

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A", KOLKATA**

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1133/KOL/2016
(ASSESSMENT YEAR-2011-12)**

JCIT (OSD), Circle-8(1), Aayakar Bhawan, 5 th Floor, P-7, Chowringhee Square, Kolkata- 700069.	vs	M/s. Kunjal Synergies Pvt.Ltd., 15D, Everest House, 46C, Jawaharlal Nehru Road, Kolkata-700071. PAN-AACCK9990L
(Appellant)		(Respondent)

**C.O.-40/Kol/2016
[In ITA No.1133/KOL/2016]
(ASSESSMENT YEAR-2011-12)**

M/s. Kunjal Synergies Pvt.Ltd., 15D, Everest House, 46C, Jawaharlal Nehru Road, Kolkata-700071. PAN-AACCK9990L	vs	JCIT (OSD), Circle-8(1), Aayakar Bhawan, 5 th Floor, P-7, Chowringhee Square, Kolkata- 700069.
(Appellant)		(Respondent)
Appellant by	Sh. Sankar Halder, Addl. CIT Sr. DR	
Respondent by	Sh. S.Jhalaria, FCA	
Date of Hearing	05.11.2018	
Date of Pronouncement	30.01.2019	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the Revenue and Cross-objection filed by the assessee against the order dated 29.02.2016 passed by CIT(A)-3, Kolkata for AY 2011-12.

**ITA No.1133/KOL/2016
(ASSESSMENT YEAR-2011-12)**

2. The only issue is to be decided as to whether the CIT(A) is justified in cancelling the penalty imposed by the AO u/s 271AA of the Income Tax Act, 1961 (in short "Act").

"I have perused the observations of the Assessing Officer and the written submission filed by the appellant. On plain reading of the provisions as contained in section 271AA, I find that, under the said provisions as applicable to the assessment year in question, the assessee was liable to penalty only if assessee failed to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D."

On going through the relevant provisions of sub section (1) and sub section (2) of section 92D I find that the assessee was obliged to keep and maintain such information and document in respect of the international transaction as may be prescribed and further the Board is to prescribe the period for which the information and document shall be kept and maintained under that sub-section Though there was no mention of subsection (3) of section 92D in the penal provisions u/s 271AA it will be relevant to quote the said sub section which is as under:-.

92D(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard:

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days."

It would therefore appear that the assessee during the relevant year was obliged to maintain the records and details and was to file the same within 30 days when asked for. The AO has however imposed penalty on the ground that the assessee mentioned the word :NO" in the return or that the assessee failed to report the international transactions with its associated enterprise. The AO was also of the view that the penalty was automatic. As far as the effect of mentioning "No" in the return as mentioned supra it hardly be said that it is not a curable defect. With regard to the treatment of a penal provision as automatic, I cannot again find myself in agreement with the AO. Both of the above issues have a plethora of authorities -several quoted by the appellant himself - commenting authoritatively on them. Let us now address the portion of the issue that has a direct bearing upon the result of the present appeal. The "No" mentioned above has been belied by the overwhelming amount of evidence that the appellant had substantively complied with the provisions of section 92D as presented above. The appellant had also undeniably produced the concerned documents within the stipulated period of thirty days from the date that they had been asked for by the AO. The only issue that remains is whether it would be the provisions as they stood before the said amendment that could apply in the instant case or would it be the provisions after amendment that would be applied retrospectively. In my considered view only penal provisions as they existed during the relevant assessment year shall be applicable to consider the violation of law if any by the assessee. The assessee is obliged to comply with the provisions of law as then applicable and not divine them. The law as on the date of filing of the return can be the only law that governs the imposition of penalty. It has been so held by the

Hon'ble Supreme Court in the case of Brijmohan 120 ITR page 1 and Hon'ble Delhi High Court in Joginder Singh 151 ITR page 93. It is only logical to conclude that the assessee could not have contemplated the amendment in law with effect from 1.7.2012 on the basis of which penalty has been imposed by the AO. The decisions relied upon by the AO do not help him, as, as rightly pointed out by the Ld.AR, they address a completely different issue, that of limitation and the effect of amendments on pending proceedings with regard to issues of limitation. They have no applicability here."

3. Heard both parties and perused the material available on record. It is noted from the record from the day of initiation of proceedings u/s 271AA of the Act, the assessee's contention before the AO was that the substituted provision u/s 271AA of the Act through Finance Act, 2012 is not applicable to the present case as there was no condition report of the international transaction by the assessee. The AO proceeded to impose penalty of Rs.65,71,972/- vide its order dated 30.09.2014. The CIT(A) considering the submissions of the assessee discussed the provision u/s 271AA of the Act as it stood relevant to the year under consideration and its substitution thereafter w.e.f. 01.04.2014. We find that it was rightly pointed out by the Ld.AR that the entire provision was substituted vide Finance Act, 2012 w.e.f. 01.07.2012 thereby *prima facie* the said provision is not applicable to the present case. It is also noted that the AO primarily imposed penalty u/s 271AA of the Act only on the condition that the assessee reported "*no international transaction in its return of income*". But, however, the CIT(A) discussed the same in its order at page No.11 and observed during the year under consideration the requirement is to keep and maintain any such information/document in respect of international transaction and no such condition to impose penalty on failure of reporting international transaction in the return of income. Therefore, we find no infirmity in the order of CIT(A) and it is justified for the reasons stated in his order which is reproduced herein above. Thus, Ground No.1 raised by the Revenue fails and it is dismissed.

C.O.-40/Kol/2016 [In ITA No.1133/KOL/2016]
(ASSESSMENT YEAR-2011-12)

4. We find that the assessee filed the above cross-objection supporting the order of CIT(A). Since a view has been taken by us in the Revenue's appeal above wherein we confirmed the order of CIT(A) in favour of the assessee. Therefore, Grounds raised by the assessee in cross-objection becomes academic and hence no adjudication is required.

5. In the result, the cross-objection filed by the assessee is dismissed.

6. In the final result, the appeal of the Revenue and the cross-objection of the assessee are dismissed.

Order pronounced in the open court on 30.01.2019.

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Date:- 30.01.2019

Amit Kumar

Sd/-

(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant- JCIT (OSD), Circle-8(1), Aayakar Bhawan, 5th Floor, P-7, Chowringhee Square, Kolkata-700069.
2. Respondent- M/s. Kunjal Synergies Pvt.Ltd., 15D, Everest House, 46C, Jawaharlal Nehru Road, Kolkata-700071.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

AR/H.O.O
ITAT, KOLKATA