

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.8810/DEL/2019
Assessment Year 2013-14

M/s. Jai Jawan Coal Carriers (P) Ltd., G-201, Preet Vihar, New Delhi.	v.	DCIT, Circle-13(1), New Delhi.
TAN/PAN: AAACJ0202A		
(Appellant)		(Respondent)

Appellant by:	Shri Basant Kumar, Adv. Shri Prabhat Kumar, CA		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	20	12	2022
Date of pronouncement:	27	01	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee seeking to challenge the penalty imposed amounting to Rs.11,91,190/- by the Assessing Officer under Section 271AA of the Act vide order dated 31.05.2017 and sustained by the CIT(A)-V, New Delhi vide order dated 13.09.2019 for the Assessment Year 2013-14.

2. Briefly stated, the assessee-company in the relevant assessment year 2013-14 was engaged in the business of transportation / wagon loading of iron ore from mining area to railway sides. In the relevant assessment year, the assessee

entered into certain transactions worth Rs.5,95,59,636/- with person specified under Section 40A(2)(b) which is stated to be covered under the purview of Section 92BA of the Income Tax Act and consequently is covered by TP regulations applicable to domestic transactions. The Assessing Officer while framing the assessment alleged that the assessee has not complied with the statutory requirement of maintenance and keeping of information and documents for entering into specified domestic transactions and reporting thereof. It was alleged that assessee has not filed form 3CEB by the Specified date in this regard and it is not ascertainable as to whether the assessee had maintained such information and documents as required by Section 92D of the Act and whether the contemporaneous documents existed as on the specified date referred to in clause (iv) of Section 92D. The Assessing Officer consequently invoked the provisions of Section 271AA for failure to maintain the relevant records and imposed a penalty of Rs.11,91,190/- being 2% of the value of specified domestic transaction value of Rs.5,95,59,536/- vide penalty order dated 31.05.2017 passed under Section 271AA of the Act.

3. Aggrieved by the imposition of penalty, the assessee preferred appeal before the CIT(A) without any avail. The CIT(A) vide order dated 13.09.2019 upheld the action of the Assessing Officer and sustained the penalty.

4. Further aggrieved, the assessee preferred appeal before the Tribunal.

5. We have considered the rival submissions. The imposition

of penalty by invoking Section 271AA in respect of Specified Domestic Transactions is in issue. The penalty has been imposed on the ground that Audit Report under Section 92E in form 3CEB was not filed before the specified date. The assessee contends that;

(i) the Specified Domestic Transactions were inserted within the ambit of Section 271AA by Finance Act, 2012 w.e.f. 01.04.2013 and thus applicable to Assessment Year 2013-14 onwards and hence Assessment Year 2013-14 is the first year requiring maintenance of records stipulated under Section 92D of the Act.

(ii) the requisite information were duly provided to the Assessing Officer and no TP adjustments were eventually suggested in the TPO order passed under Section 92CA(3) of the Act dated 17.10.2016 and hence no *mala fide* can be attributable to the assessee.

(iii) the imposition of penalty under Section 271AA is discretionary in nature and thus penalty is not automatically liable to be imposed particularly where reasonable cause exists in terms of Section 273B of the Act.

6. We find justifiable merit in the plea of the assessee. We note that the Assessment Year 2013-14 was the first year where the provisions of Section 92D came into force. Coupled with this, the TPO has accepted the Arm's Length Price declared by the assessee without any adjustment and thus non submission of

TP study report / or delinquency in maintenance of records if any within time is to be construed as merely a breach of technical nature. Notwithstanding, the requisite information was made available at the time of assessment and therefore, substantial compliance of Section 92D has been carried out without any grave prejudice to revenue. It is further noticed that no specific allegation is found as to what documents and information has not been maintained, which ought to have been maintained. In the totality, we find that imposition of penalty is not justified in the circumstances existing in the case.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 27/01/2023.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER
DATED: /01/2023
Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Assistant Registrar