



IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.4041/Mum./2015
(Assessment Year : 2009-10)

M/s. Garrison Pharma (India) Ltd.
Dinesh B. Shah, 7A, 601, Patel
Apartments, B.G. Kher Marg
CPA Compound, Worli Naka
Mumbai 400 018 PAN – AAACG0568N

..... Appellant

v/s

Income Tax Officer
Ward-5(1)(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Ms. Shreekala Pardeshi

Date of Hearing – 19.11.2020

Date of Order – 27.11.2020

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 2nd March 2015, passed by the learned Commissioner of Income Tax (Appeals)-10, Mumbai, for the assessment year 2009-10.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application

seeking adjournment either. Considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Brief facts are, the assessee, a resident company, is engaged in the business of trading in pharmaceuticals. For the assessment year under dispute, the assessee had filed its return of income on 29th September 2009, declaring total income of ₹ 12,67,506. The return of income filed by the assessee was selected for scrutiny. As stated by the Assessing Officer in the assessment order, in response to the notices issued under section 142(1) and 143(2) of the Act, no compliance was made. Subsequently, in response to another notice issued under section 142(1), the assessee without appearing sent a letter raising some general objections. Due to non-compliance of the assessee, the Assessing Officer proceeded to invoke the provisions of section 144 of the Act and completed the assessment to the best of his judgment. While doing so, he added back an amount of ₹ 80 lakh, as unexplained cash credit under section 68 of the Act. On the basis of such addition made in the assessment order and confirmed in appeal, the Assessing Officer proceeded to initiated proceedings for imposition of penalty under section 271(1)(c) of the Act alleging concealment of income and furnishing inaccurate particulars of income. As alleged by

the Assessing Officer, in response to the show cause notice issued under section 271(1)(c) r/w section 274 of the Act, neither the assessee filed any explanation nor he appeared before the Assessing Officer during the penalty proceedings. Therefore, the Assessing Officer proceeded to pass an order imposing penalty of ₹ 24,72,000, under section 271(1)(c). Against the penalty order so passed, the assessee preferred appeal before the first appellate authority. However, since, the assessee did not appear before learned Commissioner (Appeals), he proceeded to dispose off the appeal ex-parte sustaining penalty imposed under section 271(1)(c) of the Act.

4. We have carefully considered the submissions of learned Departmental Representative and perused the material placed on record. It is evident from the factual matrix, in the course of assessment proceedings the assessee did not comply with any of the statutory notices issued by the Assessing Officer under section 142(1) and 143(2) of the Act to explain the genuineness of the increase in share premium. Due to this reason, the Assessing Officer proceeded to complete the assessment under section 144 of the Act by adding back the amount of ₹ 80 lakh under section 68 of the Act in the absence of any explanation or supporting evidence produced by the assessee. It appears from record, against the addition so made the assessee preferred appeal before learned Commissioner (Appeals) and

thereafter before the Tribunal. Since before the Tribunal also, the assessee did not appear, vide order dated 27th April 2015, in ITA no.7162/Mum./2012, the Tribunal confirmed the addition of ₹ 80 lakh. It is evident, on the basis of the aforesaid addition the Assessing Officer had initiated proceedings for imposition of penalty under section 271(1)(c) of the Act alleging concealment of income and furnishing of inaccurate particulars of income. However, the assessee neither furnished any explanation in response to the show cause notice issued under section 271(1)(c) r/w section 274 of the Act nor appeared before the Assessing Officer to show that no penalty is imposable. Before learned Commissioner (Appeals) when the appeal challenging the levy of penalty was fixed no one appeared on behalf of the assessee despite several opportunities. Even before us also, no one appeared on behalf of the assessee to represent the case.

5. Thus, from the aforesaid narration of facts it is very much clear that neither in the quantum proceedings nor in the penalty proceedings, right from the stage of Assessing Officer till the Tribunal, the assessee has not furnished any explanation or supporting evidence either to contest the addition made under section 68 of the Act on merits or to prove the fact that there is neither any concealment of income nor furnishing particulars of inaccurate income. On the contrary, the facts on record clearly reveal the casual and non-

cooperative attitude of the assessee towards the tax proceedings. Thus, when the assessee has not brought on record any evidence to prove the genuineness of the share premium and has also miserably failed to establish on record that there is neither any concealment or furnishing of inaccurate particulars of income, imposition of penalty under section 271(1)(c) of the Act, in our view, is justified. Accordingly, we do not find any reason to interfere with the decision of learned Commissioner (Appeals). Grounds raised by the assessee are dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 27.11.2020

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 27.11.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai