

ORDER**PER ANADEE NATH MISSHRA, AM:**

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-44, New Delhi, [Ld. CIT(A)”, for short], dated 19.11.2018 for Assessment Year 2003-04.

Grounds taken in this appeal of Assessee are as under:

“1. That on the facts of the case and in law, the Hon’ble CIT(A)/ Ld. AO grossly erred in levying the penalty under section 271(1)(c) of the Act amounting to Rs.71,83,895/- in respect of transfer pricing addition made under section 92CA(3) of the Act.

2. That on the facts of the case and in law, the Hon’ble CIT(A) grossly erred in confirming the action of the Ld. AO of levying the penalty under section 271(1)(c) of the Act, in respect of transfer pricing addition merely on account of difference opinion on selection of Profit Level Indicator (PLI) for determination of Arm’s Length Price of International transactions.

2.1 That on the facts of the case & in law, the Hon’ble CIT(A)/AO erred in not appreciating that the Hon’ble CIT(A) in appeal against assessment had accepted the PLI of Cash Profits/ Sales for determination of Arm’s Length Price of international transactions undertaken by the Appellant based of judicial precedents, thus it could not be fit case for levy of penalty under section 271(1)(c) of the Act.

2.2 That on the facts of the case and in law, the Hon’ble CIT(A) erred in confirming the penalty imposed by Ld. AO even when the appeal of the Appellant in respect of substantial question of law is pending before Hon’ble High Court of Delhi for adjudication along with similar matters filed by the Revenue on same vary issue.

3. That on the facts of the case and in law, the Hon’ble CIT(A) erred in confirming the penalty imposed by Ld. AO under section 271(1)(c) without invoking Explanation 7 to section 271(1)(c) of the Act in respect of transfer pricing adjustment made under section 92CA(3) of the Act.

3.1 That on the facts of the case and in law, the Hon'ble CIT(A) erred in not appreciating no penalty is leviable in the present case under section 271(1)(c) as the appellant submitted complete details/documentation of its international transactions good faith and with due diligence as mandated in Explanation 7 to section 271(i)(c) of the Act.

4. That on the facts of the case and in law, the Hon'ble CIT(A) erred in not appreciating the fact that neither the notice dated 29.03.2016 issued by the Ld. AO under section 274 read with section 271(1)(c) of the Act, specify the precise/clear-cut charge as to whether the penalty proceedings are being initiated on account of concealment of income, or furnishing of inaccurate particulars of income by the Appellant nor the penalty order passed by the Ld. AO under section 271(1)(c) of the Act specify such precise charge.

5. That on the facts of the case and in law, the Hon'ble CIT(A) erred in confirming the penalty order passed under section 271(1)(c) by the Ld. AO without appreciating that the said penalty order is barred by limitation and void-ab-initio as per the provisions of section 275(1)(a) of the Act.

6. That on the facts of the case and in law, the Hon'ble CIT(A) has failed to take cognizance of the principle that no penalty under section 271(1)(c) of the Act can be levied in respect of additions/disallowances made under the normal provisions when tax payable on income is the case of CIT v. Nalwa Sons Investments Ltd. [2012] 21 taxmann.com 184).

The above grounds are without prejudice to each other.

The Appellant craves leave to alter, amend, modify, supplement or withdraw all or any of the grounds herein or add any further grounds as may be considered necessary either before or during the hearing."

(B) At the time of hearing, the Learned Authorized Representative ("Ld. AR", for short) for the assessee informed us that the assessee has opted to settle the aforementioned appeal under Vivad se Vishwas ACT, 2020 ("VSVS", for short) and that the Designated Authority has already issued Form-3 under VSVS forms. Learned Senior Departmental Representative for Revenue did not express any objection to withdrawal of appeal by the

assessee. After due consideration, and in view of the foregoing, we are of the opinion that this appeal has become infructuous on account of aforesaid VSVS, and accordingly, this appeal is treated as withdrawn on account of the aforesaid VSVS. Thus, this appeal having become infructuous, is treated as withdrawn and is hereby dismissed.

(B.1) Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under this appeal before us are not settled under the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of this appeal in accordance with law.

(C) In the result, this appeal is dismissed as withdrawn.

(D) This order was already pronounced orally on 11.01.2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. This written order is now signed today on 11/01/2022

-Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

-Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated:

PK

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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