

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SANJAY GARG, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.3547/Del/2018
(Assessment Year : 2007-08)

Danfoss Power Solutions Pvt. Ltd. (earlier known as Sauer-Danfoss India Pvt. Ltd.), Gate No.94-100, High Cliff Industrial Estate, Wagholi Rahu Road, Village Kesnand, Pune-412 207 PAN : AAFCS 2954 P	Vs.	CIT(A)-38 New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Gokul Ramakrishnan, C.A.
Revenue by	Shri Jagdish Singh, Sr. D.R.

Date of hearing:	06.10.2021
Date of Pronouncement:	11.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 22.12.2017 of the Commissioner of Income Tax (Appeals)-38, Delhi relating to Assessment Year 2007-08.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of distributing hydraulic machinery in India and is stated to be subsidiary of Saurer-Danfoss (Holding) A/s Denmark which is a subsidiary of Saurer-Danfoss Inc. USA. Assessee filed its return of income for A.Y. 2007-08 on 31.10.2007 declaring total income at Rs.4,31,65,019/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 28.01.2011 and the total income was determined at Rs.6,28,17,590/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A), CIT(A) vide order dated 22.12.2014 in Appeal No. 07/2015-16 held that only Transactional Net Margin Method (TNMM) is applied in TP documentation which resulted in issue of show cause notice u/s 274 r.w.s 271J of the Act. It was thereafter held that assessee had furnished incorrect information in Form 3CEB and accordingly information in Form 3CEB were defective and inaccurate to that extent. Accordingly a penalty u/s 271J of the Act was levied on the assessee for furnishing incorrect information in certificate in Form 3CEB. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds of appeal:

1. *“The order dated December 22, 2017 passed under section 271J of the Income Tax Act, 1961 (“the Act”) by Ld. Commissioner of Income tax (Appeals) – 38 [“Ld. CIT(A)”] and subsequent notice of demand under section 156 of the Act*

dated February 27, 2018 is null and void and cannot be enforced against the Appellant, being ultra vires the provisions of Section 271J of the Act.

2. *The Ld. CIT(A) erred on facts and in law in arriving the conclusion that the Accountant's Report (i.e. Form No. 3CEB) furnished under section 92E of the Act disclosed incorrect information thereby warranting levy of penalty under section 271J of the Act.*

The above grounds of appeal are without prejudice to and independent of one another.

The appellant craves leave to add, alter omit or substitute any or all of the above grounds of appeal, at any time before or at the time of hearing of the appeal."

4. Before us, at the outset, Learned AR submitted that penalty has been levied u/s 271J of the Act on the assessee. He submitted that penalty u/s 271J of the Act can be levied on an accountant or a merchant banker or a registered valuer who has furnishing incorrect information in any report or certificate furnished under the provision of this Act or rules made there under. He submitted that the levy of penalty therefore on the assessee is *void-ab-initio* and therefore the same be deleted.

5. Learned DR on the other hand supported the order of lower authorities but did not controvert the submissions made by Learned AR.

6. We have heard the rival submissions and perused the material available on record. The issue in the present ground is

with respect to levy of penalty under section 271J of the Act. Section 271J of the Act postulates that penalty can be levied by AO or CIT(A) when it is found that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of the Act and the AO or the CIT(A) may direct that such accountant or merchant banker or registered valuer, as the case may be, shall pay, by way of penalty, a sum of Rs. Ten thousand for each such report or certificate. In the present case, we find that penalty has been levied on the assessee who is not an “accountant” or a “merchant banker” or a “registered valuer” as per the explanation provided under section 271J of the Act. In such a situation, we are of the view that penalty could not be levied on the assessee. We therefore direct its deletion. **Thus the ground of the assessee is allowed.**

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11.10.2021

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Date:- 11.10.2021
 PY*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI