Delay in filing TDS return through NSDL is Technical Breach, not attracts penalty

Branch Manager, UCO Bank Vs. ACIT (ITAT Cuttack)

The AO imposed penalty u/s 272A(2)(k) for delay in filing the TDS return u/s 200(3). The assessee's argument that the delay was due to a shortage of staff was rejected on the ground that the same was not reasonable cause. The CIT(A) confirmed the penalty. On appeal by the assessee to the Tribunal, HELD allowing the appeal:

"The penalty was levied by the department in a mechanical manner. The assessee would have filed the hard-copy of the quarterly statements but this is not accepted by the department. The computer has to generate a number for acknowledging receipt of such statements. The number is not generated till the computer tallies the PAN and the information available on AS-26. The late filing is caused by an administrative glitch. The delay occurs because the assessee-deductors are dependent on information of TDS and its deposit from the sub treasury of the Government and the filing of the e-return through the designated service provider of the Income-tax Department. The assessee-deductors have no technical competency to file the return by themselves without external aid. They are also not competent to do so by themselves as per rule 37B and "Filing of Return of Tax deducted at source" scheme 2003, which requires the submission of quarterly statement through NSDL or other approved agencies which are third parties and not under the control of the assessees. Penalty u/s 272(A)(2) cannot be levied in a routine manner. The late filing of TDS return cannot be said to be intentional or willful. It is only a technical or venial breach"

CA SHIVA SHANKARA R. SHETTY
CHARTERED ACCOUNTANT
Mobile: +91 9035846043 Email: ca.srshetty@icai.org
www.casrshetty228359.in