

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1504/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,
Circle-1(2), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Francois Compressors India Pvt. Ltd.
Gat No.147/1 (New), Pirangut,
Village Lavale Road, Tal. Mulshi,
Pune-412 115
PAN : AABCF0496K

.....प्रत्यर्थी / Respondent

Revenue by : Shri S.P Walimbe
Assessee by : Shri Sharad A Shah

सुनवाई की तारीख / Date of Hearing : 27.05.2021
घोषणा की तारीख / Date of Pronouncement : 31.05.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(Appeals)-13, Pune dated 08.03.2017 for the assessment year 2012-13 as per the following grounds of appeal on record :

"1. The order of the Ld. CIT(A) is contrary to law and to the facts and circumstances of the case.

2. The Ld. Commissioner of Income Tax (Appeals) grossly erred in deleting the penalty levied u/s.271G of the I.T. Act.

3. The Ld. Commissioner of Income Tax (Appeals) grossly erred in allowing the ground in favour of the assessee ignoring the provisions of Section 92D of the Act as well as Rule 10D of the Income Tax Rules.

4. For these and such other grounds as may be urged at the time of hearing, the order of the Ld. CIT(A) may be vacated and that of the AO restored.

5. The appellant craves to add, amend, alter or delete any of the above ground of appeal during the course of appellate proceedings before the Hon'ble Tribunal."

2. In this case, the assessee had entered into international transactions and in respect thereof, he was supposed to furnish certain documents specified u/s.92D of the Act r.w.r. 10D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'). That however, the assessee did not furnish those documents irrespective of opportunities being provided to him. The Assessing Officer while issuing notice u/s.274 r.w.s. 271G of Act in respect of section 92D(3) of the Act had show-caused why penalty u/s.271G of the Act should not be levied. The assessee had not attended penalty proceedings before the Assessing Officer and therefore, did not furnish any explanation before Assessing Officer regarding the issue of penalty levied u/s.271G of the Act.

3. That when the matter travelled before the Ld.CIT(Appeals), the assessee vide its submissions had explained that he was prevented from not filing the requisite documents as required u/s.92D r.w.r. 10D because of various reasonable causes. The assessee in its submissions has explained those reasonable causes before the Ld. CIT(Appeals) which is on record. More specifically, the assessee had contended that even though they had not filed requisite documents before the Assessing Officer but nonetheless all those documents were filed before the Transfer Pricing Officer (TPO) and thereafter, the TPO in his order dated 29.01.2016 u/s. 92C(3) of the Act had accepted

the value of international transactions with regard to Arm's Length Price (ALP) of the assessee and the said was not disturbed by the TPO. The assessee had further submitted that the basic purpose for furnishing the documents specified u/s.92D r.w.r. 10D is to justify the ALP with regard to international transactions entered into during the year under consideration by the assessee and when that has been determined and has not been disturbed by the TPO's order then non filing of such documents before the Assessing Officer is merely a technical hitch for which no prejudice is caused to the Revenue.

4. That further the assessee had contended that the principles of natural justice demands that the notice issued to the assessee for proceedings u/s.274 r.w.r. 271G in respect of section 92D(3) of the Act that such notice should contain the names of the specific documents which the Assessing Officer requires the assessee to file before him. That however, in the said notice issued to the assessee nothing was specifically mentioned by the Assessing Officer. The Hon'ble Delhi High Court in the case of **CIT vs. Leory Somer & Controls (India) (P) Ltd. (2014) 360 ITR 532 (Del.)** has held that notice issued u/s. 92D(3) of the Act should specify information or documents which was required to be submitted by the assessee. In absence of basic details or fact order of penalty u/s.271G of the Act cannot be sustained. The Ld. CIT(Appeals) in his order has observed that it is correct statement of fact that the TPO had passed order in favour of the assessee without disturbing the ALP of the international transactions. Meaning thereby that all the requisite details and documents were filed before him and as such there was no prejudice caused to the Revenue. That further the Assessing Officer in his notice issued for penalty proceeding u/s.271G of the Act has not specified what are the requisite documents to be furnished by the assessee before him

and the Ld. CIT(Appeals) also has accepted the submissions on reasonable causes enumerated in the submissions of the assessee.

5. We have perused all the relevant documents placed before us and have gone through the submissions of the assessee as well as the assessment order and the order of the Ld.CIT(Appeals) along with relevant documents annexed before us in the paper book, more specifically the penalty notice issued u/s.274 r.w.s 271G in respect of section 92D(3) of the Act, decision of the Hon'ble Delhi High Court (supra.) and the explanation of reasonable causes by the assessee. We find that the finding of the Ld.CIT(Appeals) is in order. The TPO has accepted the ALP of the assessee in respect of the international transactions. The basic requirements of the provision for filing documents u/s.92D r.w.r. 10D of the Rules is with regard to enabling the Department for determination of the said ALP. In any case when the Assessing Officer has referred the matter to the TPO ultimately all the documents would had to be examined by the TPO and in this case he has done that. Therefore, non-filing of such documents before the Assessing Officer is a mere technical hitch which has not caused any prejudice to Revenue

6. Thereafter, when we peruse the notice for penalty proceedings, there also, there is no mention of any specific documents that are required to be filed by the assessee before the Assessing Officer. Taking the guidance of the Hon'ble Delhi High Court (supra.) without naming those documents there cannot be any imposition of penalty u/s.271G of the Act. In our opinion, the principles of natural justice demands in respect of the right of defense for the assessee whatever proceedings are to be done by any Quasi-Judicial Authority, the first step is the issuance of notice to the assessee and in that said notice all the relevant details should be there so that the assessee gets

an opportunity to prepare his defense and unfortunately in this case, it was not done. For this reason also penalty u/s.271G of the Act is not imposable. That further section 273B of the Act provides for reasonable cause and if that is justified, penalty /s. 271G of the Act may not be imposed and when this opportunity is given to the assessee by the statutes itself and the assessee has explained the reasonable causes which was accepted by the Ld. CIT(Appeal) and after perusing such reasons, we are in conformity with the findings of the Ld.CIT(Appeals). The Ld. DR could not bring out any evidences or place on record any material suggesting no reasonable cause in respect of the assessee. In view thereof, we don't find any reason to interfere with the findings of the Ld. CIT(Appeal) and the same is upheld. The relief provided to the assessee is hereby sustained.

7. In the result, **the appeal of the Revenue is dismissed.**

Order pronounced on 31st day of May, 2021.

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2021
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	27.05.2021	Sr.PS/PS
2	Draft placed before author	31.05.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		