

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1451/Ahd/2019
Assessment Year: 2014-15**

The D.C.I.T., Circle – 1(1)(2),
Ahmedabad.

vs. M/s. Dishman Pharmaceuticals &
Chemicals Limited,
(Formerly known as M/s. Dishman
Carbogen Amcis Limited)
2nd Floor, Bhadr-Raj Chamber,
Swastik Cross Road,
Navrangpuora, Ahmedabad.
[PAN – AADCC 1254 E]
(Respondent)

(Appellant)

Appellant by : Shri V.K. Singh, Sr. DR
Respondent by : Shri S.N. Soparkar, AR & Parin Shah, AR

Date of hearing : 07.07.2022
Date of pronouncement : 29.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Revenue against the order dated 29.07.2019 passed by the CIT(A)-12, Ahmedabad for the Assessment Year 2014-15.

2. The Revenue has raised the following grounds of appeal:

- “1 The Id. CIT(A) has erred in law and on facts in deleting the penalty of Rs.68,11,735/- levied u/s 271G of the I.T. Act, by the Assessing Officer.
2. It is, therefore, prayed that the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored.”

3. The return for A.Y. 2014-15 was filed on 26.11.2014 declaring income of Rs.99,76,87,715/- under the normal provisions of the Income Tax Act, 1961 and income of Rs.119,41,55,638/- under Section 115JB of the Act. Later on the revised return of income was filed by the assessee on 29.03.2016 at Rs.52,21,39,680/- under

the normal provisions of Income Tax Act, 1961 and income under Section 115JB of the Act remained unchanged. Since the issue involved in assessee's case was related to International Taxation and Specified Domestic Transaction which are under Section 92CA of the Act, the matter was recalled to Transfer Pricing Officer for determining Arm's Length Price (ALP) of such transaction. There is an observation by the Assessing Officer that the assessee revised its return of income due to Specified Domestic Transaction but did not file the revised Specified Domestic Transaction in Form No.3CEB. Accordingly, the assessee was provided the opportunity to explain as to why penalty proceedings under Section 271G should not be initiated for non-reporting i.e. non-filing of revised Specified Domestic Transaction in form No. 3CEB online. In response to the said notice, the assessee filed reply dated 06.11.2017 thereby stating that all the information/details were furnished before the Transfer Pricing Officer during the assessment proceedings and the Transfer Pricing Officer at no point of time observed that there is failure on the part of furnishing details/information as required under section 92D(3). After taking cognizance of the reply of the assessee, the Assessing Officer passed penalty order thereby imposing penalty of Rs.68,11,735/- which is 2% of the value of Specified Domestic Transaction not reported in revised form No. 3CEB online.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) failed to appreciate the fact that the revised form No. 3CEB was not filed online by the assessee thereby specifying revised Domestic Transaction. Thus, the assessee is liable to pay penalty under Section 271G of the Act as the requirement under Section 92D(3) was not fulfilled by the assessee relating to the furnishing of correct information.

6. The Ld. AR submitted that CIT(A) has rightly allowed the appeal of the assessee as penalty under Section 271G of the Act can be imposed only if the document/information as requisitioned but was not furnished by the assessee within the specified time. Ld. AR relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs. Bumi Hiway (I) (P.) Ltd. (2014) 51 taxmann.com 572 (Delhi) and CIT vs. Leroy Somer & Controls (India) Private Limited (2014) 360 ITR 532 (Delhi) wherein

it is held that where the Assessing Officer in his order under Section 271G had not mentioned which document or information was required by a notice under Section 92D(3) and was not furnished by the assessee within a period of thirty days or the extended period, penalty imposed under Section 271G is unsustainable.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the revised Form No.3CEB dated 18.03.2016 was filed by the assessee related to claim under Section 80IA of the Act. The penalty order under Section 271G has stated that the assessee has not filed revised form No.3CEB online. This amounts to admitting that the assessee has physically filed revised Form No.3ECB on 18.03.2016 which cannot be stated as non-furnishing of the relevant documents or non-reporting of transaction of Specified Domestic Transaction. The reliance of the Ld. AR upon the decision of Hon'ble Delhi High Court in case of Bumi Hiway (supra) is very apt in the present assessee's case wherein it is held that where the Transfer Pricing Officer had asked for specific details and documents so these requirements were fully complied with by the assessee company, penalty under Section 271G could not be imposed. Besides this, the Transfer Pricing Officer vide notice dated 10.08.2017 under Section 92D(3) had asked for information related to the transactions which were submitted by the assessee vide submissions dated 17.08.2017. The CIT(A) has given detailed finding and there is no need to interfere with the same. Thus, the CIT(A) has rightly allowed the appeal of the assessee.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 29th day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 29th day of July, 2022

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*