आयकर अपीलीय अधधकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 2410/PUN/2017

धनधाारण वषा/ Assessment Year : 2011-12

Maharashtra Jeevan Pradhikaran
Works Division, Parbhani-431 401
TAN : NSKM04669A

.....**अपीलाथी** / Appellant

बनाम / V/s.

The Joint Commissioner of Income Tax,
(TDS) Range, Nashik

.....प्रत्यथी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri S.P Walimbe

सुनवाईकी तारीख / Date of Hearing : 07.04.2021
घोषणा की तारीख / Date of Pronouncement : 17.05.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)-1, Aurangabad dated 21.07.2017 for the assessment year 2011-12 passed u/s.272A(2)(K) r.w.s.200(3) of the Income Tax Act, 1961 **(hereinafter referred to as „the Act") as per the following grounds of appeal on** record :

> ***"On the facts and circumstances of the case and in law, the Learned*** *Assessing Officer has erred in levying the penalty under section 272A(2)(k) of Income Tax Act, 1961 for a sum of Rs.2,55,700/- for alleged default of delay in filing TDS/TCS return thereby disregarding appellants*

genuine reasons in submitting the return belatedly. Appellant prays for deleting the penalty.

The appellant craves for to leave, add, alter, modify, delete above grounds of appeal before or at the time of hearing, in the interest of ***natural justice."***

2. The brief facts in this case are that the assesse being responsible for deduction of tax under the provisions of Chapter XVIIB of the Income Tax Act, 1961 was required to prepare and deliver or cause to be delivered to the prescribed Income Tax Authority, a quarterly statement u/s.200(3) within such time and form as prescribed under Rule 31A of the Income Tax Rules. A notice u/s.272A(2)(k) r.w.s.274 of the Act was issued to the deductor on 01.10.2012. It was brought to the notice of the deductor that the following returns were found to be filed late pertaining to Financial Year 2010-11:

RPR No.	Form No.	Periodicity	Due date	Date of filing	Delay Days
72520100043403	24Q	Q1	15-Jul-10	30-Jan-12	564
72520100043414	24Q	Q2	15-Oct-10	30-Jan-12	472
72520100043425	24Q	Q3	15-Jan-11	30-Jan-12	380
72520100047010	24Q	Q4	15-May-11	09-Aug-12	452
72520100043436	26Q	Q1	15-Jul-10	30-Jan-12	564
72520100043440	26Q	Q2	15-Oct-10	30-Jan-12	472
72520100043451	26Q	Q3	15-Jan-11	15-Jan-12	380
72520100043462	26Q	Q4	15-May-11	30-Jan-12	260

The Assessing Officer was of the opinion that in this case there was delay in delivering the copy of statement is 564 days, 472 days, 380 days, 452 days, 564 days, 472 days, 380 days and 260 days and the tax deductible relating to the statement in question is Rs.8,200/-, Rs.12,600/-, Rs.22,100/-,

Rs.2,81,096/-, Rs.2,63,035/-, Rs.1,96,039/-, Rs.75,298/- and Rs.30,030/- respectively. Therefore, Assessing Officer held that the assessee has committed a default in not delivering the E-TDS statements within the specified time without any reasonable cause and accordingly, levied penalty of Rs.2,55,700/- u/s.272A(2)(k) of the Act.

3. The Ld. CIT(Appeals) has confirmed the action of the Ld. Jt. Commissioner of Income Tax in levying penalty of Rs.2,55,700/- u/s.272A(2)(k) of the Act as per reasons recorded in his order vide Para 5, 5.1, 5.2 which are on record.

4. The Ld. AR for the assessee submitted that due to frequent changes in the software, non-availability of PANs and lack of knowledge about electronic filing, there was delay in e-filing and the assessee had deducted and paid TDS along with interest. The Ld. AR further submitted that there was no default in tax deduction and payment to government account and the assessee did not derive any benefit from non –filing or late filing of E-TDS statements. Therefore, the Ld. AR submitted that there were genuine reasons to the assessee in submitting the return belatedly.

4.1 Further, the Ld. AR for the assessee submitted that the issue of filing the return belatedly has already been adjudicated by the various Tribunals in favour of the assessee and has placed strong reliance on the following decisions:

(i) The Board of Control for Cricket In India Vs. ACIT (TDS)-2, ITA No.1999/Mum/2017 dated 05.10.2018

(ii) Haryana Distillery Ltd. Vs. Joint Commissioner of Income Tax, IT Appeal No.1642 & 1643 (Delhi) 2015, September 4, 2018

(iii) Nav Maharashtra Vidyalaya Vs. Addl. CIT, reported in (2016) 74 Taxmann.com 240 (Pune Tribunal)

5. The Ld. DR has placed strong reliance on the orders of the Sub-ordinate Authorities.

6. We have perused the case records and heard the rival contentions. We have also considered judicial precedents placed on record. In this case penalty has been levied u/s. 272A(2)(k) of the Act due to late filing of TDS statements/returns. However, it is an undisputed fact as admitted by the parties herein, that no loss has been caused to the Revenue by the action of the assessee. There may have been procedural lapse on the part of the assessee however, due to such procedural lapse no prejudice has been caused to the Revenue. This fact has also been admitted by the Ld. DR.

6.1 The assessee has also enclosed details of payments and return filed at Page 1 of the paper book which was also placed before the Department. Therein, it is evident that taxes were deducted and paid to the government account. In this case, it was also conceded by the parties that income tax deducted at source was deposited in time but only filing of statement of quarterly deduction of income tax at source was delayed beyond prescribed time. The Pune Bench of the Tribunal in the case of **Nav Maharashtra Vidyalaya Vs. Addl. CIT, reported in (2016) 74 Taxmann.com 240 (Pune Tribunal),** wherein the issue of levying penalty u/s. 272A(2)(k) of the Act has been elaborately dealt with and the issue of reasonable cause that has been also discussed in detail. This case was further referred in deciding the same issue by the Mumbai Bench of the Tribunal in the case of **The Board of Control for Cricket In India Vs. ACIT (TDS)-2, ITA No.1999/Mum/2017 dated 05.10.2018.** The provisions of Section 272A(2)(k) are subject to provisions of section 273B of the Act and hence, the relevance of reasonable cause has to be established. For the sake of completeness, the observations

and findings of the Pune Bench of the Tribunal in the above referred case are as follows:

> ***"****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, I.T.A. No.1999/Mum/2017 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, I.T.A. No.1999/Mum/2017 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 I.T.A. No.1999/Mum/2017 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 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 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 imposable 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's case (supra) and Chandigarh Bench of Tribunal in Central Scientific Instruments Organization's case (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 submission 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 I.T.A. No.1999/Mum/2017 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 taxpayers 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 abovesaid scenario, can the provisions of section 273B of the Act can 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. v. CIT [2005] 274 ITR 544/[2004] 140 Taxman 606 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 I.T.A. No.1999/Mum/2017 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's case (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's case (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 I.T.A. No.1999/Mum/2017 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's case (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 I.T.A. No.1999/Mum/2017 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 assessees, 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 Ashirwad Complex case (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."

7. Similarly, the Jaipur Bench of the Tribunal in the case of **Argus Golden Trades India Ltd. Vs. JCIT reported in (2017) 50 CCH 0071** (Jaipur-Tribunal) and Lucknow Bench of the Tribunal in the case of **Punjab National Bank v. ACIT (2011) 140 TTJ 0622 (Lko.)** has deleted the penalty levied u/s.272A(2)(k) of the Act. Similarly, Delhi Bench of the Tribunal in the case of **Haryana Distillery Ltd. Vs. Joint Commissioner of Income Tax (supra.),** the question arose whether since on filing belated returns/statements, Revenue had not suffered any loss because tax deducted was already deposited on time and there was mere technical or venial breach to provisions contained in Act for submitting return/statements of TDS. Therefore, penalty was not to be levied and question was answered in favour of the assessee.

8. Respectfully following the aforesaid judicial pronouncements which are in conformity with the facts and circumstances in the present case before us and following the same parity of reasoning, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to delete penalty from the hands of the assessee.

9. In the result, **appeal of the assessee is allowed.**

Order pronounced on 17th day of May, 2021.

Sd/-	Sd/-
INTURI RAMA RAO	**PARTHA SARATHI CHAUDHURY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे/ Pune; **ददनांक**/ Dated : 17th May, 2021
SB

आदेश की प्रधतधलधप अग्रेधषत / Copy of the Order forwarded to :

1. **अपीलाथी** / The Appellant.
2. **प्रत्यथी** / The Respondent.
3. The CIT(Appeals)-1, Aurangabad.
4. The CIT-TDS, Pune
5. **धवभागीय प्रधतधनधध**, **आयकर अपीलीय अधधकरण**, **"ए" बेंच**, **पुणे/DR, ITAT, "A" Bench, Pune.**
6. **गार्ाफ़ाइल** / Guard File.

आदेशानुसार/ BY ORDER,

// True Copy //

धनजी सधचव / Private Secretary
आयकर अपीलीय अधधकरण, **पुणे**/ ITAT, Pune.

		Date	
1	Draft dictated on	07.04.2021	Sr.PS/PS
2	Draft placed before author	17.05.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		