

Payment of self-assessment tax instantly on detection of default saves assessee from clutches of penalty

Summary – The Mumbai ITAT in a recent case of Agio Pharmaceuticals Ltd., (the Assessee) held that where assessee filed return of income on 28-9-2009 and paid self-assessment tax under section 140A on 19-1-2010, since assessee had paid self-assessment tax immediately when fact regarding non-payment came to its notice, it was not liable for penalty to be levied under section 221(1).

Facts

- For the assessment year 2009-10, the assessee filed the return of income on 28-9-2009. However, it paid the self-assessment tax under section 140A on 19-1-2010. Accordingly the Assessing Officer levied the penalty under section 221(1) upon the assessee.
- On appeal, the Commissioner (Appeals) upheld the penalty order.
- On second appeal:

Held

- According to section 221(1) when an assessee is in default or is deemed to be in default in making payment of tax, he shall, in addition to the amount of arrears and the amount of interest payable under sub-section (2) of section 220, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, provided that the total amount of penalty in case of continuing default does not exceed amount of tax in arrears. In the instant case, it is not a continuing default and penalty has been levied by Assessing Officer at the rate of 10 per cent of the tax in arrears. The first proviso to section 221(1) provides that a reasonable opportunity of hearing should be given to the assessee before levying such penalty. Second proviso to section 221(1) describe that penalty shall not be levied in a case where the assessee is able to prove to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons. *Explanation* to second proviso, for the purpose of removal of doubt, declares that the assessee shall not be ceased to be liable for penalty under section 221(1) merely by reason of the fact that before levy of such penalty the assessee has paid the taxes. Therefore, the assessee can escape from levy of penalty only in the circumstances if he is able to prove to the satisfaction of Assessing Officer that the default was for good and sufficient reasons.
- Provisions of section 221(1) are not absolute as the word used in the provisions is not 'shall' but 'may'. This give a discretion to the authority vested with the power of levy of penalty not to levy penalty also. The assessee was saddled with a tax liability of more than Rs. 55 lakhs in respect of earlier years in view of retrospective amendment into the statute. The assessee has been paying said liability in installments and in the process it is possible that it may have forgotten to make the

payment of self-assessment tax which was paid immediately when the fact regarding non-payment came to its notice. Therefore, it cannot be said that the assessee's act was deliberate in defiance of law or the assessee is guilty of a conduct which is contumacious or dishonest. Therefore, the assessee was not liable for penalty to be levied under section 221(1).