

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH 'B', CHANDIGARH**

BEFORE SHRI T.R. SOOD, ACCOUNTANT MEMBER  
AND Ms. SUSHMA CHOWLA, JUDICIAL MEMBER

**ITA Nos.609 to 611 /Chd/2012**  
(Assessment Years: 2006-07 & 2009-10)

Canara Bank,  
Ambala.  
Chandigarh.

Vs.

The Income Tax Officer(TDS),  
Panchkula.

PAN: RTKC01779B  
(Appellant)

(Respondent)

Appellant by : Shri H.K.Jindal None  
Respondent by : Shri Akhilesh Gupta, DR  
Date of hearing : 20.12.2012  
Date of Pronouncement : 28.12.2012

**O R D E R**

**Per SUSHMA CHOWLA, J.M. :**

These three appeals by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals), Rohtak, each dated 16.03.2012 relating to assessment years 2006-07 & 2009-10 against the penalty levied u/s 272B of Income Tax Act, 1961 (in short 'the Act').

2. The only ground raised by the assessee in all the three appeals reads as under:

*"1. The ld. commissioner of income tax appeals has erred in law and facts of the case while upholding the penalty of Rs.190000/-(Rs.10,000/- in ITA No.610 & 611/Chd/2012) instead of giving relief against the same."*

4. All the three appeals relating to the same assessee were heard together and are being disposed off by this consolidated order for the sake of convenience.

**ITA No.609/Chd/2012**

5. The brief facts of the case are that the assessee had filed e-TDS quarterly statement on 31.8.2005, in which PAN numbers of 19 deductees

were found to be invalid. The assessee failed to appear before the Assessing Officer in response to the show cause notice issued and consequently the Assessing Officer levied penalty at Rs.1,19,000/- under section 272B of the Act. The said levy of penalty under section 272B of the Act was confirmed by the CIT (Appeals) as the assessee failed to bring on record evidence to establish its plea of reasonable cause.

6. The assessee is in appeal before us against the order of the CIT (Appeals). The learned A.R. for the assessee raised plea before us that no penalty is leviable under section 272B of the Act for the impugned assessment year as the provisions requiring the assessee to furnish the PAN numbers in the quarterly statement of return filed, was introduced by the Finance Act, 2006 w.e.f. 1.6.2006.

7. The learned D.R. for the Revenue placed reliance on the orders of the authorities below.

8. We have heard the rival contentions and perused the record. The assessee is in appeal against the levy of penalty under section 272B of the Act relating to assessment year 2006-07. The assessee had furnished e-TDS quarterly statement for the financial year 2005-06 in Form No.24Q on 31.8.2005 in which PAN number of nineteen tax deductees were found to be invalid.

9. The Finance (No.2) Act, 2004 w.e.f. 1.4.2005 inserted sub-section (3) to section 200 of the Act which reads as under:

*“200 (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.”*

10. In the amended provisions of section, the assessee is to furnish quarterly e-TDS return in respect of tax deducted out of salary under the provisions of section 192 or any other payment made under Chapter-XVII. The said provisions are applicable w.e.f. 1<sup>st</sup> day of April, 2005. Prior to the insertion of sub-section (3) to section 200 of the Act, the assessee was to furnish yearly statement of tax deduction at source in the returns prescribed under the provisions of section 206 of the Act.

11. Further it is the duty of the deductor to quote the Permanent Account Number of the person to whom such sum or income or amount had been paid as per section 139A (5B) of the Act. Under the aforesaid provisions of section the deductor has to quote the Permanent Account Number of the deductee i) in the statement furnished to the employee under section 192(2C) of the Act; ii) in the certificate of tax deduction at source furnished under section 203 of the Act; iii) in all the returns prepared/delivered in accordance with the provisions of section 206 of the Act, to any income-tax authority. Further sub-clause (iv) to sub-section (5B) of section 139A of the Act was inserted by the Finance Act, 2006 w.e.f. 1.6.2006. Under the said sub-clause the tax deducted at source has to be quoted by the deductor in all the statements prepared/delivered in accordance with the provisions of section 200 (3) of the Act. The said provision is applicable w.e.f. 1.6.2006 and is to apply from 1.6.2006. The default in furnishing the correct PAN number in the various statements/certificates to be filed in accordance with the provisions of section 139A(5B) of the Act attracts levy of penalty upon the deductor under section 272B of the Act.

12. In the facts and circumstances of the present case before us, the e-TDS quarterly statement of tax deducted at source in Form No.24Q relating to financial year 2005-06 was due and furnished by the assessee on 31.8.2005. In view of the insertion of sub-clause (iv) to section 139A(5B) of the Act, the duty of the deductor to quote the PAN number

starts from 1.6.2006 i.e. the date of insertion of the said sub-clause by way of Finance Act, 2006. Accordingly, the assessee having furnished its e-TDS quarterly statement on 31.8.2005 cannot be held to have defaulted by non-furnishing or wrongly mentioning the PAN number of the deductee in the quarterly statement filed on 31.8.2005. In view thereof, there is no merit in the levy of penalty under section 272B of the Act. Thus we hold that there is no merit in the levy of penalty amounting to Rs.1,19,000/- for the captioned assessment year i.e. assessment year 2006-07. The Assessing Officer is directed to delete the penalty levied under section 272B of the Act amounting to Rs.1,19,000/-. The ground of appeal raised by the assessee is thus allowed.

**ITA No.610/Chd/2012**

13. The facts relating to the captioned assessment year is that assessee had furnished e-TDS quarterly statement in Form No.24Q for the financial year 2008-09 on 17.6.2009 and had failed to furnish the PAN numbers of three deductees. The assessee failed to respond to the show cause notice issued by the Assessing Officer and consequently penalty of Rs.30,000/- was levied under section 272B of the Act. The CIT (Appeals) confirmed the levy of penalty under section 272B of the Act at Rs.30,000/- as the assessee had failed to file the correction statement in respect of three deductees before the Assessing Officer or before passing of the order of the CIT (Appeals) also. In view thereof the Assessing Officer levied penalty of Rs.30,000/-, which was confirmed by the CIT (Appeals). The provisions of section 272B(1) of the Act provide that *If a person failed to comply with the provision of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty a sum of Rs.10,000/-*. In view of the above said provisions of the Act we restrict the levy of penalty under section 272B of the Act at Rs.10,000/-. Thus ground of appeal raised by the assessee is partly allowed.

**ITA No.611/Chd/2012**

14. The facts relating to the present appeal are that the assessee had furnished e-TDS quarterly statement of tax deducted at source relating to financial year 2008-09 in Form No.24Q on 29.4.2009. The PAN number of one of the deductees was not furnished by the assessee and hence the Assessing Officer found the assessee to have defaulted. Thus the Assessing Officer levied penalty under section 272B of the Act at Rs.10,000/-. The said levy of penalty under section 272B of the Act at Rs.10,000/- was confirmed by the CIT (Appeals), against which the assessee is in appeal before us.

15. The learned A.R. for the assessee raised a new plea before us that the salary paid to the employee was below taxable and hence there is no requirement of furnishing the PAN number of the said deductee as the person was not liable to apply for PAN number.

16. The learned D.R. for the Revenue placed reliance on the orders of the authorities below.

17. We have heard the rival contentions and perused the record. The provision of section 272B of the Act are attracted where the assessee has failed to furnish the PAN number of the deductee in the statement furnished in response to tax deduction at source under various provisions of the Act. The learned A.R. for the assessee has raised a new plea that the person in respect of which it was held to be in default in non-furnishing of the PAN number, had below taxable income and as such there was no requirement to apply or get PAN number. The said provisions of section 139A of the Act are applicable to the person in respect of the first previous year in which the income exceeds the maximum amount which is not chargeable to income-tax. In case the income of the person is below taxable limit, there is no requirement to apply for the PAN. The learned A.R. for the assessee has raised a new

plea before us that the deductee in respect of whom the PAN was not furnished was not obliged to apply for the PAN as the salary paid to the person was below taxable limit. The said plea of the assessee needs verification and accordingly we remit the issue back to the file of the Assessing Officer to verify the stand of the assessee. The Assessing Officer is to determine the total income of the deductee for the previous year from all sources and not only the salary received by the deductee for the period under consideration. In case the said income of the deductee is below taxable limit, then there is no requirement to apply and receive the PAN and in such circumstances, the deductor assessee for not quoting the PAN could not be held to have defaulted and hence not exigible to levy of penalty under section 272B of the Act. The Assessing Officer shall decide the issue after verification and in accordance with law. Reasonable opportunity of hearing shall be afforded to the assessee. The grounds of appeal raised by the assessee are allowed for statistical purposes.

16. In the result, the appeals of the assessee in ITA No.609 is allowed, in ITA No.610/Chd/2012 is partly allowed and in ITA No.611/Chd/2012 is allowed for statistical purposes.

Order pronounced in the open court on this 28<sup>th</sup> day of December, 2012.

Sd/-  
**(T.R.SOOD)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUSHMA CHOWLA)**  
**JUDICIAL MEMBER**

Dated 28<sup>th</sup> December, 2012

\*Rati\*

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,  
 ITAT, Chandigarh

