

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA Nos. 5986 & 5987/Del/2019
Assessment Years: 2006-07 & 2007-08

Addl. CIT, Special Range, New Delhi	Vs.	AON Services India Pvt. Ltd., 710, Ansal Chamber-II, 6-Bhikaji Cama Place, New Delhi
PAN :AABCH1559D		
(Appellant)		(Respondent)

Department by	Shri Harpreet Singh Ajmani, Adv.
Assessee by	Ms. Mrinal Kumar Das, Sr. DR

Date of hearing	14.02.2023
Date of pronouncement	28.02.2023

ORDER

PER SAKTIJIT DEY: JUDICIAL MEMBER:

Captioned appeals have been filed by the Revenue challenging two separate orders, both dated 30.04.2019, of learned Commissioner of Income-Tax (Appeals)-44, New Delhi deleting penalty imposed

under Section 271(1)(c) of the Income-Tax Act,1961 pertaining to assessment years 2006-07 and 2007-08.

2. At the outset, we will deal with appeal relating to assessment year 2006-07.

3. Briefly, the facts are, the assessee is a resident corporate entity and is a subsidiary of Hewitt, USA. As stated, assessee is engaged in providing global management consultancy services. For the assessment year under dispute, the assessee filed its return of income declaring income of Rs.12,10,71,067.

4. In course of assessment proceedings, the Assessing Officer noticing that assessee has entered into international transaction with his associates enterprises (AE) made a reference to the Transfer Pricing Officer (TPO) to determine arms length price (ALP) of international transactions. While examining the arms length nature of international transactions, the TPO suggested adjustment of Rs.24,23,62,055. In addition to the adjustment suggested by the TPO, the Assessing Officer made a further addition of Rs.30,52,561, being the disallowance of provision for doubtful debts. The assessee contested both the additions by filing appeal before learned

Commissioner (Appeals) and thereafter before the Tribunal. During the pendency of the dispute in the appellate forum, the assessee wanted to settle part of the transfer pricing adjustment relating to US transaction amounting to Rs.22,30,70,035 under Mutual Agreement Procedure (MAP). After MAP resolution, the adjustment in relation to US transaction reduced to Rs.1,48,20,847. In so far as, non US transactions for an amount of Rs.1,92,92,020, dispute was agitated before the Tribunal. Be that as it may, based on the additions made in the draft assessment order, the Assessing Officer initiated proceedings for imposition of penalty under Section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income and concealment of income and ultimately passed an order imposing penalty of Rs.8,26,06,560. Challenging imposition of penalty, assessee preferred an appeal before learned Commissioner (Appeals).

5. After considering the submissions of the assessee, learned Commissioner (Appeals) noticed that the transfer pricing adjustment was on account of change/modification of certain filters adopted by the assessee which ultimately resulted in rejection of comparables selected by the assessee and selection of fresh comparables. Relying

upon a decision of the Tribunal in case of Verizon India (Pvt.) Ltd. vs. CIT - ITA No.5566/Del/2011 dated 17.09.2012, learned Commissioner (Appeals) held that additions arising out of transfer pricing adjustment based on change of filters and comparables cannot lead to imposition of penalty under Section 271(1)(c) of the Act. As regards, addition on account of disallowance of provision for doubtful debts, learned Commissioner (Appeals) observed that the assessee has shown the provision for doubtful debts in the original return of income. Therefore, the assessee cannot be accused of furnishing inaccurate particulars of income. In this context, he relied upon the decision of Hon'ble Supreme Court in case of CIT vs. Reliance Petro-products (P) Ltd. 322 ITR page 158 (SC). Thus, based on the aforesaid reasoning, learned Commissioner (Appeals) deleted the penalty imposed under Section 271(1)(c) of the Act.

6. We have heard Shri Harpreet Singh Ajmani, the learned counsel appearing for the assessee and Ms. Mrinal Kumar Das, learned Departmental Representative.

7. Undisputedly, the Assessing Officer has imposed penalty under Section 271(1)(c) of the Act for the following two additions:

- i) Addition on account of transfer pricing adjustment; & : Rs.24,23,62,055
- ii) Disallowance of provisions of doubt debts :Rs.30,52,561

8. In so far as TP adjustment is concerned, the assessee had opted for resolving the issue relating to US transactions covering adjustment of Rs.22,30,70,035. After the issue was resolved under MAP, the adjustment was reduced to Rs.1,48,20,847. As regards, non US transaction covering adjustment of Rs.1,92,92,020, the assessee contested the adjustment before the Tribunal and the Tribunal decided the issue more or less in favour of the assessee. While giving effect to the order of the Tribunal, the TPO has reduced the adjustment to nil. Thus, as could be seen from the facts on record, the adjustment of Rs.24,23,62,055 originally suggested by the TPO, ultimately, got reduced to Rs.1,48,20,847 only, that too, under MAP resolution. Whereas, for the purpose of imposing penalty under Section 271(1)(c) of the Act, the Assessing Officer has considered the entire adjustment of Rs.24,23,62,055 made by the TPO. In any case of the matter, as rightly observed by learned Commissioner (Appeals), the entire TP adjustment was due to change in filter and comparables by the TPO. There cannot be any doubt that application of filters and selection of

comparables are highly debatable issues. Therefore, in respect of additions made on such issues, the assessee cannot be accused of furnishing inaccurate particulars of income or concealing income. Therefore, in our view, learned Commissioner (Appeals) was justified in deleting the penalty imposed in respect of addition made on account of TP adjustment. In so far as the disallowance of provision of doubtful debts is concerned, it is observed that while deciding the issue in the appeal filed by the assessee in ITA No.5181/Del/2010 dated 02.08.2019, the Tribunal having taken note of assessee's submission that the assessee itself has disallowed the amount in the computation of income, had directed the Assessing Officer to factually verify assessee's claim, and withdraw the disallowance. Learned counsel appearing for the assessee has submitted before us that till date, the Assessing Officer has not given effect to the order of the Tribunal.

9. Further, on perusing the computation of income filed by the assessee along with return of income, prima facie, we are convinced that the assessee has itself disallowed the amount in dispute while computing its income. In any case of the matter, after the order of the

Tribunal, the addition as on date, doesn't survive. Thus, in our view, learned Commissioner (Appeals) was justified in deleting the penalty imposed under Section 271(1)(c) of the Act.

10. In so far as assessment year 2007-08 is concerned, while completing the assessment, the Assessing Officer made the following two additions:

- i) Addition on account of transfer pricing adjustment; & : Rs.41,20,14,305
- ii) Addition on account of denial of benefit of deduction under Section 10A of the Act: Rs. 2,04,37,456

11. Based on the aforesaid two additions, Assessing Officer has proceeded to impose penalty under Section 271(1)(c) of the Act for an amount of Rs7,82,43,260. While deciding assessee's appeal challenging imposition of penalty, learned Commissioner (Appeals) having found that disallowance made under Section 10A of the Act was deleted by DRP and the TP adjustment was on account of change of filters and comparables, deleted the penalty imposed.

12. We have considered rival submissions and perused material on record.

13. Facts relating to TP adjustment are more or less identical to assessment year 2006-07. In this year, the Assessing Officer suggested total adjustment of Rs.41,20,14,305, out of which US transactions amounted to Rs.38,30,08,498 and non-US transaction amounted to Rs.2,90,05,807. The adjustment relating to US transactions were settled under MAP and adjustment was reduced to Rs.6,96,57,816. In so far as, non US transactions are concerned, the Tribunal while deciding assessee's appeal had granted substantial relief to the assessee and as per the computation submitted before us by the learned counsel for the assessee, after giving effect to the order of the Tribunal, there would be no adjustment. However, it has been brought to our notice that, till date, the TPO has not given effect to the order of the Tribunal. Thus, our reasoning/decision in respect of penalty on TP adjustment in assessment year 2006-07 would apply mutatis-mutandis to this year also. As regards penalty imposed on the addition of Rs.2,04,37,456, being addition on account of denial of benefit of deduction under Section 10A of the Act, it is observed, though, the aforesaid addition was proposed in the draft assessment order, however, while considering assessee's objection on the issue, learned

Dispute Resolution Panel deleted the addition. In the final assessment order, the Assessing Officer has allowed the entire claim of the assessee. Thus, it is manifest, the Assessing Officer has imposed penalty on non-existent addition by overlooking the facts on record.

14. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) in deleting the penalty imposed under Section 271(1)(c) of the Act.

15. In the result, both the appeals are dismissed.

Pronounced in the open court on 28.02.2023.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(SAKTJIT DEY)
JUDICIAL MEMBER**

Dated: 28th February, 2023.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi