

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO.1271/MUM/2015 (A.Y: 2009-10)

Jindal Drugs Pvt. Ltd.
(Formerly Jindal Drugs Ltd)
Bhaktawar 6th Floor,
B&C, 229, Nariman Point,
Mumbai – 400 021

v. Additional CIT – (TDS) – 2(1)
K.G. Mittal Hospital Building,
Charni Road Station,
Mumbai – 400 020

PAN: AAACJ 1000 A

(Appellant)

(Respondent)

Assessee by : Shri Ashok Mehta

Department by : Ms. Arju Garodia

Date of Hearing : 12.09.2017

Date of Pronouncement : 27.09.2017

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-59, Mumbai dated 05.01.2015 for the Assessment Year 2009-10 in sustaining the penalty of ₹.34,800/- levied u/s. 272A(2)(g) of the Act.

2. Briefly stated facts are that, a grievance petition was filed before the DCIT (TDS)-(2)(1) Mumbai by M/s. B.Mehtalia Consultants Private

Limited stating that assessee has failed to furnish the certificate in Form.No.16A on the consultancy fee for the period from 01.04.2008 to 31.03.2009. Based on this grievance letter the Assessing Officer directed the assessee to issue forthwith TDS Certificate to the deductee. Assessee company filed a letter before the Assessing Officer enclosing the copy of TDS Certificate issued by the assessee to the deductee. The Assessing Officer on noticing the TDS Certificate pointed out wrong mentioning of PAN NO. of the deductee and directed the assessee to rectify this defect and issue a fresh certificate. Assessing Officer also issued penalty notice u/s. 272A(2)(g) of the Act and in response to the said notice assessee submitted that TDS Certificate was issued in time and since it was sent in regular post there is no proof of dispatch. It was submitted that the deductee is the only one to complaint about non-issuance of TDS certificate out of 200 parties to whom the TDS Certificates were issued by the assessee company.

3. The revised certificate incorporating correct PAN was dispatched by Professional Courier on 14.04.2010 for which proof of dispatch is also furnished to the Assessing Officer by the assessee. It was therefore submitted that there is no default on the part of the assessee company and the TDS Certificate was issued in time. However, not convinced with the replies furnished by the assessee the Assessing Officer imposed

penalty of ₹.34,800/- observing that the only admissible evidence produced by the assessee company in proof of having sent the TDS Certificate is the TDS Certificate after incorporating the correct PAN Number to the deductee on 14.04.2010. Therefore, he observed that in the absence of any other evidence to substantiate that the TDS Certificate was earlier issued to the deductee by regular post, he construed that the actual date of issue of TDS Certificate is to be reckoned as 14.04.2010 only. The Assessing Officer observed that the due date for issue of TDS certificate is 30.04.2009 and the date of issue was taken as 14.04.2010 and levied penalty from 01.05.2009 to 06.01.2011 for 348 days @ ₹.100/- per day.

4. On appeal the Ld.CIT(A) sustained the penalty as no one attended nor any reply was filed in the proceedings before him.

5. Before us, the Learned Counsel for the assessee furnished the details of dispatch of TDS Certificates for the year 2008-09 and submitted that the certificates were dispatched to all the deductees from the month of May 2009 till September 2009 and some of these certificates were dispatched by Courier, some of the certificates were handed over by hand and some of the certificates were dispatched by ordinary post. It was the submission of the Learned Counsel for the assessee that around 200 certificates were issued during this period and there was no complaint

from any of the deductee that they have not received the TDS Certificates. Therefore, Learned Counsel for the assessee submits that since assessee issued TDS Certificates right from 21.05.2009 till 02.09.2009 the Assessing Officer is not justified in assuming that no TDS Certificates were issued by the assessee to the deductee M/s. B.Mehtalia Consultants Private Limited ignoring the copy of TDS Certificate submitted before him. Referring to the TDS certificate the learned Counsel submits that the TDS certificate was downloaded on 22.05.2009 and it was dispatched to the deductee on 19.06.2009.

6. The Ld. DR supported the orders of the lower authorities.

7. Heard rival submissions, perused the orders of the authorities below and the details furnished before us. The details of dispatch of TDS Certificates for the year 2008-09 clearly shows that assessee dispatched TDS Certificates from 21.05.2009 till 02.09.2009. The Certificates were dispatched to various parties either through Courier or ordinary post or by physical delivery. The assessee dispatched TDS Certificates to the deductee namely M/s. B.Mehtalia Consultants Private Limited by ordinary post along with other three deductees namely Hospitality First, Saffron Media Pvt, Ltd and the Amalgamated Press. The dispatch information shows that assessee has regularly dispatched the TDS Certificates to the deductees. In such circumstances it cannot be disbelieved the version of

the assessee that TDS Certificate was dispatched to the deductee namely M/s. B.Mehtalia Consultants Private Limited in the month of June 2009 itself. The assessee downloaded the TDS certificate on 22.05.2009 and it was dispatched on 19.06.2009 by ordinary post. In these circumstances, we do not see any justification for imposing penalty u/s.272A(2)(g) of the Act from 01.05.2009 to 06.01.2011. Thus, we direct the Assessing Officer to delete the penalty levied u/s.272A(2)(g) of the Act.

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

Order pronounced in the open court on the 27th September, 2017.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 27/09/2017
VSSGB, SPS

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

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asst. Registrar)
ITAT, Mum