



ITA No.85/Mum/2019
M/s. Amore Jewels P.Ltd.
Assessment Year:2013-14

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

मजनीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.85/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT-Circle 12(1)(1) Room no.223, 2 nd Floor, Aaykar Bhavan, Churchgate Mumbai- 400 020.	बनाम/ Vs.	M/s. Amore Jewels Private Ltd. 3A, Pandit Motilal Nehru Marg ITT Bhatti, Western Express Highway Off Aarey Road, Goregaon East, Mumbai-400 063.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAECA-7184-J		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Aarti Vissanji-Ld.AR
Revenue by	:	Shri Michael Gerald-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	19/02/2020
घोषणा की तारीख / Date of Pronouncement	:	12/03/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-55, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No.CIT(A)-55/DCIT-12(1)(1)/17-18, dated 05/10/2018 on following grounds: -



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i) Whether in the facts and circumstances of the case and in law the CIT(A) was right in deleting the penalty u/s 271G in the assessee's case even when the assessee had clearly failed in maintaining the documentation as required u/s 92D(3) of the act.

ii) Whether the decision of CIT(A) is not vitiated for the reason that the CIT(A) has not given any findings on how the assessee has complied with the clause (d), (g) and (m) of rule 10D(1), that has been specifically invoked by the TPO.

iii) Whether the CIT(A) was not incorrect in stating that the TPO should have asked for copies of profit and loss accounts and balance sheets of AEs to make an overall comparison with the gross profitability levels of the assessee with the AE's to ascertain diversion of profits, if any ignoring the findings of the ITAT in the case of Aztec Software Technology services Ltd. Vs ACIT Vs. ITA No. 584/Bang/2006, in which it has been held that there is no legal requirement for the AO to prima facie demonstrate tax avoidance before invoking the provisions of section 92 and 92CA of the act.

The Id. CIT(A) erred in holding that there was reasonable cause for non-compliance of sec. 92D r/w rule 10D(1) without specifying the cause of such non compliance or demonstrating how the same was reasonable.

The Id. CIT(A) erred in deleting the penalty for the reason that no adjustment was made to the ALP, failing to note that by not producing the material documents necessary to determine the ALP under any of the prescribed methods u/s 92C(1), the assessee effectively prevented the TPO to make determination as recorded by the TPO in para 5 of the order u/s 92CA(3).

Whether the Id. CIT(A) was correct in ignoring the ratio laid down in the decision of Hon'ble Bombay High Court in the case of M/s. Shatrunjay Diamonds (261 ITR 258) holding that the initial burden was cast upon the assessee?

iv) Whether on the facts and circumstances of the case and in law the CIT(A) was right in arriving at the conclusion that the TPO could have tried to work out the gross profits and net profits by averaging the purchase prices and the expenses in proportion of export sales of each one of the segments to arrive at average profitability of each segment and then to compare the same with the average profitability of other public companies whose details were available in public domain, when it was not possible to do so in the absence of proper documentation.

v) The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored."

2. The Ld. Counsel for the assessee (AR), at the outset, submitted that similar issue of penalty u/s 271G stood covered in assessee's favor by the decision of this Tribunal in assessee's own case for AYs 2009-10 & 2012-13, ITA Nos.6009/Mum/2017 & 716/Mum/2018, common order dated 10/04/2019. A copy of the order has been placed on record. When



the same was confronted to Ld. DR, he could not point any distinguishing feature.

3.1 Facts leading to imposition of penalty are that assessee being resident corporate assessee is stated to be engaged in the business of manufacturing & trading of diamonds and studded Jewellery. An assessment was framed u/s 143(3) r.w.s. 92CA(4) on 29/12/2016. Certain international transactions carried out by the assessee with its Associate Enterprises (AE), during the year under consideration, were referred to Learned Transfer Pricing Officer (TPO) u/s 92CA(1) for determination of Arm's Length Prices. These transactions were in the nature of purchase / sale of rough as well as polished diamonds with overseas group entities. The assessee applied entity level TNMM to benchmark the stated transactions, which was rejected by Ld. TPO. The assessee was asked to produce complete break up of both the transactions in terms of quality as well as prices. However, the said information could not be furnished by the assessee. Although finally Ld. TPO accepted the transactions to be at Arm's Length Price, but initiated penalty u/s 271G in view of the fact that the assessee was unable to submit profitability at net margin level, separate stock record or production record was not produced for AE and non-AE segmental analysis and for quantitative reconciliation.

3.2 The assessee explained that the benchmarking done by the assessee was well accepted as well as suitable method keeping in view the assessee's nature of business. The assessee drew attention to the detailed records maintained by the assessee with respect to the stated



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transactions. However, concluding that the assessee failed to maintain documentation as required under Clause (d), (g), (h) & (i) of Rule 10D (1), the aforesaid penalty u/s 271G was initiated and finally, the assessee was saddled with impugned penalty of Rs.123.63 Lacs vide order dated 28/04/2017.

4. The learned first appellate authority, after analyzing the manufacturing process and nature of trade, opined that levy of penalty would neither be fair nor reasonable since substantial compliance was made by the assessee. Therefore, the penalty was deleted. Aggrieved, the revenue is in further appeal before us.

5. Upon perusal of cited order of Tribunal for AYs 2009-10 & 2012-13 in revenue's appeals, we find that the assessee was saddled with penalty u/s 271G for those years under similar factual matrix. The same was deleted by learned first appellate authority, against which the department was in appeal for both these years. However, the co-ordinate bench, relying upon the decision of Tribunal in **ACIT V/s D. Navinchandra Exports Pvt. Ltd. (2017 87 Taxmann.com 306)**, dismissed the appeals. Since fact are pari-materia the same in this year, respectfully following the earlier decision, we dismiss the revenue's appeal.

6. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 12th March, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



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मुंबई Mumbai; दिनांक Dated : 12/03/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.