

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 4051/Del/2019
Assessment Year: 2011-12**

JCIT (OSD),
Circle-27(2),
New Delhi

Versus Yutaka Autoparts India Pvt. Ltd.
1005, Roots Tower, Plot No. 7,
District Center, Near
NirmanVihar Metro Station,
Laxmi Nagar, New Delhi-
110092

PAN:AAACY2991H
(Respondent)

(Appellant)

Appellant by : ShriToufelTahir, Ld. Sr. DR
Respondent by : Sh. DakshMalhotra, CA

Date of hearing : 14.06.2022
Date of order : 27.06.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Revenue department against the order dated 21.02.2019, impugned herein, passed by the Id. Commissioner of Income Tax (Appeals)-9 (in short 'Ld. Commissioner'), New Delhi, u/s 250(6) of the Income Tax Act, 1961 (in short 'the Act'), whereby the Id. Commissioner deleted the penalty imposed by the Assessing Officer vide order dated 26.03.2018 u/s 271(1)(c) r.w.s. 274 of the Act, by concluding as under:

“5.1 I have perused the facts of the ground and contention of the AR of the appellant. AO has levied penalty u/s 271(1)(c) of the Act by stating that TPO has made adjustment on account of comparable companies were held to be not appropriate by TPO. AO also stated that “Assessee

is a group company of Honda Motors and wholly owned subsidiary of Yutaka Giken Japan. Thus the assessee is a part of a multinational conglomerate with an elaborate taxation and accounts department, despite this comparable companies selected by Assessee were rejected by TPO since the net worth of the company was negative and it was thus not functionally comparable to the Assessee. Further companies which had a high profit margin were not selected by the Assessee in the comparables. These were added by TPO during assessment proceedings. This fact does not show a mere difference in opinion with the assessing authority rather it clearly shows that Assessee has reduced its tax liability by furnishing inaccurate particulars of income.”

Assessee in this respect has furnished that Hon’ble ITAT has allowed the above mentioned grounds in assessment of cases for AY 2009-10 & 2010-11, which have similar issues in Assessee’s own case.

5.2 In AY 2010-11, similar comparables were rejected and new comparables were proposed by TPO as in the year under contention. However, when issued reached before ITAT, they have allowed the contention of the Assessee and has upheld the comparable accepted by Assessee which was rejected by TPO on account of negative net worth. Also, ITAT has rejected the comparables proposed by TPO and not accepted by Assessee.

5.3 Further CIT(A) also in AY 2012-13, has upheld the comparable accepted by Assessee which was rejected by TPO on account of negative net worth. Similarly comparables proposed by TPO and not accepted by Assessee were also rejected by Ld. CIT(A).

Apart from comparables, other issues on which TPO made addition were:

- Forex treated as non operating by TPO*
- Adjustment for higher depreciation on account of under utilization of capacity is not allowed by TPO*

Assessee has given detailed submission and has highlighted that these grounds were also decided in favour of Assessee in AY 2009-10 and 2010-11 and also by CIT(A) in AY 2012-13.

5.4 On carefully considered the facts of the case and submission includes ITAT orders and analyzing the issues on which addition were proposed by TPO based on which AO has held that Assessee has not computed arm length price as per section 92C of the Act. It is noted that, however, ITAT in other years have accepted the, contention of

Appellant on similar issues and CIT(A) also has accepted contention of Appellant in future years which is evident of the fact that Appellant has computed arm length price in accordance with Section 92C of the Act and has acted bonafide in computation of arm length price. Therefore, there is no concealment of income & penalty shouldn't be levied. Also, the AO has levied penalty on the fact that CIT(A) has not allowed any relief in respect of additional proposed by Assessee in the year under review. In that respect Assessee has submitted that since ITAT pronounced it's order after the order of CIT(A) in present case, the same were not at the disposal of CIT(A) at the time of passing the order in the present case.

5.5 Based on above facts, it emanates that there is no concealment of income by the Appellant and adjustment is mere on account of difference in opinion. Appellant has also relied upon order pronounced by jurisdictional high court and tribunals case laws wherein it is stated that adjustment on account of transfer pricing issues does not amount of concealment of income where Appellant has acted in good faith with due diligence and it is able to explain the same. In the present case, since issues are highly debatable also has been accepted by ITAT and CIT(A) in further years, penalty u/s 271(1)(c) is not attracted.”

{Highlighted by us}

2. The sole ground raised by the Revenue Department is that the Id. Commissioner erred in deleting the penalty of Rs.56,43,544/- imposed by the AO u/s 271(1)(c) read with section 274 of the Act qua upward adjustment of arm's length price by the Transfer Pricing Officer.

3. Heard the parties and perused the material available on record. The Assessing Officer had imposed the penalty u/s 271(1)(c) of the Act on the ground “*that the TPO has made adjustment on account of comparable companies which were held to be not appropriate by the TPO. Further, the Assessee being a part of multinational conglomerate with an elaborate taxation and despite this,*

the comparable company selected by the Assessee were rejected by TPO, since, the net worth of the company was negative and it was thus, not functional to the Assessee. Further, companies which had a high profit margin were not selected by the Assessee as comparable. Therefore, Assessee has reduced tax liability as inaccurate particulars of income.”

3.1 It is a fact that the Hon'ble ITAT in Assessee's own case for A.Ys. 2009-10 and 2010-11 on the identical issue, allowed the grounds raised by the Assessee and deleted the identical addition on the basis of which the penalty was imposed by the Assessing Officer.

3.2 The Id. Commissioner while deleting the penalty had taken into consideration the said facts and observed that since the issues are highly debatable and has also been accepted by the ITAT and Id. CIT(A) in other years, therefore, penalty u/s 271(1)(c) is not attracted.

3.3 The Id. Commissioner further observed that adjustment on account of Transfer Pricing Officer does not amount of concealment of income where the applicant has acted in good faith and due diligence and is able to explain the same. It emanates from the facts that there is no concealment of income by the Assessee and the adjustment is mere on account of difference of opinion. Where the issue agitated by the Assessee has been accepted by the Tribunal, shows that the issue is debatable and the Assessee's contention that it acted on a bonafide belief cannot be shot down because assessment/adjustment made by the TPO has been upheld by the Id. CIT(A).

3.4 We have given thoughtful consideration to the peculiar facts and circumstances of the case and do not find any reason or material to controvert the findings and conclusions drawn by the Id. Commissioner in deletion of the penalty under challenge. Consequently, the appeal under consideration is liable to be dismissed.

4. In the result, the appeal of the Revenue Department is dismissed.

Order pronounced in the open court on 27/06/2022.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Subodh, Sr. PS

Copy forwarded to:

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

Assistant Registrar
ITAT New Delhi

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