आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.2026/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Nisar Mehboob Alam Khan
N K Construction, Plot No.22,
Motiwala Nagar,
Opp. MGM Hospital,
Aurangabad .... अपीलार्थी/Appellant

PAN: AKGPK5798P

Vs.

The Jt. Commissioner of Income-tax,
TDS Range, Nashik .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Ms Sabana Parveen

सुनवाई की तारीख / **Date of Hearing : 04.10.2018**		घोषणा की तारीख / **Date of Pronouncement: 16.10.2018**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-1, Aurangabad, dated 18.07.2016 relating to assessment year 2011-12 against penalty levied under section 272A(2)(k) r.w.s. 200(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

> *1. The learned CIT(A) erred in law and on facts in confirming penalty u/s 272A(2)(k) of Rs.52,175/- for late filing of TDS Returns without appreciating that the appellant was prevented from reasonable cause for not filing the Returns in time.*
>
> *2. The learned CIT(A) failed to appreciate that the appellant had paid TDS along with interest, the default remained only a technical breach and there was no malafide intention for not filing the returns within specified time.*

3. Despite service of notice, none appeared on behalf of assessee nor any application for adjournment was moved. However, we proceed to decide the present appeal as the issue is squarely covered by various earlier orders of Tribunal.

4. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

5. The issue raised in present appeal is against levy of penalty under section 272A(2)(k) of the Act of ₹ 52,175/- for late filing of TDS returns. The case of assessee before us is that it was prevented by reasonable cause for not filing the returns of TDS in time. However, the CIT(A) has not accepted the reasonableness and upheld the levy of penalty. The assessee had furnished quarterly statements of TDS returns under section 200(3) of the Act. The Assessing Officer noted that the said quarterly TDS returns were furnished beyond the time prescribed under the Act. The Assessing Officer issued show cause notice to the assessee as to why the order imposing penalty under section 272A(2)(k) r.w.s. 200(3) of the Act should not be passed. However, none appeared on behalf of assessee before the Assessing Officer. The Assessing Officer held the assessee to have defaulted for a period of 587 days for quarter No.1, 495 days for quarter No.2, 403 days for quarter No.3 and 283

days for quarter No.4 and levied penalty @ ₹ 100/- for each day of delay, totaling ₹ 1,57,106/-.

6. In appeal before the CIT(A), the assessee pointed out that he had not received notice of hearing from the Assessing Officer and the order haD been passed without providing opportunity of hearing to the assessee. He also pointed out that the TDS returns were filed after paying taxes along with interest before any show cause notice was issued by the Department. The assessee also pointed out that it works in unorganized sector and it had incurred certain expenses such as professional fees, rent and contract labour, which had attracted TDS. He further stated that many of sub-contractors who had undertaken various works were not educated and were ignorant about the Income-tax laws and did not possess PAN, so the assessee compelled the individual sub-contractors to apply for PAN and hence, the delay was beyond the control of assessee. The assessee further relied on various decisions of different Benches of Tribunal to point out that the error was technical in nature and there was no loss of revenue, hence no merit in levy of penalty. The CIT(A) did not accept the cause of reasonableness propounded by the assessee since the assessee had failed to show as to what kind of efforts were made by him in collecting PAN. He further observed that the assessee was admittedly, aware of TDS provisions and it was simply an afterthought to escape legal consequences for delay in filing e-TDS statements. He accepted that under the provisions of section 273B of the Act, in case there was reasonable cause for the delay, then the same could be accepted for dropping penalty proceedings, but he was of the opinion that the assessee did not deserve such a relief. He upheld the levy of penalty since the word used in section was ‘shall’ and not ‘may’ and therefore, it was mandatory for the

assessee to comply with the provisions by filing the requisite particulars within prescribed time.

7. On perusal of record and the orders of authorities below, we find merit in the plea of assessee, wherein he has admitted to have filed TDS returns belatedly on the ground that he had not received PAN numbers of deductees. The assessee was a proprietor of his business and has deducted tax at source out of payments made to sub-contractors and also on account of rent and professional fees. The TDS return for the first quarter was due on 15.07.2010 and was filed on 22.02.2012. The TDS return for quarter No.2 in Form No.26Q was due to be filed on 15.10.2010 and for quarter No.3 by 15.01.2011 and for quarter No.4 by 15.05.2011, but all these TDS returns were filed on 26.02.2012. The Assessing Officer has calculated the default in number of days i.e. for first quarter at 587 days, second quarter at 495 days, third quarter at 403 days and for fourth quarter at 283 days. The case of assessee on the other hand, is that in view of peculiar circumstances of sub-contractors not having PAN, which were applied at a later date and hence, the delay in filing TDS returns late but the taxes were paid along with interest upto date; in such circumstances, applicability of provisions of section 273B of the Act. We find merit in the plea of assessee, wherein under section 273B of the Act, if the assessee established its case of reasonable cause, which had resulted in failure of assessee to comply with the requirement of law, then penalty merits to be deleted in the hands of assessee. The facts of each case has to be seen independently and under such circumstances, reasoning of CIT(A) that the word used in section is ‘shall’ and not ‘may’ and hence, it was mandatory upon the assessee to comply with the provisions of the Act by filing the TDS return within prescribed time, cannot hold. Undoubtedly, in the said section, the word

used is 'shall' but thereafter, the provisions of section 273B of the Act are also provided in the Statute and reading two together would show that levy of penalty can be deleted in case the assessee fulfills the conditions of reasonable cause as provided in section 273B of the Act.

8. We also find that similar issue had arisen before the Tribunal in bunch of appeals with lead order in Nav Maharashtra Vidyalaya Vs. Addl. CIT (TDS) Range, Pune in ITA No.832/PN/2016, relating to assessment year 2011-12 vide order dated 07.10.2016 has decided the issue of levy of penalty under section 272A(2)(k) of the Act. The relevant findings of Tribunal are as under:-

> *"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, 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, 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. 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 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 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 Vs. Prl. CIT (supra) and Chandigarh Bench of Tribunal in Central Scientific Instruments Organization Vs. JCIT (TDS) (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 submissions 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 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 tax payers 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 above said scenario, can the provisions of section 273B of the Act 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., Tractor Division Vs. CIT (2005) 274 ITR 540 (P&H) 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 deliver 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 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 Vs. Prl. CIT (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 Vs. Prl. CIT (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 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 Vs. JCIT (TDS) (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 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 M/s. Ashirwad Complex Vs. JCIT (TDS) (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."

9. Following the same parity of reasoning, we direct the Assessing Officer to delete penalty levied under section 272A(2)(k). The grounds of appeal raised by assessee are thus, allowed.

10. In the result, the appeal of assessee is allowed.

Order pronounced on this 16th day of October, 2018.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 16th October, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Aurangabad;
4. The CIT-TDS, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune