

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)  
and Shri Satbeer Singh Godara, Judicial Member**

**I.T.A. No. 1992/KOL/2017  
Assessment Year: 2011-2012**

***Deputy Commissioner of Income Tax,.....Appellant***  
***Circle-8(1), Kolkata,***  
***Aayakar Bhawan,***  
***P-7, Chowringhee Square, 5<sup>th</sup> Floor,***  
***Kolkata-700 069***

-Vs.-

***M/s. EIH Limited,.....Respondent***  
***4, Mangoe Lane,***  
***Kolkata-700 001***  
***[PAN:AAACE 6898 B]***

**Appearances by:**

*Shri P.K. Srihari, CIT, D.R., for the Appellant*

*Shri Rohan Poddar, Advocate, for the Respondent*

Date of concluding the hearing : October 31, 2018

Date of pronouncing the order : November 22, 2018

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (KZ):-**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-16, Kolkata dated 06.07.2017 whereby he cancelled the penalty of Rs.8,68,77,800/- imposed by the Assessing Officer under section 271AA of the Income Tax Act, 1961.

2. The assessee in the present case is a Company, which is engaged in the business of running Hotels. The return of income for the year under consideration was filed by it on 28.09.2011 declaring total income of Rs. NIL. During the course of assessment proceedings, it was noticed by the Assessing Officer that the report under section 92E was not filed by the

assessee-company within the due date of filing of income-tax return inspite of the fact that it had entered into international transactions with its Associated Enterprises during the year under consideration. He, therefore, required the assessee to file such report. After the initial delay, the assessee-company finally furnished the copy of Transfer Pricing Report in Form No. 3CEB as required under section 92E of the Act on 13.03.2014. The said report was stated to have been drawn up on 28.11.2011. On the basis of the information contained in the said report, the Assessing Officer held that the assessee had failed to report the international transactions with its Associated Enterprises and had also furnished incorrect information in the return of income with reference to the said transactions. He accordingly invoked the provisions of section 271AA and imposed a penalty of Rs.8,68,77,800/- being 2% of the value of international transactions of the assessee-company with its Associated Enterprises.

3. The penalty imposed by the Assessing Officer under section 271AA was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made on behalf of the assessee-company, the Id. CIT(Appeals) cancelled the penalty imposed by the Assessing Officer under section 271AA on the ground that the amendment made in section 271AA by the Finance Act, 2012 w.e.f. 1<sup>st</sup> July, 2012 was applicable from A.Y. 2012-13 and not to A.Y. 2011-12. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the penalty in this case was imposed by the Assessing Officer under section 271AA of the Act, the provisions of which as applicable to the year under consideration were as under:-

***“271AA- Penalty for failure to keep and maintain information and document in respect of international transactions – Without prejudice to the provisions of section 271, if any person fails to keep and maintain any such information and document as required by sub-section (2) of section 92D, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of each international transaction entered into by such person”.***

The provisions of section 271AA were subsequently amended by the Finance Act, 2012 w.e.f. 01.07.2012 and the provisions so amended read as under:-

*“Without prejudice to the provisions of section 271, if any person in respect of an international transaction-*

- (i) fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D;*
- (ii) fails to report such transaction which he is required to do so; or*
- (iii) maintains or furnishes an incorrect information or document,*

*the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of each international transaction entered into by such person”.*

5. A perusal of the penalty order passed by the Assessing Officer in the present case shows that the penalty under section 271AA was imposed by the Assessing Officer in the case of the assessee for A.Y. 2011-12 for the failure of the assessee to report the international transactions and also to furnish incorrect information in the return of income with reference to such international transactions. The said defaults allegedly committed by the assessee for the year under consideration, i.e. A.Y. 2011-12, however, were not covered by the provisions of section 271AA as applicable to the said year and the same were covered only by the provisions of section 271AA as amended by the Finance Act, 2012 w.e.f. 01.07.2012. Since the said provisions as amended by the Finance Act,

2012 w.e.f. 01.07.2012 were not retrospective in nature and were applicable from A.Y. 2012-13, we find ourselves in agreement with the Id. CIT(Appeals) that the penalty imposed by the Assessing Officer by relying on the amended provisions of section 271AA was not sustainable. We accordingly uphold the impugned order of the Id. CIT(Appeals) cancelling the penalty imposed by the Assessing Officer under section 271AA and dismiss this appeal of the Revenue.

**6. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on November 22, 2018.

**Sd/-**  
**(Satbeer Singh Godara)**  
**Judicial Member**

**Sd/-**  
**(P.M. Jagtap)**  
**Vice-President (KZ)**

***Kolkata, the 22<sup>nd</sup> day of November, 2018***

*Copies to :* (1) ***Deputy Commissioner of Income Tax,***  
***Circle-8(1), Kolkata,***  
***Aayakar Bhawan,***  
***P-7, Chowringhee Square, 5<sup>th</sup> Floor,***  
***Kolkata-700 069***

(2) ***M/s. EIH Limited,***  
***4, Mangoe Lane, Kolkata-700 001***

(3) ***Commissioner of Income Tax (Appeals)-16, Kolkata,***  
(4) ***Commissioner of Income Tax-*** ,  
(5) ***The Departmental Representative***  
(6) ***Guard File***

*By order*

***Assistant Registrar,***  
***Income Tax Appellate Tribunal,***  
***Kolkata Benches, Kolkata***

***Laha/Sr. P.S.***