

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No.1930/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2016-17)

DCIT(IT) –4(1) (2) MUMBAI Room No.1609, 16 th Floor, Air India Bldg, Nariman Point, Maharashtra, 400021	बनाम/ Vs.	M/s Techware Singapre Holdings Pte. Ltd. C/O DELOTTE HASKINS 7 SELLS LLP C.A’S INDIA BULLS FINANCE CENTRE, Tower-3 ,32 nd Floor Senapati Bapat Marg, Elphinstone Road(West), Mumbai Maharashtra,-400013
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAFCT5409E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Manoj Sinha, Sr.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	None
सुनवाईकीतारीख/ Date of Hearing	:	28.09.2022
घोषणाकीतारीख / Date of Pronouncement	:	30.09.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the Revenue against order dated 03/03/2022, passed by Ld. CIT(A)-68, Mumbai in relation to penalty proceedings under section 271G for the AY 2016

2. The revenue mainly aggrieved by deletion of penalty of Rs. 19,03,94,592/- u/s 271G of the Act.

3. From the perusal of the impugned order, it is seen that Assessee is a Techware Singapore Holdings Pvt. Ltd. is incorporated in the Republic of Singapore. The Assessee's principal activity is to serve as an investment holding company. The Assessee had filed its return of income ('ROI') on 30 November 2016 returning a Short Term Capital Loss of Rs. (-) 4,09,52,182/-. The address of the assessee as disclosed in the ROI e-filed was its registered office at Singapore. The assessee did not have any office in India. The assessee had also filed an Accountant's Report in Form No. 3CEB on 30 November 2016, in accordance with Section 92E of the Income-tax Act, 1961 ('the Act'), reporting the particulars of its international transaction. The address of the assessee disclosed in the form No. 3CEB was registered office at Singapore.

2. In the course of Assessment Proceedings, a reference u/s 92CA (1) of the Act was made to the TPO for determination of Arm's Length Price (ALP) in relation to international transaction entered into by the Assessee. As culled out from the records, no TP

adjustment was proposed by the TPO and international transactions were accepted at arm's length price.

3. The Ld. AO in the penalty order has noted that TPO issued notices u/s 92D(3) calling for various details and documents maintained in support of ALP determination for the transactions reported in Form No. 3CEB, however, no compliance to the said notices was made. Again when show cause notice for the penalty proceedings u/s 271G was initiated wide notice dated 23.03.2019 made for non compliance to notice u/s 92D(3) issued on 18.12.2018, again no compliance was made from the Assessee. However, in the reminder notice to the Assessee, it was submitted before him that it had not received any of the notices and further it has filed all the necessary documentation in support of the ALP of International transactions and the method applied. However, the Ld. AO levied the penalty of Rs. 19,03,94,592/- being value of the 2% of the entire International transaction by holding that Assessee company has failed to comply with the terms of notice issued u/s 92D(3) within the prescribed time limit of 60 days.

4. The Ld CIT(A) has deleted the penalty after referring to various judgments, wherein it was held that if the TPO was satisfied by the documents which were called for and were produced by the Assessee at a later point of time and no addition has been made then, it is not a case of total failure on the part of the Assessee.

5. After hearing Ld. DR and on perusal of the relevant findings given in the impugned order, we find that it is undisputed fact that Assessee had filed all the relevant documents in support of ALP of the International Transaction and the ALP that has been duly examined by the TPO and no adjustment has been proposed. It is not a case where there is a failure part of the Assessee to file documents before the TPO albeit could be case of belated replies. In any case, the Assessee categorically stated that Assessee had not received the notice because it was sent on the firm's address who has issued the accountant report in Form No. 3CEB instead of Assessee's registered address disclosed in the ROI. Thus, when notice itself issued by Assessing Officer has not been received by the Assessee and later on when the notice were received Assessee has made due compliance. It would be too harsh to levy penalty u/s

271G Act, on amount of Rs.19.04 Crores on these facts when all compliances has been made and notices sent were on the address of the assessee. Even this fact was also brought to the notice of the AO during the penalty proceedings however, AO has given his own reasoning that the notice issued under section 92D(3) had been served upon the Assessee without ascertain whre the notice was sent. Thus, on the facts of the case, no penalty under section 271G can be levied in any case, if the Assessee has contended that notice was not served as the same was not sent on the registered address, then there was a reasonable cause for non compliance on the date specified in the notice issued u/s 92D(3) and therefore in view of provision of section 273B, penalty cannot be imposed. Accordingly the order of Ld. CIT(A) deleting the penalty is confirmed.

5. In the result, the appeal filed by the revenue is **dismissed**.

Orders pronounced in the open court on 30thSeptember, 2022.

Sd/-

(S. Rifaur Rahman)
Accountant Member

Sd/-

(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 30/09/2022

Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai