

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'D' BENCH, AHMEDABAD**

[Coram: Justice P P Bhatt, President and Pramod Kumar, Vice President]

IT(TP)A No.1914/Ahd/2014
Assessment Year: 2009-10

ITT Corporation India Pvt. Ltd.
Plot No.713, Manjusar GIDC,
Savli Road, Savli,
Vadodara – 391 770.
[PAN: AABCI 7013 D]

..... **Appellant**

vs.

**Deputy Commissioner of Income Tax,
Circle – 1(2), Baroda.**

..... **Respondent**

Appearances by

Dhinal Shah for the Appellant
Lalit P. Jain for the Respondent

Date of concluding the hearing : 05.12.2018
Date of pronouncement : 04.03.2019

O R D E R

Per Pramod Kumar, Vice President:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 21.03.2014 passed by the learned CIT(A), Baroda in the matter of assessment under section 271G of the Income-tax Act, 1961, for the assessment year 2009-10.

2. When this appeal was called out for hearing, our attention was drawn to the application for admission of following ground of appeal:

“That the order of the Ld. CIT(A)-I, Baroda in confirming the order of the Ld. TPO-II, Ahmedabad in the levy of penalty u/s. 271G amounting to Rs.93,67,851/- is liable to be quashed as void ab initio as being passed without any authority in law.”

3. Having heard the rival contentions and having perused the material on record, and having regard to the fact this additional ground of appeal only raises a question

of law arising out of undisputed facts on record, we deem it appropriate to admit the above additional ground of appeal. Ordered, accordingly.

4. To adjudicate on this appeal, it is enough to take note of the fact that the impugned penalty under section 271G was imposed by the Transfer Pricing Officer, vide his order dated 25.06.2012, whereas until the amendment was made to section 271G, vide Finance (No.2) Act 2014, only the Assessing Officer or the CIT(A) had the statutory powers to impose such penalty. When the above legal position was pointed out to the learned Departmental Representative, he did not have much to say but he placed his reliance on the stand of the authorities below.

5. As learned counsel for the assessee rightly points out, the powers to impose penalty under section 271G, till 01.10.2014, did not vest in the Transfer Pricing Officer. The impugned penalty order was passed on 25.06.2012, and was, therefore, for this short reason alone, unsustainable in law. The legal position is clear and unambiguous. In view of the above discussions, we vacate the orders of the authorities below and delete the impugned penalty of Rs.93,67,851/-. The assessee gets the relief accordingly.

6. As the appeal is allowed on the above technical ground, we see no need to deal with other issues raised in the appeal. These issues are as on now purely academic.

7. In the result, the appeal is allowed. Pronounced in the open Court today on the 4th day of March, 2019.

Sd/-

Justice P P Bhatt
(President)

Sd/-

Pramod Kumar
(Vice President)

Ahmedabad, dated the 4th day of March, 2019

*PBN/**

Copies to: (1) *The appellant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

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By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad