

Income-tax Appeals ['CIT(A)'] has erred in confirming the levy of penalty under Section 271G of the Income-tax Act, 1961 ('Act') of Rs.48,70,467.

2. On the facts and in the circumstances of the case and in law, the learned AO erred in levying and the Hon'ble CIT(A) erred in confirming the levy of penalty under Section 271G of the Act, even though the learned Transfer Pricing Officer in the transfer pricing order has not disturbed the Arm's Length Price determined by the Appellant.
3. On the facts and in the circumstances of the case and in law, the learned AO erred in levying and the Hon'ble CIT(A) erred in confirming the levy of penalty under Section 271G of the Act, even though the default, at best, can be said to be technical or venial breach of the provisions of the Act leading to no tax effect.
4. On the facts and in the circumstances of the case and in law, the learned AO erred in levying and the Hon'ble CIT(A) erred in confirming the levy of penalty under Section 271G of the Act without appreciating the fact that since Transfer Pricing Officer has accepted that Appellant's transaction are at arm's length hence, there is no failure on the part of the Appellant in furnishing information / details as required for under Section 92D of the Act in respect of its international transactions.
5. On the facts and in the circumstances of the case and in law, the learned AO erred in levying and the Hon'ble CJT(A) erred in confirming the levy of penalty under Section 271G of the Act without appreciating the fact that the transactions of the Appellant are replica transactions of Cadbury India Limited ('CIL') and it has relied on the information / documentation maintained by CIL which were already submitted during CIL's assessment proceedings.
6. On the facts and in the circumstances of the case and in law, the learned AO erred in levying and the Hon'ble CIT(A) erred in confirming the levy of penalty under Section 271G of the Act without appreciating the provisions of Section 273B of the Act and other applicable provisions of the Act having

regard to the fact that there was reasonable cause for not being able to respond to the notices of the learned AO.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2008-09 on 30.09.2008 declaring total income of Rs.24,35,23,345/-. The Assessing Officer (AO) made the assessment u/s 143(3) at Rs.24,35,23,350/-. The AO observed that the assessee had failed to furnish information or document u/s 92D before the Transfer Pricing Officer (TPO). Therefore, the AO imposed a penalty of Rs.48,70,467/- u/s 271G.

4. Aggrieved by the order of the AO the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has dismissed the appeal filed by the assessee on the ground that the assessee failed to file before the TPO information or document u/s 92D.

5. Before us, the Ld. counsel of the assessee submits that the TPO in his order dated 28.10.2011 took cognizance of the documents submitted in the case of its associated enterprise in India i.e. Cadbury India Ltd. (CIL) and asserting the fact that since these are replica of the transactions of CIL, wherein the ALP has been determined of these very transaction, did not disturb the ALP as determined by the assessee. The Ld. counsel submits that no notice u/s 92D (3) has been issued by the TPO/AO. He specifically relies on the decision in the case of *CIT vs. Leroy Somer & Controls (India) (P) Ltd.* (2013) 37 taxmann.com 407 (Del) and *ITO vs. Netsoft India Ltd.* (2013) 35 taxmann.com 579(Mumbai-Trib.)

6. On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. As mentioned hereinbefore the AO in his assessment order dated 27.12.2012 has accepted the income declared by the assessee at Rs.24,35,23,345/-.

We also find that neither the TPO nor the AO has issued notice u/s 92D(3) to the assessee. A condition precedent to levy penalty u/s 271G is failure to comply with specific requisition made u/s 92D (3). In the case of *Leroy Somer & Controls (India) (P) Ltd.* (supra), the Hon'ble Delhi High Court has held as under:

“When there is general and substantive compliance of the provisions of Rule 10D, it is sufficient. The legislature was conscious of this fact and, therefore, had specifically stipulated in Section 92D(3) that the Assessing Officer or Commissioner (Appeals) may require a person to furnish any information or document in respect thereof and on failure of the said person to furnish the documentation within the specified time, penalty under Section 271G can be imposed. Thus, for imposing penalty the Revenue must first mention the document and information, which was required to be furnished but was not furnished by the assessee within the specific time. The documentation or information should be one specified in Rule 10D, which has been formulated in terms of Section 92D(1) of the Act. Looking from any quarter and angle, the appeal of the Revenue is misconceived, totally lacking in merits and is, therefore, dismissed.”

7.1 The Co-ordinate Bench in *Netsoft India Ltd.* (supra) has held that penalty u/s 271G, for failures to furnish information u/s 92D, cannot be

imposed unless notice is issued specifying information to be produced by person entering into an international transaction.

7.2 In the instant case, we find that that no notice u/s 92D (3) has been issued by the TPO/AO. Respectfully following the judgment of the Hon'ble Delhi High Court in *Leroy Somer & Controls (India) (P) Ltd.* (supra), and the order of the Co-ordinate Bench in *Netsoft India Ltd.* (supra) , we delete the penalty of Rs.48,70,467/- imposed by the AO u/s 271G.

8. In the result the appeal is allowed.

Order pronounced in the open Court on 31/10/2017.

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/10/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai