

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI ANIKESH BANERJEE, JM

ITA No. 997/Mum/2024
(Assessment Year:2016-17)

Income Tax Officer Ward 4(1)(3) Room No. 637, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020 (Appellant)	Vs.	Aura Spinwell Limited Office No.209, Kapadia Chambers, J.S.S. Road, Marine Lines East, Mumbai-400 002 (Respondent)
PAN No. AACCE3114A		

Assessee by : None
Revenue by : Shri Amol Kirtane, CIT DR

Date of hearing: 09.07.2024
Date of
pronouncement : 22.07.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Income Tax Officer, Ward 4(1)(3), Mumbai (the learned Assessing Officer), against the appellate order passed Commissioner of Income-tax (Appeals)-56, Mumbai [the learned CIT (A)] for A.Y. 2016-17, dated 5th January, 2024, wherein the appeal filed by

the assessee against the penalty order passed under Section 271G of the Income-tax Act, 1961 (the Act) dated 1st March, 2021, levied by transfer pricing officer, ward 1(1)(1), Mumbai (the learned Assessing Officer) of ₹4,32,65,819/-, was deleted.

02. The learned Assessing Officer is aggrieved and is in appeal before us. The following grounds of appeal are raised: -

"1. "Whether, on the facts and circumstances of the case and as per law, the Ld. CIT(A) is justified in deleting the penalty when the requisite information and supporting documentation which was mandatorily to be provided by the assessee as obligatory compliance of the Rules has been violated even though the reasonable cause has not been established to invoke section 273B of the IT Act and when the Transfer Pricing Study Report submitted by assessee was nothing but a summary of the Transfer Pricing Study

2. "Whether, on the facts and circumstances of the case and as per law, the Ld. CIT(A) is justified in deleting the penalty u/s 271G stating that Hon'ble ITAT has held that no transfer pricing adjustment could have been made in the hands of the assessee on account of ALP of specified domestic transaction as section 92BA(i) of the Act was omitted since, therefore provisions of section 92D are not applicable to the facts of

the case and thereby erroneously linking levy of penalty u/s 271G with that of TP adjustment for which separate penalty is provided for?"

03. The brief facts of the case shows that assessee is a company engaged in the business of trading in grey fabric, recycled polyester yarn and other allied products. The assessee is a trader, who filed its return of income on 30th November, 2016, at a total income of ₹10,39,500/-. The case was selected for limited scrutiny, where one of the ground was whether the value of specific domestic transactions are at arms' length or not. The notice under Section 143(2) of the Act was issued on 3rd July, 2017. The reference was made to the learned Transfer Pricing Officer, to examine the Arm's Length Price of domestic transactions amounting to ₹216 crores. The transfer pricing officer, the ACIT TP 1(1)(1), Mumbai passed an order under Section 92CA(3) of the Act making an adjustment of ₹4,26,12,834/-. The draft order under Section 144C of the Act was passed on 19th December 2019, making the above adjustment as addition to the total income. The assessee filed an objection before the learned Dispute Resolution Panel-1, Mumbai. The directions were issued on 23rd March, 2021, where certain directions were given to learned Assessing Officer / Transfer Pricing Officer. Based on the above directions, the adjustments was revised to ₹4,16,58,367/-. The assessment order was passed under Section 143(3) read with section 144C (13) of the Act on 24th April, 2021,

determining the total income of the assessee at ₹4,26,97,870/-.

04. During the course of TP assessment, the learned transfer pricing officer asked the assessee on 22nd November, 2018, to furnish the transfer study report and annual accounts of the assessee. Further notice under Section 92D(3) were issued on 19th March, 2019. The assessee did not comply with the same. Accordingly, notice under Section 271G of the Act was issued which was replied by the assessee on 8th February, 2021. After considering the reply of the assessee, the learned Transfer Pricing Officer passed the penalty order under Section 271G of the Act on 1st March, 2021, levying penalty of ₹4,32,65,819/- being 2% of the value of transaction of SDT of ₹216,32,90,959/- .
05. Against this penalty order, assessee preferred the appeal before the learned CIT (A), who deleted the penalty holding that as the ITAT has deleted the addition of the transfer pricing adjustment on judicial ground that clause (i) of Section 92BA, omitted by the Finance Act, 2017, with effect from 1st April, 2017, the addition could not have been made. Thus, as assessee was not required to follow the provisions of Section 92BA of the Act, there is no consequent requirement of maintaining any documents. The learned Assessing Officer is aggrieved with the same.
06. The learned Departmental Representative vehemently submitted that the assessee was required to maintain

certain documents, which were not maintained. Therefore, the assessee has violated the provisions of Section 92D of the Act. He submitted that assessee did not furnish the transfer pricing study report and therefore, the penalty was levied. He further submitted that merely because of the transfer pricing adjustment, deleted by ITAT requirement of maintenance of documents and consequent penalty for non-maintenance of such documents could not have been deleted.

07. Despite notice, none appeared before us. Therefore, the appeal is decided on the merits of the case as per availability of information on record.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. In this case, the penalty is levied on the assessee under Section 271G of the Act for non-maintenance of documents for specified domestic transaction of purchase and sale to associated enterprises. The adjustment of transfer pricing was made with respect to the specified domestic transactions covered under Section 92BA(1) of the Act. The co-ordinate Bench in ITA No.1147/Mum/2021, dated 27th September, 2022, following the decision of the Hon'ble Karnataka High Court in PCIT Vs. Texport Overseas (P.) Ltd. [2020] 114 taxmann.com 568 has held that transfer pricing provisions do not apply to the case of the assessee for the impugned assessment year in view of the omission of the above clause by the Finance Act, 2017, with effect from 1st April, 2017, having the resultant effect that such provisions

never existed. As there is no requirement of or applicability of transfer pricing provisions to the specified domestic transactions of the assessee covered u/s 92BA (i) of the act , consequently there cannot be any requirement of maintenance of the document. Therefore, the assessee cannot be penalized under Section 271G of the Act. Accordingly, the learned CIT (A) has correctly deleted the penalty levied under Section 271G of the Act.

09. However, it may be right that mere deletion of adjustment of transfer pricing cannot automatically result into deletion of penalty for non-maintenance of documents, but in this case, there is no requirement of maintenance of such documents. Therefore, assessee cannot be penalized, for maintaining documents, which is not required by law. Accordingly, the order of the learned CIT (A) is confirmed and both the grounds of appeal of the learned Assessing Officer are dismissed.

010. In the result, the appeal of the learned Assessing Officer is dismissed.

Order pronounced in the open court on 22.07.2024.

Sd/-
(ANIKESH BANERJEE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.07.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant

2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai