

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI  
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6192/Del/2016  
(Assessment Year: 2012-13)

Jay Gee Overseas P Ltd, 129, AD Block, Pitampura, Delhi PAN: AABCJ1624R	Vs.	DCIT, Circle-13(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Shekhar Kerjwal, Director of Company
Revenue by:	Smt Naina Soin Kapil, Sr. DR
Date of Hearing	22/01/2019
Date of pronouncement	28/02/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-5, Delhi dated 05.09.2016 for the Assessment Year 2012-13.
2. The assessee has raised the following grounds of appeal:-
  - “1. That on the facts and in circumstances of the case and in law, the order passed by CIT(A) is bad in law and void ab-initio.
  2. That the order CIT(A) erred in confirming the order of the Assessing Officer imposing penalty of Rs. 1,00,000/- under section 271BA of the Act.
  3. That the CIT(A) erred in holding that appellant has not been able to explain reasonable cause for not getting the audit report u/s 92E of the Act.
  4. That the CIT(A) erred in passing the order without considering the detail submissions of the appellant during the appellate proceedings.”
3. The brief facts of the case show that assessee is a company engaged in the business of manufacturing and export of home furnishing decor items. The assessee furnish the return of income on 27/09/2012 showing an income of rupees 7716210. The case of the assessee was selected for scrutiny and the order under section 143 (3) was passed under the income tax act on

30/03/2015 where the only addition was made of Rs. 412555/- in aggregate and computed taxable income of the assessee at INR 8128770/- . Therefore the only addition was made with respect to the disallowance u/s 14 A of INR 73703/- and addition because of the stale creditor of INR 338852/-. As the assessee has entered into an international transaction of the sale of finished goods with its associated enterprise amounting to rupees 66642864/- and the assessee has not filed requisite documents before the learned assessing officer the show cause notice under section 271BA was issued on 30/3/2015 and 5/8/2015 which was replied by the assessee on 20/8/2015. The assessee submitted that the said notice has been served for non-submission of the audit report in form number 3CEB for the assessment year 2012- 13 while making an assessment under section 143 (3) of the income tax act. It has been submitted during the course of assessment proceedings as well as during the course of penalty proceedings. Therefore, no penalty u/s 271BA of the income tax act is to be levied. The learned assessing officer rejected the contention of the assessee and passed an order u/s 271BA of the income tax act on 23 9/2015 stating that that assessee does not have any intention to conceal the tax particulars in any manner is not sustainable argument for non-levy of the penalty. He further stated that the issue of concealment of tax could only be ascertained after the report in cases of 10 from the transfer-pricing officer. He therefore levied the penalty of INR 100,000 under section 271BA of the income tax act.

4. The assessee aggrieved with the order of the learned assessing officer has preferred an appeal before the learned CIT – A who passed an order dismissing the appeal of the assessee. Therefore, assessee is in appeal before us.
5. Sri Shekhar Kejriwal, director of the company appeared on behalf of the company and submitted that during the course of assessment proceedings the assessee has submitted form number 3CEB before the assessing officer. He submitted that no addition was made with respect to the arm's-length price of the international transaction. He further stated that the assessee could not submit the required form because of the reason that son of the director of the assessee was facing a case before the honourable Delhi

High Court in case of diverse. He submitted that an FIR was registered in case of the assessee in order the honourable Delhi High Court passed dated 29/9/2014. He extensively read the copy of the order. He further referred to the fact that the assessee company was also facing cases before the company law board and he submitted the copy of the order dated 23/12/2014 with respect to the dispute. He further stated that that counsel of the assessee, chartered accountant of the assessee was also involved in the case of Mr. Yadav Singh and the company also received notice from the Central bureau of investigation with respect to the functioning of the chartered accountant of the assessee he also submitted the copy of the press cutting of times of India dated 30/03/2016 wherein all these information was available. Therefore his submission was that that the situation of the company and its directors was so much disturbed because of all these litigations that they could not produce the audit report in form number 3CEB for the year ended on 31<sup>st</sup> of March 2012. He submitted that there is a reasonable cause for non-compliance by the assessee and therefore penalty under section 271 BA may not be levied.

6. The learned departmental representative vehemently stated that if any person fails to furnish the report from an accountant as required by section 92E the assessing officer may direct that such person shall pay by way of way of penalty a sum of rupees INR 100,000. He submitted that the assessee has not shown any reasonable cause under section 273B of the act and therefore the lower authorities have rightly levied the penalty.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. On careful consideration of the expression furnished by the assessee, it is apparent that the company as well as the directors of the company was disturbed because of the litigation in the family, which resulted into the cases before company law board. Further, it is apparent that the chartered accountant of the assessee was looking after the affairs of assessee were also involved in some proceedings where the Central bureau of investigation was involved. Even otherwise, the assessee has submitted form number 3CEB before the learned assessing officer. Admittedly, there is no addition made by the learned transfer pricing officer/assessing officer because of any adjustment with the arm's-length price of the international

transaction. Therefore looking at the facts and circumstances of the case, we do not find any reason to say that there was no reasonable cause with the assessee for failure to comply with the provisions of furnishing form number 3CEB within the due time before the assessing officer. The provisions of section 273B of the income tax act states that the penalty should not be imposed in certain cases where the assessee proves that there was a reasonable cause for the said failure. That section also cover the provisions of section 271BA. In view of the above facts we do not find any reason to uphold the penalty levied by the learned assessing officer and confirmed by the learned CIT – A. Accordingly the learned assessing officer is directed to delete the penalty of INR 1 00000/- levied under section 271BA of the income tax act for not getting the audit report u/s 92E of the income tax act. Accordingly, ground number 2 of the appeal of the assessee is allowed.

8. All other grounds of appeal are general in nature and do not require any adjudication in view of our decision with respect to ground number 2 of the appeal of the assessee.
9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28/02/2019.

-Sd/-

(BEENA A. PILLAI)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 28/02/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi