

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI**

**BEFORE SHRI PROMOD KUMAR (VICE PRESIDENT) AND
MS. SUCHITRA KAMBLE (JUDICIAL MEMBER)**

**ITA No. 4901/MUM/2012
Assessment Year: 2005-06**

M/s S.G. Asia Holdings (India) Pvt. Ltd.,
One Indiabulls Centre, 1102, 11th floor,
B-Wing, Tower 2, 841, Jupiter Mills,
SenapatiBapat Marg, Lower Parel,
Mumbai-400013.

PAN No. AA ECS 2909 R

Appellant

ACIT, Cir-4(2),
Mumbai

Vs.

Respondent

Assessee by : Mr. Niraj Sheth, AR
Revenue by : Mr. Ajit Kumar, DR

Date of Hearing : 13/01/2022
Date of pronouncement : 20/01/2022

ORDER

PER MS. SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 14.05.2021 passed by the Pr. Commissioner of Income-15, Mumbai (in short 'Pr. CIT') for assessment year 2005-06.

2. The assessee has raised following grounds of appeal is as under :

1. *On the facts and in the circumstances of the case and in law, the Hon'ble Commissioner of Income-tax (Appeals) (CIT(A)) erred in confirming the*

*penalty of Rs. 10,605,511 imposed by the Assessing Officer (*AO") under section 271 (1)c) of the Income Tax Act, 1961 ('Act').*

- 2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred indisregarding the benchmarking analysis and arm's length price computed by the Appellant, which was in accordance with the provisions contained in the section 92C and Rule 10B(1)(a) of the Act and was undertaken in good faith and with due diligence.*
- 3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the approach of the AO of using secret comparable to benchmark the Appellant's transactions with its associated enterprise, merely based on his conjectures and surmises. Accordingly, on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in holding that the benchmarking approach adopted by the AO is factually and legally justified.*
- 4. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the AO's approach of not allowing any adjustments as warranted under Rule 10B(1)(a)(ii) of the Income-Tax Rules, 1962 for computing arm's length price.*
- 5. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding /confirming the action of the AO as regards the levy of penalty, without demonstrating that the Appellant has concealed or furnished inaccurate particulars in respect of its broking services rendered by the Appellant to the associated enterprise.*

3 The return of income was filed by the assessee on 31.10.2005 declaring total income at ₹24,31,82,750/-. The assessee-company is engaged in broking and dealing in shares and other securities. The assessment was completed u/s 143(3) of the Act. During the assessment proceedings, the Assessing Officer initiated the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961

and issued notice u/s 274 r.w.s. 271(1)(c) of the Income Tax Act dated 27.12.2007. The Assessing Officer imposed penalty of ₹1,06,05,511/- thereby stating that the assessee concealed particulars of income and furnished inaccurate particulars.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that in the quantum appeal, the assessee filed appeal before the Tribunal being ITA No. 2399/M/2009 order dated 22.04.2015 thereby partly allowing appeal of the assessee. Thereafter, the Department/Revenue filed appeal before the Hon'ble Bombay High Court being ITA No. 281/M/2016 order dated 27.08.2018 wherein the Department's appeal was dismissed. The Department filed Civil Appeal No. 6144 of 2019 before the Hon'ble Supreme Court, the Hon'ble Supreme Court vide order dated 13.08.2018 restored the matter to the file of the Assessing Office so that appropriate reference could be made to the TPO to consider the matter in terms of sub-section (1) of section 92CA of the Act. Therefore, the Ld. AR submitted that the penalty does not survive and therefore appeal of the assessee be allowed.

6. The Ld. DR relied upon the assessment order and the order of the penalty passed by the Assessing Officer.

7. We have heard both the parties and perused all relevant materials available on record. It is pertinent to note that the Hon'ble Supreme Court has restored the original issues to the file of the Assessing Officer for the reference

to the TPO as per the relevant provisions of the Act. The very basis of the penalty u/s 271(1)(c) therefore does not sustain in the light of the directions given by the Hon'ble Supreme Court. Therefore, the penalty does not survive and the Department has to initiate penalty separately as per the decisions of the quantum in the fresh proceedings after following the directions of the Hon'ble Supreme Court. Thus, the penalty under Section 271(1)(c) is quashed at this juncture. The appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/01/2022.

Sd/-

**(PRAMOD KUMAR)
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Mumbai;

Dated: 20/01/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai