

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

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 8929/Del/2019: Asstt. Year : 2015-16

DCIT, Circle-14(2), New Delhi-110002	Vs	Kindle Engineering & Construction Pvt. Ltd. 616A, Devika Tower, Nehru Place, New Delhi-110019
(APPELLANT)		(RESPONDENT)
PAN No. AAECK1635Q		

Assessee by : None

Revenue by : Sh. Shri Bhagwati Charan, Sr. DR

Date of Hearing: 24.11.2022

Date of Pronouncement: 24.01.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-44, New Delhi dated 20.08.2019.

2. The revenue has raised the following grounds of appeal:

- “1. *In the facts and circumstances of the case, whether the Id. CIT(A) was right in deleting the penalty imposed u/s 271G of the Act.*
2. *In the facts and circumstances of the case, whether the Id. CIT(A) was right in ignoring the fact that there was failure on the part of the assessee in filing the documentation as prescribed in Rule 10D of the Income Tax Rules, 1962 despite several opportunities provided.”*

3. The relevant provision of the Income Tax Act and facts are as under:

Specified Domestic Transactions as defined 92BA of The Income Tax Act:

"Meaning of specified domestic transaction

92BA. For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—

(i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A:

(ii) any transaction referred to in section 80A:

(iii) any transfer of goods or services referred to in sub-section (8) of section 80-1 A:

(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-1 A:

(v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-1A are applicable; or

(vi) any other transaction as may be prescribed."

and where the aggregate of such transactions entered into by the assessee in the previous year **exceeds a sum of five crore rupees.**

4. In the instant case the payment for expenditure made to persons referred to in clause (b) of sub-section (2) of section 40A are as below:

Name of Associated Persons/ Enterprises	Description of transaction	Amount Paid or Payable	
		As per books of	Arm Length Price
Hindustan power projects Private Limited	Consultancy Charges	10,531,645	10,531,645
Hindustan Cleanenergy Limited	Reimbursement of Expenses	15,479,042	15,479,042
Hindustan EPC Co. Limited	Operation and Maintenance	16,641,626	16,641,626
Hindustan EPC Co. Limited	Reimbursement of Expenses	70,312	70,312
Mr. Salil Bhalla	Director Remuneration	311,400	311,400
Total		43,034,025	43,034,025

5. The above stated sum does not exceed the threshold of Rs.5 crores and therefore the provisions of section 92BA are not applicable.

6. In case of Mayar India Limited (ITA No.1872/Del/2014), Delhi Bench of ITAT has observed that though the AO had not pointed out the details of how the information furnished by the Assessee was late and even if Assessee had delayed in filing the information, it was not a fit case for imposition of penalty since Assessee's international transactions were accepted to be Arm's length. In case of Worlds Window Impex (India) Pvt. Ltd (ITA No.3721/Del/2014), Delhi Bench of ITAT had held that based on the documentation provided by the Assessee no adjustment was proposed by the TPO and further the penalty levied for non-furnishing "TP Study Report", which was not a specified document under Rule 10D in time, was not sustainable even though available before passing of the order.

7. The provisions of Section 271G reads as under:

"Penalty for failure to furnish information or document under section 92D.

271G. *If any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Transfer Pricing Officer as referred to in section 92CA or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the international transaction or specified domestic transaction for each such failure."*

8. The Hon'ble Delhi High Court in the case of CIT vs Leroy Somer and Controls India Pvt. Ltd. in ITA No. 410/2012 dated 30.08.2013 has held that it is sufficient if there is general and substantive compliance of the provisions of Rule 10D. The Hon'ble Apex Court in the case of Hindustan Steel Ltd. v/s State of Orissa - [1972] 83 ITR 23 (SC), held as follows:-

"Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions."

9. At the outset, the transactions did not cross threshold prescribed. In accordance with the doctrine of judicial discipline following order of the Co-ordinate Bench of ITAT in the case of CIT v/s Leroy Somer & Controls India Pvt.

Ltd. in ITA No. 410/2012 dated 30.08.2013, we decline to interfere with the order of the Id. CIT(A).

10. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 24/01/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 24/01/2023

Subodh Kumar/AK, Sr. PS
Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR