

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-2' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 3864/DEL/2015
[A.Y 2007-08]

Giesecke & Devrient India Pvt Ltd.
Corporate Office, Plot No. 57
Sector - 44, Gurgaon,

Vs.

The Dy. DCIT
Circle-10(1)
Gurgaon

PAN: AABCG 4223 D

(Applicant)

(Respondent)

Assessee By : Shri Harpreet Ajmani, Adv
Shri Rohan Khare, Adv

Department By : Shri H.K. Choudhary, CIT-DR

Date of Hearing : 23.01.2019

Date of Pronouncement : 28.01.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is directed against the order of the
CIT(A)-44, New Delhi dated 13.03.2015 pertaining to A.Y 2007-08.

2. The solitary grievance of the assessee is that the CIT(A) erred in upholding the levy of penalty imposed by the DCIT, Circle 12(1), New Delhi u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. The roots for levy of penalty lie in the assessment order dated 24.10.2011 framed u/s 143(3)/144 of the Act.

4. Assessment was completed after making the following adjustments:

- | | | |
|------|---|-----------------------------|
| i) | Provision for software development services | - Rs. 2,68,68,098/- |
| ii) | Purchase of raw material for
SIM Card assemble | - Rs. 1,90,83,391/- |
| iii) | Payment of consultancy fees | - Rs. 2,11,25,492/- |
| iv) | Purchase of finished goods | - <u>Rs. 18,60,82,400/-</u> |
| | | Rs. 25,31,59,381/- |

5. The quarrel travelled upto the Tribunal and the Tribunal, vide order dated 15.03.2013, in ITA No. 5735/DEL/2011 upheld the adjustments at Sl. Nos. 1 and 2 above, and other two adjustments were deleted.

6. Taking a leaf out of the order of the Tribunal, the Assessing Officer invoked Explanation 1 of section 271(1)(c) of the Act and came to the conclusion that the assessee has concealed its true income liable to tax by way of furnishing inaccurate particulars of its income by claiming wrong deduction and hence it is a clear-cut case for imposition of penalty u/s 271(1)(c) of the Act and, accordingly, levied penalty of Rs. 1,54,67,271/-.

7. The assessee agitated the matter before the CIT(A) but without any success. However, while confirming the penalty, the CIT(A) invoked Explanation 7 to section 271(1)(c) of the Act.

8. Before us, the ld. AR vehemently stated that the assessee has computed its transfer price and had undertaken its TP analysis with utmost due diligence and in good faith. It is the say of the ld. AR that the ALP computed by the assessee is in accordance with TP provisions for which the assessee has maintained proper documentation and computed the ALP in accordance with the relevant TP provisions. Therefore, penalty levied should be deleted.

9. Per contra, the ld. DR strongly supported the findings of the first appellate authority. It is the say of the ld. DR that the adjustments upheld by the Tribunal itself shows that the assessee has furnished inaccurate particulars of income and, therefore, penalty so levied should be upheld.

10. We have given thoughtful consideration to the orders of the authorities below. It is true that the adjustment on account of provision of software services and purchase of raw material for sim card assembly was upheld by the Tribunal. Facts on record show that there is no quarrel in so far as comparables are concerned. In fact, the TPO has accepted the bench marking done by the assessee. It is true that the assessee has used multiple year data in computing the ALP. The TPO/Assessing Officer has held that such action by the assessee is contrary to the provisions of the Act and would tantamount to furnishing of inaccurate particulars of income. In our understanding of the law, prior to 2007, there was a legal debate as to whether multiple year data can be used or current year data has to be used. In our considered opinion, this being a debatable issue at that point when the assessee filed its return of income, adoption of multiple year data for arriving at ALP is a bonafide exercise. Therefore, it cannot be said

that the assessee has not done TP exercise in good faith and with due diligence.

11. Another reason for making the adjustments was that the assessee had claimed capacity utilisation which was denied by the TPO/CIT(A)/ITAT. The difference in level of capacity utilisation is an accepted principle though denied in the case of the assessee but then the same cannot tantamount to filing TP report without good faith and due diligence.

12. Considering the TP documentation of the assessee in totality, we are of the considered opinion that neither Explanation 1 as applied by the Assessing Officer nor Explanation 7 as applied by the CIT(A) to section 271(1)(c) of the Act apply. We, therefore, do not find any merit in the penalty so levied and we, accordingly, direct the Assessing Officer to delete the same.

13. In the result, the appeal of the assessee in ITA No. 3864/DEL/2015 is allowed.

The order is pronounced in the open court on 28.01.2019.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 28th January, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	