 273B on ground that it was first year in which strict requirement of filing e-TDS returns was imposed and, thus, delay was caused due to non-availability of expert staff who were aware of intricate of filing of e-return.
- The Commissioner (Appeals) having rejected assessee's explanation, confirmed impugned penalty order.
- On appeal:

Held

- In the instant set of appeals, 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 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, 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, then no penalty shall be imposable on such person for the said failure. Reading of section 273B 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.
- What is relevant for adjudication is section 272A(2), since penalty has been levied for default in furnishing e-TDS returns under section 272A(2)(k). Since section 273B covers the cases of levy of

penalty under section 272A(2), 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). The Commissioner (Appeals) has wrongly come to the conclusion that the provisions of section 273B do not cover the defaults under section 272A(2)(k). The finding of Commissioner (Appeals) in this regard is reversed.

- Thus, in order to adjudicate the issue, the case of reasonable cause as relevant to section 273B put up by the assessee is accepted in instant appeal, which admittedly relates 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, then the delay in furnishing the e-TDS returns should be liberally construed. Hence, there was practical difficulty on the part of assessee to comply with newly introduced requirement of e-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.