

**आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4961/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2009-10)

M/s Turbo Travels India Pvt. Ltd., 105, Doctor House, Pedder Road, Mumbai -400026.	<b>बनाम/</b> v.	The Additional Commissioner of Income Tax - (TDS), Range 3, 10 <sup>th</sup> floor, Smt. K.G. Mittal Ayurvedic Hospital Bldg., Charni Road, Mumbai - 400002.
स्थायी लेखा सं./PAN : AAAC 4767 G		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	Mrs. Devmaya Kalvani
Revenue by :	Shri Saurabh Deshpande (D.R.)

सुनवाई की तारीख / **Date of Hearing** : 22-08-2016

घोषणा की तारीख / **Date of Pronouncement** : 26-10-2016

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 4961/Mum/2014, is directed against the appellate order dated 19<sup>th</sup> May, 2014 passed by learned Commissioner of Income Tax (Appeals)- 14, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10 w.r.t penalty of Rs.25,065/- imposed by the AO u/s 272A(2)(k) of the Act for delay in filing of TDS returns with the prescribed Income-tax authority.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) read as under:-

“1] A] We are of the opinion that the learned CIT(A) has erred in confirming the penalty of Rs. 25,065/- u/ s. 272A(2)(K) of I.T. Act, 1961.

B] The learned CIT(A) has not appreciated the fact that the delay in filing the TDS Return was attributable to the fact that filing of TDS Returns through E-process was in the initial stage and that there were difficulties in preparing and submitting the TDS Return.

C] The learned CIT(A) has not appreciated the fact that there was no deliberate intention on the part of the appellant to submit the TDS Returns late and that there is no loss caused to the exchequer in the appellants filing the Returns late in as much as the appellant has remitted the tax on due dates.

D] The appellant submits that there was a reasonable cause in submission of TDS Returns late and as such the appellant prays that the penalty should be deleted.”

3. The Brief facts of the case are that the A.O. on examination of the records observed that the assessee had filed the TDS returns after the due dates which were required to be filed at the end of every quarter. As per the provisions of section 200(3) of the Income Tax Act,1961 (Hereinafter called “the Act”) read with Rule 31A of the Income Tax Rules, 1962 a quarterly statement of TDS in Form 24Q and 26Q was required to be filed by the assessee with the prescribed income-tax authority by 15<sup>th</sup> July, 15<sup>th</sup> October, 15<sup>th</sup> January and 15<sup>th</sup> June of the year. The A.O. compiled the delay in submission of TDS returns by the assessee for the assessment year 2009-10 which are as under:-

Quarter	No. of days delay	TDS Amount	Penalty Amount (In Rs)
24Q2	68x100 = 6800	605200	6800
24Q3	2x100 = 200	120000	200
24Q4	2x100=200	120000	200

26-Q1	160x100 = 16000	10665	10665
26-Q2	68x100 = 6800	11615	6800
26-Q3	2x100 = 200	10665	200
24-Q4	2x100 = 200	10665	200
			25065

The A.O. issued show-cause notice to the assessee asking it to explain as to why penalty under section 272A(2)(k) of the Act should not be levied. In reply to the above show cause notice, the assessee submitted that the delay was due to the delay submission of TDS forms(24Q and 26Q) through e-filing of TDS returns in electronic mode which was in its initial phases as earlier the TDS returns were filed in physical mode annually, and that there was difficulties in preparing and submitting the e-TDS forms in electronic mode. The submission of the assessee were considered for the financial year 2007-08 by the AO and the penalty proceedings were dropped, however, the submissions of the assessee were not found acceptable for the financial year 2008-09 as it was observed by the AO that there is a statutory obligation to file the quarterly returns and the assessee had failed to comply with the provisions of the Act, therefore, the A.O. therefore imposed penalty of Rs.25,065/- on the assessee u/s 272A(2)(k) of the Act.

4. Aggrieved by the penalty order u/s 272A(2)(k) of the Act of the A.O., the assessee filed its first appeal before the Id. CIT(A).

5. Before the Id. CIT(A) the assessee filed the details of TDS returns for all the financial years and submitted that the delay had occurred for the first year and in the subsequent years the assessee had filed the TDS returns on time without any delay with the prescribed income-tax authority. The Id. CIT(A) considered the submissions of the assessee and observed that in assessee's case clause (k) of sub-section 2 of Section 272A of the Act requires a person to deliver or cause to be delivered copy of the TDS return/statement

within time specified under section 200(3) of the Act. As per the provisions of Section 200(3) of the Act 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 at source to the credit of the Central Government. The liability of assessee is a statutory and absolute liability. Fiscal statute has to be strictly construed so that nobody can avoid the responsibility of deposit of tax so deducted and file the return on time with the prescribed income-tax authority. The ld. CIT(A) observed that breach of the provisions of section 200(3) of the Act will attract penalty leviable u/s 272A(2)(k) of the Act. The learned CIT(A) observed that the plea of the assessee that the submission of TDS returns/forms through electronic mode was in its initial phases and that there was difficulty in preparing and submitting the e-forms cannot be held as a genuine explanation for not filing return on time by the assessee. The ld. CIT(A) held that no reasonable cause has been furnished by the assessee for delay in filing the e-TDS return. The learned CIT(A) held that the several case laws cited by the assessee cannot come to its rescue in view of the clear provisions of section 272A(2)(k) of the Act . It was observed by the learned CIT(A) that Section 200(3) of the Act places a statutory mandate on every person to file e-TDS return/statements' in prescribed form and in the prescribed manner by the due date and on breach of provisions of Section 200(3) of the Act , penalty is leviable u/s 272A(2)(k) of the Act. The ld. CIT(A) accordingly confirmed the penalty order of the A.O. passed u/s 272A(2)(k) of the Act , vide appellate orders dated 19-05-2014.

6. Aggrieved by the appellate orders dated 19-05-2014 passed by the ld. CIT(A), the assessee is in appeal before the Tribunal.

7. The ld. Counsel for the assessee submitted that the concept of e-filing of the TDS return introduced by the Revenue was in the initial stages during

the previous year relevant to the impugned assessment and there were difficulties in preparing and submitting the e-forms as several new changes were introduced by the Income-tax Department including technological platform compatible requirements . It is submitted that the assessee has remitted the tax deducted at source (TDS) on the due date to the credit of Central Government and no loss/prejudice has been caused to the Revenue in the late filing of the TDS returns. It was submitted that e-TDS returns were filed voluntarily by the assessee albeit delayed without any notice from Revenue. The taxes were remitted to Government in time. There is no deliberate delay on the part of the assessee in filing TDS return with the Department and the assessee has not benefitted from this technical breach in filing TDS return late with the Department. In support, the ld. Counsel placed reliance on the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa,(1972) 83 ITR 26(SC). The learned counsel also relied upon Hon'ble Gujarat High Court decision in the case of CIT v. Harsiddh Construction (P) Ltd., (2000) 244 ITR 417(Guj.) and also the decision of the ITAT, Chandigarh Bench in the case of Corporation Bank v. JCIT in ITA No. 161/Chd/2015 , whereby the facts were identical and the penalty was deleted. The ld. Counsel submitted that there was no case for levy of penalty u/s 272A(2)(k) of the Act as the assessee had a reasonable cause for not filing the TDS return in time.

8. The ld. D.R. supported the order of the authorities below and submitted that there was proper system in place for filing of TDS returns.

9. We have considered the rival contentions and also perused the material available on record including the case laws relied upon. We have observed that the penalty has been imposed by the A.O. on the assessee u/s 272A(2)(k) of the Act of Rs. 25,065/- as the assessee has delayed in filing the e-TDS returns in Form No. 24Q and 26Q with the prescribed income-tax

authority as per the chart in the preceding paras . We find that the assessee has deposited the taxes deducted at source (TDS) in time to the credit of Central Government and hence there was no loss/prejudice caused to the Revenue. However, there was a delay in filing the TDS return as the submission of e-TDS forms through electronic mode was in initial stages and there were difficulties in preparing and submitting the TDS return forms in form no 24Q and 26Q by the assessee , however, taxes deducted at source were paid in time by the assessee. It is a matter of common knowledge that the Department has switched over the annual filing system of TDS returns in manual form to quarterly e-filing of TDS returns in form no. 24Q and 26Q and in this process there were various technological platforms / systems to be put in place and upgraded from time to time . Similarly, the tax-deductors also faced initial glitches as well faced gestation period in understanding and adapting to new regime of e-filing of TDS returns in electronic mode/formats during switch over phase from regime of manual filing of TDS returns to e-filing of TDS returns in electronic mode. The assessee has also claimed to have faced difficulties in upgrading and adjusting to the new regime/ system of quarterly e-filing of TDS returns and in our considered view , keeping in view facts and circumstances of the case and detailed discussions as set-out above, penalty levied by the A.O. u/s. 272A(2)(k) of the Act for breach of provisions of Section 200(3) of the Act is not exigible in this case as the assessee has come out with a plausible and bona-fide explanation as set-out above explaining delay in filing of the e-TDS returns with the Revenue which in our considered view is a reasonable cause as contemplated u/s. 273B of the Act for delay in filing of e-TDS returns with the prescribed income-tax authority and hence we order deletion of the penalty of Rs.25,065/- levied by the A.O. u/s. 272A(2)(k) of the Act and as confirmed by the Id. CIT(A). We order accordingly.

8. In the result, the appeal filed by the assessee in ITA No. 4961/Mum/2014 for the assessment year 2009-10 is allowed.

Order pronounced in the open court on 26<sup>th</sup> October, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 26-10-2016 को की गई ।

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 26-10-2016

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व.नि.स./ R.K., Ex. Sr. PS

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "E" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai