

## ITAT deleted penalty levied on 'BCCI' for delayed e-filing of TDS return due to technical glitches

**Summary – The Mumbai ITAT in a recent case of Board of Control for Cricket In India, (the Assessee) held that Penalty levied under section 272A(2)(k) could not be sustained where income tax deducted at source was deposited in time and only filing of TDS return was delayed in initial years of switch-over from manual system in a e-filing of quarterly TDS returns due to several technical glitches in working of revenue's server**

### Facts

- The assessee had during relevant assessment year deposited the income tax deducted at source (TDS) on salaries paid to employees within prescribed due date to the credit of Central Government but quarterly TDS returns in form No. 24Q were filed beyond the time stipulated under Rule 31A of the Income-tax Rules, 1962 which ultimately triggered levy of penalty under section 272A(2)(k) by the Assessing Officer which was later confirmed by Commissioner (Appeals).
- On second appeal, the assessee had 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 those quarterly returns in time as those employees were travelling on official duties. It was 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 stage 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 was also explained that for subsequent periods, such delays were substantially reduced and ultimately all statement of quarterly TDS returns in form No. 24Q, 26Q and 27Q were filed in time.

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### Held

- In various judicial precedents, the Tribunal has discussed these difficulties faced by the taxpayer in switching-over from manual system of filing statement of income tax deduction at source returns.
- The provisions of section 272A(2)(k) are subject to provisions of section 273B and the cause shown by the assessee in the instant case 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. One is fully aware that High Courts have upheld the constitutional validity of late fee as prescribed under section 234E for delay in filing of TDS returns as it is a fee paid to revenue for extra work having been done in giving credit to those taxpayers who suffer because of non filing of TDS returns by the deductors in time. At the same time, one cannot also ignore the fact that it was for the revenue to have allowed smooth switch-over 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 switch-over from manual to e-filing system of TDS returns due to several glitches. 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 , is also to be noted.

- Thus, keeping in view that income tax deducted at source were deposited in time and only filing of the TDS return was delayed in the initial years of switch-over from manual system to e-filing of quarterly TDS returns, the penalty as was levied by Assessing Officer and as confirmed by the Commissioner (Appeals) under section 272A(2)(k) was not sustainable in the eyes of law as the assessee has shown a reasonable cause falling within parameters of section 273B.