

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2402/MUM/2018  
Assessment Year: 2009-10**

Mancare Pharmaceuticals  
Pvt. Ltd.,  
Plot No. 59, 60, 85, 86,  
Dhowali Village, Vasai  
Municipal Industrial Estate,  
Vasai (West), Palghar-  
401207.

Vs. Addl. Commissioner of Income  
Tax, TDS Range Thane.

**Appellant**

**PAN No. AACCM4296R  
Respondent**

Assessee by : Mr. Awadhesh Kumar, AR  
Revenue by : Ms. JothilakshmiNayak, DR

Date of Hearing : 26/09/2019  
Date of pronouncement : 25/10/2019

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax-2, Pune [in short 'CIT(A)'] and arises out of the penalty levied u/s 272A(2)(k) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal filed by the assessee reads as under :

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in confirming penalty order u/s 272A(2)(k)/274 r.w.s. 200(3) of the IT Act, 1961 of Rs.1,30,503/-.

3. Briefly stated, the facts of the case are that the appellant-deductor did not file its quarterly TDS returns within the prescribed time limit and there was delay in filing quarterly statement of TDS u/s. 200(3) as provided under Rule 31A of the Income Tax Rules (the Rules). The Assessing Officer (AO) issued show cause notice to the appellant for explaining the delay. After considering the reply filed by the deductor, the Addl. CIT (TDS) levied penalty of Rs.1,30,503/- u/s.272A(2)(k) by observing that the reasons were general and there was no reasonable cause for the said delay. He further held that due to delay in filing of the TDS returns by the deductors, the deductees have to suffer, as they do not get credit of TDS till the time TDS statements are uploaded.

4. Aggrieved by the order of the Addl. CIT (TDS), the appellant filed an appeal before the ld. CIT(A), who observed that there is substantial delay of 123 to 458 days in filing the quarterly statement. Further, it is observed by him that the assessee is a company and having well-organized set up and it should have been well-prepared for filing the quarterly returns in time. Thus, holding that the appellant cannot take the plea that the delay occurred due to auditor's mistake, the ld. CIT(A) confirmed the above penalty of Rs.1,30,503/-.

5. Before us, the ld. counsel for the appellant submits that the assessee made TDS and paid the amount along with interest, thus there was no loss to the revenue. However, the quarterly returns were filed late. It is stated that the matter was being looked after by the statutory auditor of the company, but due to their failure the quarterly TDS return to be filed u/s.200(3) r.w. Rule 31A were filed belatedly. It is thus explained that there was no revenue loss and delay in filing quarterly returns was a technical default. Further, it is argued by the ld. counsel that the penalty could not have been levied only for technical and venial breach of provisions which was not due to conscious disregard of the statutes. It is therefore submitted by that the penalty of Rs.1,30,503/- levied by the AO be deleted.

On the other hand, the ld. Departmental Representative (DR) submits that the reasons given by the appellant for the delay are general nature. Further, relying on the decision of the Hon'ble Bombay High Court in the case of *Rashmikant Kundalia v. UoI* (2015) 373 ITR 268, the ld. DR submits that the order passed by the CIT(A) be confirmed.

In rejoinder, the ld. counsel submits that in the above decision, the Hon'ble Bombay High Court has emphasized the necessity of filing e-TDS statement in time. It is stated by him that in the instant case the appellant has committed the mistake for the first time and the same may be condoned.

6. We have heard the rival submissions and perused the relevant material available on record. We find that the technical defect was committed by the appellant for the first time and thereafter there is no

record that it made any delay in filing the quarterly statements of TDS. The appellant had made the same submission before the CIT(A) also.

In *Rashmikant Kundalia* (supra), by filing Writ Petition under Article 226 of the Constitution of India, the Petitioners have challenged the constitutional validity of Section 234E of the Act. Section 234E seeks to levy a fee of Rs.200/- per day (subject to certain other conditions as set out therein) *inter alia* on a person who deducts tax at shows (TDS) and then fails to deliver or cause to be delivered the TDS returns/statements to the authorities within the prescribed period. In that context, the Hon'ble Bombay High Court held that Section 234E does not violate any provision of the Constitution and is therefore *intra vires* Constitution of India.

In the instant case, we find that the technical defect was there for the first time and thereafter, there is no record that the appellant company has made any delay in filing of the returns. Considering the fact that the above technical defect was committed by the appellant for the first time, we set aside the order of the Id. CIT(A) and delete the penalty of Rs.1,30,503/- levied u/s.272A (2)(k)/274 r.w.s. 200(3) of the Act, by the Addl. CIT, TDS Range, Thane.

7. In the result, the appeal is allowed.

**Order pronounced in the open Court on 25.10.2019**

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

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 25/10/2019

*Subhankar Samanta, P.S. (On tour)*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**