

## ITAT remanded matter back to AO as assessee failed to submit evidence for delay in submission of TDS statement

**Summary – The Mumbai ITAT in a recent case of Dr. Khan Industrial Consultants (P.) Ltd., (the Assessee) held that where assessee had challenged penalty under section 272A(2)(k) on ground that delay in filing TDS Statement occurred due to non-availability of PANs in respect of few deductees but failed to substantiate same with evidences, assessee was to be directed to produce necessary evidences before Assessing Officer to substantiate its claim who would then determine issue on merits after examination of such evidences**

### Facts

- The assessee had delayed in filing the quarterly TDS statements within the time prescribed under section 200(3) read with rule 31A. The assessee submitted that the PANs in respect of few deductee parties were not available which had prevented the assessee in filing the quarterly TDS statements in time.
- The Assessing Officer observed that the assessee had not filed any evidence to substantiate the contention that PANs of deductees were not available. Thus, he rejected the contention of the assessee and levied penalty under section 272A(2)(k).
- On appeal, it was submitted that the TDS amount deducted had been deposited with the Government and there was no loss to the revenue, hence, the assessee prayed that the assessee had a reasonable cause for delay in filing of the quarterly TDS statements and penalty levied under section 272A(2)(k) might be deleted. However, the Commissioner (Appeals) also confirmed the order of the Assessing Officer.
- On second appeal:

### Held

- It is observed that the assessee had made the TDS payments to credit of Central Government but the assessee has not filed the quarterly TDS statements in form No. 24Q/26Q for financial year 2008-09 in time with revenue which has led to inconvenience caused to the deductees as they do not get the credit for tax deducted at source by the assessee in their cases till the time the TDS statements were uploaded by the deductors which also expose them to punitive action by the revenue. This delay is also fatal as it increases the work-load of the revenue as they have to work extra to grant credit to various deductees whom credit cannot be granted at the first go due to failure of the defaulting deductor in uploading quarterly statements in form No. 24Q/26Q in time. This also lead to unnecessary litigations of various *bona fide* taxpayers on the one hand for no fault of theirs and revenue on the other hand due to mismatches in TDS and non-grant of credit of TDS to

deductees by revenue due to delay in uploading of quarterly TDS statements in form No. 24Q/26Q by deductors of TDS. The delay in filing quarterly TDS statements in form No 24Q/26Q for financial year 2008-09 by the assessee ranges from 437 days to 772 days which by all yardsticks is significant delay in filing of quarterly TDS statements. However, the assessee has come forward with the reasons that the said delay occur due to non-availability of PANs in respect of few deductee parties but no details/evidences were filed by the assessee to substantiate the said contentions. It is also claimed that the director of the assessee was diagnosed with cancer, but again no details/evidences were furnished by the assessee to substantiate the said contention. The levying of the penalty under section 272A(2)(k) is not mandatory as perusal of section 273B will clearly reveal that the penalty under section 272A(2)(k) will not be imposed if there was a reasonable cause for the failure. The assessee has relied on various case laws and has tried to explain a reasonable cause for the said failure so that its case gets covered by exempting provisions of section 273B to take it out of clutches of penalty provisions as contained under section 272A(2)(k), but evidences were not filed by the assessee to substantiate the same. Thus, keeping in view facts and circumstances of the case and in the interest of justice, this matter is set aside and restored to the file of the Assessing Officer for *de novo* determination of issue on merits in accordance with law keeping in view provisions of section 272A(2)(k) read with section 273B, after examination of the evidences filed by the assessee in its defence explaining reasonable cause in filing quarterly TDS statements in form No. 24Q/26Q for financial year 2008-09 late beyond time stipulated by law.