

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 4113/M/2019**  
(Assessment Year 2013-14)

The Dy. Commissioner of Income Tax, 5 (2) (1), Ayakar Bhavan, M.K. road, Mumbai-400 020	Vs.	Interjewel private limited HW - 8012, eighth floor, H Tower Bharat Diamond Bourses Bandra Kurla complex, Mumbai-400 051
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. AACCD5877B</b>		

<b>Assessee by</b>	:	Written submission
<b>Revenue by</b>	:	Shri Vivek A Perampura SR AR , DR

<b>Date of hearing:</b>	05-04.2022
<b>Date of pronouncement :</b>	20.06.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. This appeal is filed by the Deputy Commissioner of income tax, Circle 5 (2) (1) (the learned AO) against the order of the Commissioner of income tax (Appeals) - 56, Mumbai (the learned CIT - A) for assessment year 2013 - 14 dated 22/3/2019 wherein penalty levied by the learned assessing officer u/s 271G of ₹ 69,584,950/- stands deleted.

2. The learned AO is aggrieved with that and has preferred 5 different grounds of appeal challenging the deletion of the penalty.
3. Facts of the case show that assessee is a company engaged in the business of import of rough diamonds, manufacturing the same into the polished diamonds and finally exporting the said polished Diamond.
4. For assessment year, 2013 – 14 it entered into several international transactions, which were referred by the learned assessing officer for determination of arm's-length price to the learned transfer-pricing officer. Assessee has entered into transaction of purchase of rough diamonds, sale of diamonds, purchase of polished diamonds etc. with its associated enterprises and it were benchmarked using the transactional net margin method as the most appropriate method.
5. The learned transfer pricing officer examined the benchmarking made by the assessee and noted that sale of the assessee to associated enterprises is about 43.38% of turnover and purchase of assessee from associated enterprises is about 43.31% of total purchases. In its transfer, pricing study report assessee has followed transactional net margin method for the purposes of benchmarking using operating profit/total cost as a profit level indicator. The assessee's entity level margin is 6.44% whereas the comparable company's margin was 3.69% and therefore assessee claimed that the transactions entered into by it are at arm's-length.
6. The learned transfer-pricing officer noted that the margins of the assessee included its combined profit in transactions with associated enterprises and non-associated enterprises. He found that this is in violation to the rules of transfer pricing. Therefore, he held that the entity level margins do not stand the test of rule 10 B (1) (e) of the income tax rules 1962. He therefore found that assessee has not maintained the proper documents with relation to rule 10 D (1) (g).

7. The assessee submitted that in a diamond business world over there are estimated 8000 – 10,000 different qualities of diamonds price of which depends on various factors and note to diamonds can have the same price as valuation also depends upon the perception of individual businessman. Assessee therefore stated that normally there are no comparable pieces and prices of diamonds available.
8. Based on the above submission the learned assessing officer held that it is a gross violation of provisions of Section 271G of the act and accordingly a penalty of ₹ 69,584,950/- being 2% of the international transaction was levied. The main reason for the levy of penalty was that the transfer-pricing officer has called for specific details pertaining to segmental profitability between associated enterprise and no associated enterprises within the provisions of Section 92D (3) of the act. The details were called for during the transfer, pricing proceedings and assessee was given opportunity to submit the same but it were not furnished. These details are essential for benchmarking the transaction of assessee with its associated enterprises. As assessee could also not provide any alternative method of benchmarking the transaction based on material available on record were accepted. In the absence of material, the TPO was forced to accept the transaction of the assessee to be at arm's-length. Thus penalty was levied by order dated 20/4/2017 passed u/s 271G of the act.
9. Assessee, aggrieved with that order preferred an appeal before the learned CIT – A. The learned CIT – A as per order dated 22/3/2019 deleted the penalty holding that in the similar circumstances and facts in the case of the appellant itself the coordinate bench in ITA number 5628/M/2016 for assessment year 2011 – 12 per order dated 1/11/2018 deleted the penalty. Therefore, the learned CIT – A merely followed the order of the coordinate bench in assessee's own case for

earlier year where on identical facts and circumstances the penalty was deleted.

10. By this order, the learned assessing officer is aggrieved and has preferred the appeal before us.
11. The learned departmental representative vehemently supported the order of the learned assessing officer.
12. At the time of hearing, none appeared on behalf of the assessee. However, letter dated 4/4/2022 was placed on record wherein it is stated that on identical facts and circumstances of the case the issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case. Further, it was stated that this issue is also covered by the several judicial precedents of the coordinate benches where on identical facts and circumstances penalty levied u/s 271G of the act is cancelled.
13. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the learned CIT – A has deleted the penalty by following the order of the coordinate bench in assessee's own case for assessment year 2011 – 12 in ITA number 5628/M/2016 wherein on identical facts and circumstances are identical penalty levied u/s 271G was deleted. When the learned CIT – A as followed the order of the coordinate bench in assessee's own case for earlier years on identical facts and circumstances, no fault can be found with such an order. Assessee has also stated that there are plethora of judicial precedents available (16 subject precedents are cited) on identical facts and circumstances where such penalty is been cancelled looking to the peculiar scenario in the diamond trade. Therefore respectfully following the decision of the coordinate bench in assessee's own case as well as other decisions of the coordinate benches involving the similar set of facts and circumstances, we

confirm the order of the learned CIT – A in deleting the penalty u/s 271G of the act of ₹ 69,584,950/-. In the result, all the grounds of appeal of the learned AO are dismissed.

14. In the result, appeal filed by the learned assessing officer is dismissed.

Order pronounced in the open court on 20.06.2022.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.06.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai