

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “A”, MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER  
ITA No.4015/Mum/2016 (Assessment Year- 2010-11)**

Lord India Private Limited A/401-404,215 – Atrium, Andheri Kurla Road, Andheri (East) Mumbai- 400093 PAN: AAACU 0785H	<b>Vs.</b>	Deputy Commissioner of Income –tax, Circle-3(2), Aayakar Bhavan, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Sh. M.P. Lohia - AR  
Revenue by : Ms. Harkamal Sahi(Sr DR)  
Date of hearing : 25.07.2018

Date of Pronouncement : 19.09.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. The instant appeal by assessee is directed against the order of Ld. Commissioner (Appeals)-57, Mumbai dated 2<sup>nd</sup> February 2016, which in turn arises from the penalty levied by Assessing Officer under section 271AA of Income Tax Act ('Act'), for Assessment Year 2010-11. The assessee has raised following grounds of appeal:

*(1) The learned Commissioner (Appeals) erred in confirming the action of Deputy Commissioner of income tax/Assessing Officer in levying penalty of Rs. 50,632/- under section 271 AA of Income tax Act.*

*(2) The learned Commissioner (Appeals) erred in holding that appellant failed to keep and maintain information and document the specified under section 92D(1) of the Act on the ground that the transaction was not reported in Form No. 3CEB.*

*(3) The learned Commissioner (Appeals) erred in confirming penalty under section 271 AA of the Act on the ground that the appellant has failed to keep and maintain information and document as required in section 92D(1) of the Act, whereas the notice under section 274 read with section 271 AA of the Act was issued for nondisclosure of international transaction in Form No. 3CEB.*

*(4) The learned Commissioner (Appeals) erred in holding that appellant has not been able to show any reasonable cause for the said failure as an licensed in section 273B of the Act*

*(5) The appellant prays that penalty of Rs. 50,632/- levied under section 271 AA of the Act should therefore be deleted.*

2. Brief facts of the case are that Assessee-Company is wholly owned subsidiary of Lord Corporation, USA ('Lord USA'), engaged in business of manufacturer and sale of special industrial adhesive. The assessee filed its return of income for relevant Assessment Year declaring taxable income of Rs. 21,49,63,680/-. The return of income was selected for scrutiny. The assessment was completed under section 143(3) on 19<sup>th</sup> March 2013. The Assessing Officer while passing assessment order made addition of Rs. 25,31,556/- on account of remuneration of sales support services provided by assessee to its Associated Enterprises (AE). The Assessing Officer initiated penalty proceeding under section 271AA. Show-cause notice under section 274 read with section 271AA dated 19<sup>th</sup> March 2013 was issued to assessee for non-disclosure of international transaction in Form No.3CEB asking the assessee as to why the penalty should not be levied. The assessee filed its reply and objected to the levy

of penalty vide its reply dated 19<sup>th</sup> June 2013. In the reply the assessee contended that no fees was charged by the assessee for licensing and coordinating activities performed in connection with the sale made by its associated enterprises to Hindustan Aeronautical Limited ('HAL') which was contract bound activities of its AE and no commission was paid in respect of the said agreement to the assessee. The assessee further contended that the view was taken by the assessee that in absence of any income arising from said international transaction, the Transfer Pricing provision would not applicable and was not reported in Form 3CEB. The assessee also contended that there is reasonable cause for its failure to report the international transaction based on the above submission/contention. The reply of assessee was not accepted by assessing officer. The Assessing Officer levied penalty @ 2% of addition of Rs.25,31,556/-, for not maintaining the documents of international transaction. The Assessing Officer worked out penalty of Rs. 50,632/- in its order dated 27<sup>th</sup> September 2013 passed under section 271AA of the Act. On appeal before the Ld. Commissioner (Appeals) the action of Assessing Officer was confirmed. Therefore, further aggrieved by the order of Ld. Commissioner (Appeals) the assessee has filed present appeal before us.

3. We have heard the submissions of the learned Authorised Representative (AR) of the assessee and the learned Departmental Representative (DR)

for the revenue and perused the material available on record. We have also deliberated on the various case laws cited by lower authorities in its order. The learned AR of the assessee submits the Assessing Officer levied the penalty under section 271AA for not reporting the transaction in Form No. 3CEB and levied penalty of Rs. 50,362/-. The provision of section 271AA was inserted by Finance Act 2012, which is applicable with effect from 1<sup>st</sup> July 2012 and not applicable for the Assessment Year under section. The Assessing Officer during the assessment proceeding made the addition of Rs. 25 lacks(approx) while passing the assessment order due to nondisclosure of information related with the sale service supported by assessee to its associated enterprises. The assessee has not filed any appeal against the addition made by assessing officer. The Assessing Officer initiated penalty under section 272(1)(c) and levied the under section 271AA i.e. on different account. The learned AR for the assessee further invited our attention to the assessment order dated 19.03.2013, wherein the Assessing Officer initiated penalty under section 271(1)(c). In support of his submission the learned AR of the assessee relied upon the decision of Bombay High Court in case of CIT Versus Samsung Perinchery ITA No.1154 of 2014 dated 05.01.2017, Karnataka High Court in CIT Versus Manjunatha Cotton & Ginning Factory 92 DTR 111. On the point that the levy of penalty is to levied as per the law as on date of filing return of income. The learned AR relied upon the

decision of Hon'ble Patna High Court in CIT Versus, Kamla Devi Rathi (213 ITR 177) , CIT Versus Krishna Cold Storage (207 Taxmann 1 (Gujarat) and ACIT Versus Upsara Processors (P.) Ltd. (2 SOT 132 (Ahd.) (SB).

4. On the other hand the learned DR for the revenue supported the order of assessing officer. The learned DR further submits that the assessee has not raised specific ground of appeal on validity of the penalty levied under section 271(1)(c). The learned AR also submits that no document was prepared for benchmarking of the international transaction on which the Assessing Officer made addition in the assessment. The assessee has not filed any appeal against the said addition. The finding of the Assessing Officer has attained finality.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have also deliberated on various case law relied by learned AR of the assessee. The Assessing Officer made addition of Rs. 25,31,556/- on account of non-reporting the transaction in financial statement and in report of Form-3CEB in respect of support services rendered by assessee to its AE. The Assessing Officer initiated penalty under section 271(1)(c) for furnishing inaccurate particulars of income. We have noted that in the last paragraph of Assessment Order, the Assessing Officer recorded "penalty proceeding under section 271AA and 271G are also initiated for non-disclosure of

international transaction in 3CEB report”. The Assessing Officer in para-2 of its order has mentioned that the penalty proceeding were initiated for failure to keep and maintain information and documents as required under sub-section (1) of section 92D of the Act, related to international transaction pertaining to services rendered by assessee. The Assessing Officer, further in para-1 of page-4 of its order has mentioned that the assessee failed to keep and maintain the information/documents in respect of such international transaction as the same was not reported in Form No. 3CEB in the return of income and levied the penalty @ 2% of international transaction in respect of which information/documents were not kept and maintained (Rs.25,31,556/-). Before Ld. Commissioner (Appeals) the assessee explained that the assessee has shown reasonable cause as provided under section 273B before the Assessing Officer and no penalty was leviable. The assessee also contended that Transfer Pricing provision were not applicable on the said transaction, therefore, it was reported in Form No. 3CEB. The assessee also submitted that Assessing Officer has not clearly stated the reasons of levying the penalty under section 271AA as no specific instance for non-compliance was identified and that section 271AA is substituted w.e.f. 01.07.2012, penalty cannot be levied for failure of international transaction in the Assessment Year under consideration. The contention of assessee was not found convincing by Ld. Commissioner (Appeals). The Ld.

Commissioner (Appeals) concluded that that assessee failed to record the international transaction in Form No. 3CEB for which the assessee was bound to keep and maintain information and documents as required by section 92D(1) of the Act. The failure of not reporting international transaction attract penalty under section 271AA of the Act. The Ld. Commissioner (Appeals) also not accepted the contention of assessee that they have shown reasonable cause as provided under section 273B.

6. We have noted that section 271AA was substituted by Finance Act, 2012 w.e.f. 01.07.2012 and applicable from Assessment Year 2012-13. In the Memorandum to the Finance Bill , it was explained that presently there is no penalty for non-reporting of an international transaction in report filed under section 92E or maintenance or furnishing of incorrect information or documents, therefore, there is need to provide effective deterrent based on transaction value to enforce compliance with Transfer Pricing Regulation. Therefore, amendment to section 271A was proposed for levy of penalty @ 2% of the value of international transaction, if tax payer, (i) failed to maintain prescribed or information of, (ii) failed to report an international transaction which is required to be reported, or maintain or furnish any incorrect information or documents. The amendment took effect from 01.07.2012. At the cost of repetition, we may refer that the Assessing Officer proposed and levied penalty for not reporting the international transaction in Form No. 3CEB. The penalty for

not reporting international transaction or specified domestic transaction was brought on statute book by Finance Act, 2012 w.e.f. 01.07.2012. The present case related to Assessment Year 2010-11. Therefore, the substituted provision of section 271AA substituted vide Finance Act, 2012 would not be applicable for year under consideration. Hence, the penalty levied by Assessing Officer is not sustainable. The Hon'ble Apex Court in CIT Versus Onkar Saran & Sons (195 ITR 001) held that for levying the penalty, the law applicable is the law prevailing at the time when the original return was filed.

7. Considering the above factual and legal discussion, we hold that the penalty levied by Assessing Officer is not sustainable. Hence, the grounds of appeal raised by assessee are allowed.
8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 19<sup>th</sup> day of September 2018.

Sd/-

Sd/-

**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 19/09/2018  
S.K.PS

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

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

BY ORDER,

(Asstt.Registrar)  
ITAT, Mumbai