आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./**ITA No.2835/Mum/2014**

(**निर्धारण वर्ष /** Assessment Year :2010-2011)

DCIT CC 44, Mumbai-20	Vs.	M/s Shreya Life Sciences Pvt. Ltd., Shreya House, 301-A, Pereira Hill Road, Andheri (E), Mumbai-400099
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AADCS 9890 C**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

AND

आयकर अपील सं./**ITA No.3367/Mum/2014**

(**निर्धारण वर्ष /** Assessment Year :2010-2011)

M/s Shreya Life Sciences Pvt. Ltd., Shreya House, 301-A, Pereira Hill Road, Andheri (E), Mumbai-400099	Vs.	DCIT CC 44, Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AADCS 9890 C**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

राजस्व **की ओर से** /Revenue by : Shri Rajneesh K Arvind

निर्धारिती **की ओर से** /Assessee by : Shri Vijay Mehta

सुनवाई की तारीख **/ Date of Hearing : 19/10/2015**

घोषणा की तारीख**/Date of Pronouncement 20/11/2015**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

These are the cross appeals filed by the revenue and assessee against the order of CIT(A), Mumbai, for the assessment year 2010-2011, in the matter of imposition of penalty u/s.221(1) r.w.s.140A(3) of the Act.

2. The appeal of the assessee i.e.ITA No.3367/Mum/2014 is barred by 34 days. The assessee has filed an application for condonation of delay.

We have considered rival contentions and gone through the above application of assessee and considering the reasons stated in the application, we found that there was reasonable cause for delay. In the interest of substantial justice, we condone the delay of 34 days in filing appeal and the appeal is heard on merits along with the appeal of the revenue i.e. ITA No.2835/Mum/2014.

3. Rival contentions have been heard and record perused. The brief facts of the case are that the assessee company is a pharmaceutical company manufacturing a wide range of medicines and formulations. It filed its e-return on 15.10.2010, and was liable to pay the self assessment tax of Rs.2,61,19,300/-. The assessee did not pay self assessment tax and e-return was uploaded without payment of the self assessment tax. The assessee was asked the reasons for not depositing the tax. It was submitted by assessee before the AO that assessee company was in great finance crisis. However, assessee's contention was not accepted by the AO. The AO issued notice u/s.221(1) r.w.s140A(3) of the Act holding that the assessee deemed to be in default and levied penalty of Rs.50 lakhs.

4. By the impugned order the CIT(A) deleted the penalty to the extent of Rs.10 lakhs and upheld the balance amount of Rs.40 lakhs. Against this order of CIT(A) both the revenue and assessee are in appeals before us.

5. Ld. AR drew our attention to the audited balance sheet of the assessee as well as profit and loss account to indicate that assessee was

in great financial crisis because of non-receipts of its export receivable. Our attention was drawn to the amount of debtors which has increased from Rs.2,91,96,24,000/- to Rs.3,62,54,82,000/- during the year under consideration. Our attention was also invited to the disallowance offered by the assessee u/s.40(a)(i)/43B, wherein disallowance was offered because of the fact that assessee could not actually make payment of employee's contribution to the PF,ESI, provident fund contribution, bonus of employees, service tax, etc. It was contented by the ld. AR that because of financial crisis assessee could not actually made payment of all these amounts and, therefore, compelled to offer disallowance u/s.40(a)(i)/43B amounting to Rs.7.88 crores.

6. On the other hand, ld. DR relied on the order of the AO imposing penalty and contended that the CIT(A) was not justified in giving part relief.

7. We have considered rival contentions, carefully gone through the orders of the authorities below as well as material placed on record to which our attention was invited. In this case assessee could not pay self assessment tax in time, therefore, the AO levied penalty u/s.221(1) r.w.s.140A(3) of the Act. We found that AO has also attached assessee's bank account by issuing notice u/s.221(1) having a balance of Rs.1.91 crores on 4.2.2011. Thereafter the assessee requested the AO and after handing over six post dated cheques i.e. two cheques dated 15.2.2011 of Rs.50 lacs each, 4 cheques dated 15.03.2011 of Rs.50 lacs each and one cheque dated 15.3.2011 for Rs.11,19,300/-, totaling to Rs.3,11,19,300/-,

the bank account was released. All these cheques were duly honoured and dues of the department was cleared. As per provisions of second proviso to Section 221(1), where the assessee proves to the satisfaction of the AO that the default is for good and sufficient reasons, no penalty shall be leviable under this section. In the instant case, we found that because of the financial crisis, the assessee even could not pay its dues with regard to employers' and employee's contribution to the PF,ESI fund, provident fund, bonus of employees, service tax, etc. Even the assessee was not able to pay the interest of the bank, sales tax and service tax etc. It is evident from the computation of income filed along with the return that because of the non-payment of these dues assessee was compelled to offer disallowance u/s.40(a)(i)/43B amounting to Rs.7.88 crores. Because of this disallowance u/s.40(a)(ia)/43B the assessee is required to pay more income tax of Rs.2.36 crores (i.e. 30% of Rs.7.88 crores), which he could have saved if these amounts had been paid in time. Thus, because of financial crisis the assessee is required to pay more income tax of Rs.2.36 crores. We also found that the funds of the assessee was blocked in the debtors which was Rs.291.96 crores in the year ending on 31-3-2009 and has now increased to Rs.362.54 crores during the current year ending on 31.3.2010. Thus, more than Rs.70.58 crores were additionally blocked in debtors during the year under consideration. All these facts and figure as per audited accounts and computation of income filed along with the return of income clearly establishes the financial crisis the assessee was facing and because of it assessee could not make timely payment of self assessment tax while filing return. It is not in dispute that this tax was paid after marginal delay. It is also not in dispute that for such delay assessee is liable to pay interest as per relevant provisions of law under IT Act, 1961

8. In view of the above, we do not find any merit for imposition of penalty u/s.221(1) r.w.s.140A(3) of the IT Act when the crucial financial position was established on record by documentary evidences, warranting no penalty for delay in payment of tax. We direct accordingly.

9. In the result, appeal of the assessee is allowed, whereas appeal of the revenue is dismissed.

Order pronounced in the open court on this 20/11/2015.

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(R.C.SHARMA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 20/11/2015

प्र.कु.मि/pkm, नि.स/ PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /
ITAT, Mumbai