



IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

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

ITA no.1524/Mum./2019
(Assessment Year : 2011-12)

ITA no.1525/Mum./2019
(Assessment Year : 2011-12)

Transoceanic Financial Engineering
Pvt. Ltd., 402, Field View, Upper Govind
Naar, Malad (E), Mumbai 400 097
PAN – AADCT4166A

..... Appellant

v/s

Income Tax Officer
Ward-13(3)(4), Mumbai

..... Respondent

Assessee by : Shri Prateek Jha
Revenue by : Shri Vijay Kumar P. Menon

Date of Hearing – 25.11.2020

Date of Order – 04.12.2020

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeals have been filed by the assessee challenging the common order dated 31st January 2019, passed by the learned Commissioner of Income Tax (Appeals)-58, Mumbai, confirming penalty imposed under section 271AA and 271BA of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2011-12.

2. Brief facts are, the assessee is a resident company and is engaged in the business of providing consultancy/advisory services on financial matters. For the assessment year under dispute, the assessee filed its return of income on 31st March 2013, declaring loss of ₹ 13,745. In course of assessment proceedings, the Assessing Officer observed that the assessee in the relevant previous year had entered into international transactions with its Associated Enterprises (AE) aggregating to ₹ 18,70,20,000. However, the assessee has not submitted the statutory audit report concerning such international transaction along with the return of income. Therefore, for the purpose of determining the alleged arm's length price of the international transaction, the Assessing Officer made a reference to the Transfer Pricing Officer. The Transfer Pricing Officer vide order dated 29th January 2015, proposed adjustment of ₹ 9,08,60,000. In the draft assessment order passed in pursuance to the order passed by the Transfer Pricing Officer, the Assessing Officer added back the transfer pricing adjustment proposed by Transfer Pricing Officer. Against the draft assessment order, the assessee raised objections before the Dispute Resolution Panel (DRP). When the matter stood thus, the Assessing Officer initiated proceedings for imposition of penalty under section 271AA and 271BA on the allegation that the assessee had

failed to keep and maintain information and documents as required under section 92D of the Act and has further failed to furnish the report from an accountant as required under section 92E of the Act. Though, the assessee filed his submissions objecting to the penalty proceedings initiated under section 271AA and 271BA of the Act, however, the Assessing Officer rejecting the submissions/explanation of the assessee proceeded to pass orders imposing penalty of ₹ 18,17,200, under section 271AA and ₹ 1,00,000 under section 271BA of the Act. Though the assessee contested the levy of penalty under the aforesaid provisions by filing appeals before learned Commissioner (Appeals), however, it was unsuccessful.

3. The learned Authorised Representative submitted, the assessee from the very beginning has taken a stand before the Departmental Authorities that during the year under consideration, it has not entered into any international transaction with the AE. Therefore, the transfer pricing provisions would not be applicable. He submitted, while considering the issue in the quantum proceedings, the Tribunal vide order dated 28th January 2019, in ITA no.675/Mum./2016, has restored back the issue to the DRP for fresh adjudication. Thus, he submitted, in view of the decision of the Tribunal, the issues relating to imposition of penalty should also be restored back to the Assessing Officer.

4. The learned Departmental Representative, though, relied upon the observations of learned Commissioner (Appeals), however, he submitted that the issues raised in the present appeal can be restored back to the Assessing Officer.

5. We have considered rival submissions and perused the material on record. As could be seen from the facts on record, the genesis of imposition of penalty under section 271AA and 271BA of the Act is on an assumption by the Assessing Officer and the Transfer Pricing Officer that in the relevant previous year the assessee had entered into international transaction with its AE. Therefore, while proposing adjustment to the arm's length price of the international transaction, the Transfer Pricing Officer has observed that the assessee has not complied with the provisions of section 92D and 92E of the Act. On the basis of the aforesaid, the Assessing Officer has initiated proceedings for imposition of penalty under section 271AA and 271BA of the Act and has ultimately imposed penalty under the aforesaid provisions. However, it is seen from record, from the very beginning in course of proceedings before the Assessing Officer and the Transfer Pricing Officer, the assessee had taken a categorical stand that during the year under consideration it has not entered into any international transaction with the AE. Therefore, the transfer pricing provisions

would not be applicable. Consequently, the assessee is not required to comply with the provisions contained under sections 92D and 92E of the Act. Though, the assessee was unsuccessfully on the aforesaid stand before the Assessing Officer, the Transfer Pricing Officer as well as the DRP, however, the Tribunal while considering assessee's contention in ITA no.675/Mum./2016, dated 28th January 2019, has restored the issue to the DRP for re-considering assessee's claim that there was no international transaction of revenue nature between the assessee and the AE in the relevant financial year. Thus, in our considered opinion, when assessee's contention regarding not having any international transaction with the AE is still unresolved and is pending before the DRP, it would not be logical and proper to proceed in the matter of imposition of penalty under section 271AA and 271BA of the Act. The requirement of complying with the provisions of section 92D and 92E of the Act only arises in the event of assessee having any international transaction with the AE. Since, the aforesaid preliminary claim is now pending for decision before the DRP, we are inclined to set aside the impugned orders of learned Commissioner (Appeals) and restore the issue relating to imposition of penalty under section 271AA and 271BA of the Act to the Assessing Officer. The Assessing Officer, if warranted, may initiate proceedings under the aforesaid provisions on the basis of outcome of the decision of the DRP in the quantum

proceedings. Grounds raised by the assessee are allowed for statistical purposes.

6. In the result, appeals are allowed for statistical purposes.

Order pronounced in the open court on 04.12.2020

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 04.12.2020

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

Assistant Registrar
ITAT, Mumbai