

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1162/Del/2017
Assessment Year: 2010-11

M/s.Techbooks International Pvt. Ltd., A-37, Sector-60, Noida - 201301	Vs.	DCIT, Circle-10(2), New Delhi.
PAN :AABCT3774A		
(Appellant)		(Respondent)

Appellant by	Shri S. Vasudevan, Adv.
Respondent by	Ms. Anupama Singla, Sr. DR

Date of hearing	01.06.2022
Date of pronouncement	10.06.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 24.01.2017 of learned Commissioner of Income-Tax(Appeals)- 1, Noida, confirming the penalty

imposed of Rs.19,06,235 under Section 271(1)(c) of the Income-Tax Act, 1961 for assessment year 2010-11.

2. The grounds raised by assessee are as under:

1. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred on facts and in law in not deleting the penalty u/s. 271(1)(c) of the Income-Tax Act, 1961 (hereinafter referred to as 'the Act').
 - 1.1. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred on facts and in law in upholding the levy of penalty on the Appellant even though the Ld. Assessing Officer (hereinafter referred to as 'Ld. AO') has failed to record satisfaction at the stage of initiation, whether the Appellant has concealed the particulars of its income or has furnished inaccurate particulars of its income, as required u/s. 271(1) of the Act.
 - 1.2. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred on facts and in law in not deleting the ground of appeal that the Ld. A.O acted in violation of principles of natural justice by not providing the Appellant an opportunity of being heard.
2. That, while prejudice, on the facts and in the circumstances of the case the Ld. CIT(A) erred on facts and in law in upholding the levy of penalty even though the addition made in the assessment order on account of computation of Arm's Length Price was not sustained by the Hon'ble ITAT.
3. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred on facts and in law in upholding that the Appellant has not appealed against the quantum appeal order passed by this Hon'ble Tribunal whereas an appeal was filed before the Hon'ble High Court of Allahabad, which is pending disposal.
4. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred on facts and in law in not appreciating that where the arm's length price determined by the Transfer Pricing Officer was not upheld by the Hon'ble ITAT and significantly reduced on factual and legal basis, it could not be alleged that the Appellant was liable to penalty for furnishing of inaccurate particulars of income.

- 4.1 That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred on facts and in law in not appreciating that the Transfer Pricing Officer could at best suggest an arm's length price and it was still open to the Appellant to contend that the actual transaction was carried out in good faith and with due diligence.
5. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred on facts and in law in observing that the Ld. A.O has arrived at a finding that the Appellant had furnished inaccurate particulars of income and thereby concealed the particulars of income and in failing to appreciate that furnishing of inaccurate particulars of income and concealment of income are two distinct offences as contemplated under law.

3. Briefly, the facts are, assessee, a resident individual, is engaged in the business of software development and customized electronic data. For the assessment year under dispute, assessee filed his return of income 23.09.2010, declaring income of Rs.20,70,930. While completing the assessment under Section 143(3) of the Act, read with section 144C of the Act, Assessing Officer made addition on account of adjustment to the arm's length price of International Transactions, which resulted in determination of total income at Rs.26,56,07,080. Subsequently, rectification order was passed by the TPO, revising the transfer pricing adjustment to Rs.63,54,115, which resulted in determination of total income of Rs.84,25,050. Based on such addition, the Assessing Officer initiated proceedings for imposition of penalty alleging furnishing of inaccurate particulars of income. Ultimately, she passed an order imposing penalty of Rs.19,06,235. Against the penalty order so passed, assessee

preferred an appeal before learned Commissioner (Appeals). However, in the impugned order, learned Commissioner (Appeals), confirmed the penalty imposed.

4. Learned counsel for the assessee submitted, while disposing of the appeal, learned Commissioner (Appeals) has not decided some of the grounds raised by the assessee and has also not considered various submissions made by the assessee. Thus, he submitted, matter may be restored back to the learned Commissioner (Appeals) for fresh adjudication.

5. Learned Departmental Representative did not express any objection to assessee's request for restoration of the matter to learned Commissioner (Appeals).

6. Having considered rival submissions and perusing material on record, we find that before learned Commissioner (Appeals), assessee has challenged the order passed imposing penalty on various grounds. However, the impugned order of learned Commissioner (Appeals) is cryptic and bereft of proper reasoning. Thus, prima facie, we are of the view that learned Commissioner (Appeals) has not considered various grounds raised by assessee and submissions made while deciding the appeal. Accordingly, we set aside the impugned order of learned Commissioner (Appeals) and restore the matter back to his file for de novo adjudication.

7. Needless to mention, assessee must be provided reasonable opportunity of being heard before deciding the appeal. Grounds are allowed for statistical purposes.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 10th June, 2022.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 10th June, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi