

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

माननीय 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
(Hearing Through Video Conferencing Mode)

1. आयकरअपील सं./ I.T.A. No.6854/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT CC 9(3)(1), R. No. 215, 2 nd floor Aaykar Bhavan, M. K. Road Mumbai-400 020	बनाम/ Vs.	M/s Fine Jewellery Manufacturing Ltd. Plot No. Gj/12 Seepz Sez Complex, Andheri(E) Mumbai-400 096
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACF-5736-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Apurva Shah, Ld. AR
Revenue by	:	Ms. Usha Gaikwad, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	12/08/2021
घोषणा की तारीख / Date of Pronouncement	:	01/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2012-13 arises out of the order of Ld. Commissioner of Income Tax (Appeals)-56 Mumbai [CIT(A)] dated 23/07/2019 which has deleted penalty of Rs.111.82 Lacs as levied by learned Assessing Officer (AO) u/s. 271G vide order dated 29/07/2016.

2. The Ld. Sr. DR, drawing attention to the factual matrix, justified the penalty levied by Ld. AO whereas the Ld. AR submitted that keeping in view the nature of business, the details as sought by lower authorities could not be furnished and therefore, the penalty has rightly been deleted in the impugned order. The Ld. AR relied on various favorable decision of Tribunal rendered on similar facts and circumstances, the copies of which have been placed on record.

3. We have carefully heard the rival submissions and deliberated upon the case laws placed before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. Facts leading to imposition of penalty are that assessee being resident corporate assessee is stated to be engaged in manufacturing and marketing of cut and polished diamonds / jewellery. Since the assessee carried out certain international transactions of sale and purchase with its Associated Enterprises (AE) during the year, the same were referred to Ld. Transfer Pricing Officer-2(1)(2), Mumbai (TPO) for determination of Arm's Length Price (ALP). The assessee had benchmarked the transactions using entity level TNMM method and claimed the transactions to be at Arm's Length. However, Ld. TPO sought segmental profitability of AE and non-AE segment. The assessee submitted that it was not practical to identify and bifurcate the stock, cost and revenue under two segments. Though Ld. TPO accepted the transactions to be at Arm's Length but he initiated penalty u/s 271G for aforesaid failure on the part of the assessee. Finally, the assessee was saddled with impugned penalty u/s 271G vide order dated 29/07/2016.

5. The Ld. CIT(A), relying upon the order of Tribunal in ITA No. 5628/Mum/2016 for AY 2011-12 in the case of Interjewel Pvt. Ltd.,

deleted the penalty. Aggrieved, the revenue is in further appeal before us.

6. Upon due consideration, the undisputed position that emerges is that the assessee has carried out certain international transactions during the year with its AE and benchmarked the same using TNMM method in its Transfer Pricing Study which has been accepted by Ld. TPO. The only basis of levying impugned penalty against the assessee is the fact that the assessee did not furnish segmental profitability under the two segments owing to inherent nature of assessee's business. However, it was practically difficult to maintain the details as called for by Ld. TPO. If the Ld. Transfer Pricing Officer was not satisfied with the benchmarking of the assessee under TNMM, nothing prevented him from rejecting assessee's benchmarking and proceed to determine the ALP independently by applying any one of the prescribed methods. The blame for failure on the part of the Transfer Pricing Officer to determine the arm's length price cannot be fastened with the assessee.

7. We find that similar issue of penalty u/s 271G for diamond industry has been adjudicated in assessee's favor in various decisions of this Tribunal. The coordinate bench of Mumbai Tribunal in the case of **D. Navinchandra Exports (P.) Ltd. (87 Taxmann.com 306)** held that considering the practical difficulties in furnishing the segment wise details of AE segment and non-AE segment transactions in diamond industry, no penalty under Sec. 271G could justifiably be imposed for failure to furnish the said information. Similar is the view in **DCIT V/s Leo Schachter Diamonds India Pvt. Ltd. (ITA No.5931/Mum/2017 order dated 28/02/2019)** which in turn, *inter-alia*, placed reliance on the decision rendered in **DCIT V/s Firestone International Pvt. Ltd. (ITA**

No. 5304/Mum/2016 dated 01/12/2018) and the decision of Jaipur Tribunal in **ACIT V/s Gillette India Ltd. (54 Taxmann.com 313)**. Similar is the ratio of following decisions: -

1. ACIT vs. SSL-TTK (2012) 52 SOT 20 (URO) (Chennai)(Trib.)
2. ITO vs. Netsoft India Ltd. (2014) 150 ITD 454 (Mum.)(Trib.)
3. ACIT vs. M/s. Dilipkumar V. Lakhi [ITA No.2142/M/2017, A.Y. 2011-12 dated 02.08.2018 (Mum.)(Trib.)

We find that facts are similar before us. Therefore, finding no infirmity in the impugned order, we dismiss the appeal.

8. Resultantly, the appeal stands dismissed.

Order pronounced on 1st October, 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01/10/2021
Sr.PS, Dhananjay

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.**