

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'K' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.2352/Mum/2014
(Assessment Year :2006-07)**

M/s. Abacus International Pte Ltd., C/o. Deloitte Haskins & Sells Indiabulls Financial Centre Tower 3, 28 th Floor Senapati Bapat Marg Elephinstone (W) Mumbai – 400 013	Vs.	The Deputy Director of Income Tax (International Taxation1(1) Mumbai
PAN/GIR No.AABCA6590M		
(Appellant)	..	(Respondent)

Assessee by	Shri Nitesh Joshi
Revenue by	Shri Tejider Pal Singh Anand
Date of Hearing	19/04/2022
Date of Pronouncement	24/05/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.2352/Mum/2014 for A.Y.2006-07 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-10, Mumbai in appeal No.CIT(A)-10/DDIT(IT)-1(1)/IT-446/10-11 dated 24/10/2013 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Act (hereinafter referred to as Act).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming levy of penalty of Rs.66,62,768/- u/s.271(1)(c) of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is a resident of Singapore engaged in the business of promotion, development, operation, marketing and maintenance of computerised reservation system. The primary business of the assessee is to make airline reservations for and on behalf of participating airline by using the computer reservation system. The participating air lines provide the necessary information which is displayed to the travel agents through out the world so that they could guide their customers to make the necessary request for booking of the ticket from the computer reservation system. The assessee licenses the right to market the computer reservation system to a company in each of the Asia Pacific countries i.e. National Marketing Company (NMC) which in turn markets the computer reservation system directly to the travel agents. The assessee also solicits participation of the travel related vendors, e.g. airlines, tour operators, cash rental agencies and hotels, so as to list their services in the computer reservation system in order to inform the travel agents to make booking for their services from the computer reservation system. The airlines / travel related vendors pay to the assessee a fee for each of the booking made by the travel agents. For each of the booking made through the NMC subscribers, commission is paid by the assessee to the NMC. The assessee had licensed its wholly owned Indian subsidiary company viz., Abacus Distribution System (India) Ltd., as its NMC in India.

3.1. The assessee filed its return of income for A.Y.2006-07 on 30/10/2006 declaring total income of Rs. Nil. The assessment was completed u/s.143(3) of the Act wherein in the draft assessment order, the income of the assessee was determined at Rs.9,56,05,739/-. Pursuant to the directions of the Id. DRP, final assessment order dated 23/08/2010 was passed wherein total income of the assessee was determined at Rs.6,92,17,625/-. The following additions were finally made in the final assessment order dated 23/08/2010:-

- | | |
|-------------------------------|--------------------|
| (i) Income attributable to PE | – Rs.5,32,85,612/- |
| (ii) Income of Reimbursement | - Rs. 29,32,013/- |
| (iii) TP adjustment | - Rs.1,30,00,000/- |

3.2. The Id. AO observed that the Co-ordinate Bench of this Tribunal had deleted the addition made on account of income attributable to PE in the previous year and accordingly, concealment of penalty u/s.271(1)(c) of the Act was not levied on the same. In respect of certain issue on account of TP adjustment, the Id. DRP has held that only 10% of the receipts would be taxed in India and penalty u/s.271(1)(c) of the Act was levied on the same by the Id. AO. With regard to third issue of TP adjustment of Rs 1,30,00,000/- in respect of interest free loan advanced by the assessee to its AE, penalty u/s.271(1)(c) of the Act was also sought to be levied.

3.3. We find that the quantum proceedings were initially decided by this Tribunal by passing a consolidated order for A.Yrs. 2005-06 to 2011-12 dated 16/12/2018. In the said consolidated order, one ground raised by the assessee was not decided, hence, the Tribunal passed yet another consolidated order dated 16/08/2019 for A.Yrs. 2005-06 to 2011-12 with regard to the transfer pricing adjustment of interest free loans advanced

by the assessee to its AE. We find that this Tribunal vide order dated 16/10/2019 has held that the notional interest income on the interest free loan advanced by the assessee to its AE would be assessable as income of the assessee which has business connection / PE in India and the same would be entitled to be adjusted against the expenditure incurred by the assessee by way of marketing services fee paid to NMC in India i.e. Abacus Distribution System (India) Ltd., We also find that this Tribunal had specifically stated that the order dated 16/10/2019 in the quantum proceedings with the notional interest income would be entitled to be adjusted as against the expenditure incurred by the assessee by way of marketing services fee paid to ADSIL. However, only for the quantification of the aforesaid claim, the matter was restored back for the limited purpose of making verification of the said claim to the file of the Id. AO. So, in the opinion of the Id. AR, the net result of such direction would only result in loss and hence, there cannot be any levy of penalty on the same. The Id. AR submitted that the assessee had neither declared any losses in the return of income nor the loss was converted into income by the Id. AO in the assessment proceedings. He also specifically pointed out that assessee has not claimed any benefit of carry forward of losses. Hence, there is no question of tax sought to be evaded within the meaning of Section 271(1)(c) of the Act. Considering the totality of facts and circumstances of the instant case and also considering the fact that one of the main grounds in the quantum proceedings had been remanded back to the Id. AO for limited purpose of verification of figure stated by the assessee, we deem it fit and appropriate to remand the penalty proceedings also to the file of the Id. AO for denovo adjudication in accordance with law and also decide afresh the fact as to whether at all penalty is leviable in the facts and circumstances of the instant case.

Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 24/05/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 24/05/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai