

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai**

**Before Shri D. Manmohan, Vice President
and Shri Sanjay Arora, Accountant Member**

ITA Nos. 6440&6441/Mum/2013
(Assessment Years: 2010-11 & 2011-12)

D C I T - 10(2) Room No. 432, 4th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Aanjaneya Life Care Ltd. 34, Aanjaneya House Postal Colony, Chembur Mumbai 400071
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PAN - AAGCL0851L

Appellant

Respondent

Appellant by: Shri Asghar Zain
Respondent by: Shri Harshavardhana Datar

Date of Hearing: 25.03.2015
Date of Pronouncement: 25.03.2015

ORDER

Per D. Manmohan, V.P.

These two appeals, filed by Revenue, are directed against the identical but separate orders passed by the CIT(A)-21, Mumbai.

2. Admitted facts are that though the assessee determined the self-assessment tax it did not make the payment within the stipulated period and hence notice under section 221 was issued by the AO, in response to which it was submitted that due to financial crunch assessee was not able to pay the tax.

3. AO observed that the assessee could not prove its contention with cogent and relevant material and also stated that substantial funds have been diverted to related concerns and hence it is not a case of financial crunch. He accordingly levied penalty under section 221(1) of the Act.

4. Aggrieved, assessee contended before the CIT(A) that there was sufficient cause for non-payment of self-assessment tax and in support thereof he n furnished a chart to highlight that assessee was running the business mostly on borrowed funds and operating cash/bank balances were negligible so it cannot be said to be sufficient to make tax payment. If the

taxes are to be paid on the borrowed funds the business would be irretrievably affected and hence the explanation has to be considered in the backdrop of the circumstances of the case.

5. Having regard to the circumstances of the case the learned CIT(A) observed that assessee was having meagre cash and current balances and the assessee was in financial constraints during the year under consideration. He also relied upon several case law in support of his conclusion that if there is financial hardship to the assessee it has to be considered as sufficient cause in which event penalty cannot be levied. He thus cancelled the penalty levied by the AO.

6. Aggrieved, Revenue preferred an appeal before us. Though several grounds were raised before us, the learned D.R. was unable to point out as to whether the assessee had sufficient cash/bank balance so as to meet the tax demand. The learned D.R. also could not point out as to whether any funds were diverted for non-business purposes at the relevant point of time so as to say that an artificial financial scarcity was created by the assessee. In the absence of any relevant material on record we are unable to find any infirmity in the order passed by the learned CIT(A). We, therefore, uphold the orders passed by the learned CIT(A) and dismiss the appeals filed by the Revenue.

Order pronounced in the open court on 25th March, 2015.

Sd/-
(Sanjay Arora)
Accountant Member

Sd/-
(D. Manmohan)
Vice President

Mumbai, Dated: 25th March, 2015

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| 1. The Appellant | 4. The CIT- 10, Mumbai City |
| 2. The Respondent | 5. The DR, "A" Bench, ITAT, |
| 3. The CIT(A) - 21, Mumbai | Mumbai |

By Order

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Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.