



IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.4840/Mum./2017
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-5(1)(1), Mumbai

..... Appellant

v/s

Ankit Gems Pvt. Ltd.
DW-6251-6252
D-Tower, G-Block
Bharat Biamond Bourse
Bandra Kurla Complex
Bandra (E), Mumbai 400 051
PAN - AAJCA4305Q

..... Respondent

Revenue by : Shri T. Roumuan Paite
Assessee by : Shri Sanjay B. Chokshi

Date of Hearing - 21.01.2019

Date of Order - 15.04.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the Revenue challenging the order dated 31st March 2007, passed by the learned Commissioner (Appeals)-55, Mumbai, deleting the penalty imposed under section 271G of the Income-tax Act, 1961 (for short "*the Act*") for the assessment year 2012-13.

2. Brief facts are, the assessee, an Indian company, is engaged in the business of manufacturing and sale of polished diamond as well as diamond studded jewellery. For the assessment year under dispute, the assessee filed its return of income on 28th November 2012, declaring total income of ₹ 35,20,79,030. In the course of proceedings under section 92CA of the Act, the Transfer Pricing Officer called upon the assessee to furnish various information, documents/details to demonstrate that the international transaction entered with overseas Associated Enterprises (AEs) are at arm's length. In response to the query raised by the Assessing Officer, assessee furnished various details called for along with books of account and transfer pricing study report wherein the assessee had benchmarked the international transaction by applying Transactional Net Margin Method (TNMM) as the most appropriate method. The Transfer Pricing Officer noticing that assessee also had international transactions with third parties, was of the view that Comparable Uncontrolled Transaction (CUP) method is the most appropriate method to benchmark the transaction called upon the assessee to furnish segment wise details of controlled and uncontrolled transactions. In response, it was submitted by the assessee that considering the nature of business of the assessee, CUP method could not be applied as invoices of sale to the AE and non-AE include different types of goods sold for different prices. Transfer

Pricing Officer, though, alleged that the assessee did not furnish the segment wise details of sales to the AEs and non-AEs for enabling him to determine the arm's length price of the international transaction by applying CUP method, however, ultimately, he accepted the benchmarking done by the assessee under TNMM and no variation/adjustment to the price charged was made. However, alleging that the assessee has not maintained information/documents required under section 92D(1) r/w rule 10D for enabling him to determine the arm's length price, the Transfer Pricing Officer initiated proceeding for imposition of penalty under section 271G of the Act and ultimately imposed penalty for an amount of ₹ 16,10,56,290. While deciding assessee's appeal challenging the imposition of penalty as aforesaid, learned Commissioner (Appeals) being satisfied with the submissions of the assessee deleted the penalty.

3. Learned Departmental Representative strongly relying upon the reasoning of the Transfer Pricing Officer as contained in the penalty order submitted, as per section 92D r/w rule 10D(1), the assessee is required to maintain information/documents which the Transfer Pricing Officer may require for enabling him to determine the arm's length price of the international transaction. He submitted, though, the assessee applied TNMM as the most appropriate method to benchmark the international transaction, however, he has not made proper

segment wise documentation to support the benchmarking. He submitted, though the Transfer Pricing Officer called for certain segment wise details and other information from the assessee, however, the assessee failed to produce them which prevented the Transfer Pricing Officer from determining the arm's length price of the international transaction by CUP method and ultimately he was compelled to accept the benchmarking done by the assessee under the TNMM due to lack of information furnished by the assessee. Thus, he submitted, since there is violation of provisions contained under section 92C(1) r/w sub-section (3) of the Act, the assessee was liable to be visited with penalty under section 271G of the Act.

4. The learned Authorised Representative submitted, the assessee has not only maintained the books of account but various other details for benchmarking the international taxation under TNMM. He submitted, most of the documents/information called for by the Transfer Pricing Officer was furnished before him in the course of proceedings. He submitted, before the Transfer Pricing Officer the assessee has also explained the difficulty of applying CUP method and also the reason for which segment wise details called for could not be submitted. He submitted, the assessee has made substantial compliance to the queries made by the Transfer Pricing Officer. Therefore, only because segment wise details could not be furnished

by the assessee, penalty under section 271G of the Act cannot be imposed. More so, when the Transfer Pricing Officer has ultimately accepted the arm's length price of the international transaction shown by the assessee. In support of his contention, learned Authorised Representative relied upon the following decisions:-

- i) *Dilipkumar V. Lakhi, IT(TP)A no.2142/Mum./ 2017, dated 02.08.2018;*
- ii) *Kiran Gems Pvt. Ltd., ITA no.5626/Mum./2016, dated 01.11.2018;*
- iii) *CIT v/s D. Navinchandra Exports P. Ltd., ITA no.6304/M./2016, etc. dated. 25.10.2017*

5. We have considered rival submissions and perused material on record. We have also applied our mind to the decisions relied upon. On a careful reading of the penalty order passed under section 271G of the Act, it is evident, the Transfer Pricing Officer has proceeded to impose penalty under the aforesaid provision alleging that the assessee has failed to furnish certain information/documents which prevented him from determining the arm's length price properly. However, on a perusal of the orders passed by the Departmental Authorities as well as the material placed on record, it is noticed that the assessee has maintained books of account and other information to benchmark the international transaction with AE by applying TNMM and the transfer pricing study report containing such benchmarking was furnished before the Transfer Pricing Officer along with various other details. However, the Transfer Pricing Officer was of the view that the international transaction with AE should be benchmarked by

applying CUP method and called upon the assessee to furnish segment wise details of AE and non-AE sales. It is observed, before the Transfer Pricing Officer the assessee has made submissions explaining why it is not possible for a person engaged in manufacturing and sale of diamond and diamond jewellery to maintain segment wise details of sales made to the AE and non-AEs for the purpose of applying CUP method. It was explained by the assessee that CUP method could not be applied as invoice of sale of AE and non-AE include different types of goods sold at different price. It is further observed, in the preceding years also, the assessee had benchmarked international transaction with AE by applying TNMM which was accepted by the Revenue. It is relevant to observe, the Transfer Pricing Officer has ultimately accepted the benchmarking done by the assessee under TNMM method. On going through the provisions of section 92D and rule 10D, we find that the assessee is required to maintain certain information/documents which may be required by the Transfer Pricing Officer for determining arm's length price. In the present case, it is not a fact that the assessee has not maintained any information as required under section 92D(1) r/w rule 10D(1). The facts on record clearly indicate that the assessee indeed has maintained a number of information/documents as required under the statutory provisions. Further, the assessee has also explained why it is not possible to furnish certain information sought by the Transfer Pricing Officer qua

applicability of CUP method. In this regard, detailed written submission has been filed by the assessee before the Transfer Pricing Officer which has been properly evaluated by the learned Commissioner (Appeals) and the difficulty in maintaining the information sought by the Transfer Pricing Officer has been well explained and analysed. It is also necessary to observe, ultimately the Transfer Pricing Officer had accepted the benchmarking done by the assessee under TNMM and no variation/adjustment was made by him to the arm's length price. Even, assuming that the assessee has not maintained documents as required or was unable to support the benchmarking done by it under TNMM, nothing prevented the Transfer Pricing Officer in discarding the benchmarking done by the assessee and determining the arm's length price of the international transaction with the AE independently by applying any one of the prescribed method. When the statutory provisions confer enough power on the Transfer Pricing Officer to benchmark the international transaction as per the provisions of the Act, the allegation of the Transfer Pricing Officer that by non furnishing of documents by the assessee he was prevented from determining the arm's length price under CUP method is unacceptable. Therefore, when the Transfer Pricing Officer has accepted the benchmarking of the assessee, the imposition of penalty under section 271G of the Act is unsustainable. The decisions relied upon by the learned Authorised Representative dealing with identical issue of imposition of penalty

under section 271G of the Act are squarely applicable to the facts of the present appeal. In view of the aforesaid, we do not find any infirmity in the order of learned Commissioner (Appeals) in deleting the penalty imposed under section 271G of the Act. Grounds are dismissed.

6. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 15.04.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 15.04.2019

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai