IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.147/SRT/2023

Assessment Year: (2016-17)

(Physical Hearing)

Shrirang Sales Corporation, Plot 866, G.I. D.C. Sachin, Sachin Road No.85, Chorasi, Surat– 394230	**Vs.**	Assistant Commissioner of Income-tax, Circle - 1(2), Surat, Aaykar Bhavan, Majura Gate, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAKFS8216Q**		
(Appellant)		**(Respondent)**

Appellant by	Shri Ketan Jagirdar, CA
Respondent by	Ms. Jayshree Thakur, Sr. DR
Date of Hearing	20/07/2023
Date of Pronouncement	28/07/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the National Faceless Appeal Centre, Delhi [in short "NFAC/ld. CIT(A)"], dated 27.12.2022, which in turn arises out of penalty order passed by the Assessing Officer under section 271-I of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 26.04.2019.

2. The grounds of appeal raised by the assessee are as follows:

"1) The Ld. CIT(A) NFAC has erred by confirming order of Ld. ACIT Circle 1(2), Surat, levying penalty of Rs.4,00,000/- u/s 271I of the Income Tax Act, 1961.

2) The appellant prays for granting such other relief as may be deemed just and proper by your Honour considering the factual and legal aspects of the case of the appellant.

3) The Appellant craves leave to add, amend, alter, modify, substitute, delete, change, vary, and withdraw all or any of the Ground or Grounds of Appeal."

3. Brief facts *qua* the issue are that in this case, return of income was filed by assessee on 15.10.2016 declaring total income of Rs.97,66,310/-. The assessee is engaged in the business of trading of yarn. The Assessment was completed u/s 143(3) of the Act on 16.10.2018 by accepting the returned of income filed by the assessee. However, during the assessment proceedings it was noticed that the assesse has not furnished / provided information fully related to section 195 of the Act before the Assessing Officer. Hence, penalty proceedings were initiated u/s 271-I of the Act and notice u/s 274 r.w.s 271-I of the Act was also served to the assessee along with the assessment order. The case of assessee was selected for scrutiny to verify the outward remittance made by the assessee to a non-resident or to a foreign company for the year under consideration. During the assessment proceedings it was observed that the assessee had imported various machineries from Turkey. With regard to the foreign remittance made, the assessee had submitted required details. However, on verification of the ledger account submitted regarding these foreign remittance as well as other documents, it was noticed by the Assessing Officer that the assessee has made outward remittance up to Rs.2,24,87,348/- to M/s Baylan bleu Aletleri Sanayi Ve Tocaret Ltd at Turkey on various dates. On verification of the outward remittance made to a foreign company, it was revealed to Assessing Officer that the assessee could not submit the necessary certificate i.e. Form No.15CA in respect of the all remittance made before the Assessing officer during the scrutiny proceedings. As per section 195(6) of the Act, any person responsible for paying any sum to a non-

resident or to a foreign company, whether it is chargeable or not to tax, the assessee has to furnish the information related to this transaction in Form No-15CA before the income tax department . In this case, the assessee failed to do so and therefore, penalty was levied u/s 271-I of the Act for each default. The amount of penalty is Rs.1,00,000/- for each default.

4. On verification of the entire details submitted by the assessee it was noticed that the following payments made by the assessee to a non-resident company from 01/04/2015 to 31/03/2016 in which the requisite form 15CA was required to produce before the Assessing Officer.

before the Assessing officer.

S No	Date	Name of the party	Amount in foreign currency	Amount
01	**01/05/2015**	**Baylan Olcu Aletleri Sanayi Ve Ticaret Ltd,Turkey**	**36507**	**24,69,699/-**
02	29/09/2015	Baylan Olcu Aletleri Sanayi Ve Ticaret Ltd,Turkey	4730	3,59,953/-
03	**09/11/2015**	**Baylan Olcu Aletleri Sanayi Ve Ticaret Ltd,Turkey**	**210000**	**1,39,02,332/-**
04	01/0/1/2016	Baylan Olcu Aletleri Sanayi Ve Ticaret Ltd,Turkey	64051	43,04,249/-
05	10/02/2016/	Baylan Olcu Aletleri Sanayi Ve Ticaret Ltd,Turkey	7380	5,04,792/-
06	28/03/2016	Baylan Olcu Aletleri Sanayi Ve Ticaret Ltd,Turkey	14030	9,46,323/-

Therefore, Assessing Officer noted that the assessee failed to submit necessary certificate Form No.15CA before the AO in respect of 04

foreign remittances made during the year under consideration to a non-resident company in Turkey.

5. According to the new amendment of CBDT (date 15/06/2015) if any person making remittance to a non-resident, irrespective of the fact that whether it is taxable or not the person compulsorily required to file form No 15CA before the income tax authority. In view of the above facts and circumstances of the case and legal position. The Assessing Officer held that the assessee has committed a default by not furnishing the requisite certificate before the AO in respect of four foreign remittance and therefore, liable for levy of penalty u/s 271-I of the Act. Therefore, Assessing Officer imposed penalty of Rs.4,00,000/- u/s 271-I of the Act.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A), who has confirmed the penalty imposed by the Assessing Officer.

7. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

8. At the outset, Ld. Counsel for the assessee submits that the issue in this assessee's appeal is squarely covered by the judgement of Co-ordinate Bench of ITAT, Surat, in the case of ACIT vs. Vinay Diamonds (in ITA No.103/SRT/2020, for AY.2016-17), order dated 26.06.2023, *wherein* the identical issues were adjudicated, therefore assessee's issue is squarely covered by the aforesaid judgment of the Tribunal.

9. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have

already noted in our earlier para and is not being repeated for the sake of brevity.

10. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that the assessees issue is squarely covered by the judgment of this Tribunal in the case of ACIT vs. Vinay Diamonds (supra) wherein the Tribunal held as follows:

> *"7. We have considered the rival submissions and perused the relevant finding given in the impugned order ld CIT(A). We note that assessee is in the business of trading, import and manufacturing of diamonds. The rough diamonds are imported and payments are made through foreign outward remittance in foreign currency. The assessing officer held that the provision of section 195(6) was amended by Finance Act, 2015 which came w.e.f. 01.06.2015 and as per the amended provision the assessee had to provide the Form 15CA to the assessing officer for each transaction. The assessee had made 80 transactions of foreign remittance out of which 10 transactions, were made between the period 01-04-2015 to 31-05-2015, where provisions of section 195(6) were not in force. During the appellate proceedings, the assessee submitted that all the details were filed online before the assessing officer but he has not considered the submissions made on 23.05.2019. The remittance made by the assessee was against the import of goods and does not attract the provision of withholding tax and therefore the requirement to furnish the details u/s 195(6) r.w.Rule 37BB is not mandatory. The Form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and therefore later on the Government amended the provision of section 195(6) by issuing notification no.G.S.R. 978(E) dated 16tth December, 2015. It was further submitted that Section 195 of the Income Tax Act, empowers the CBDT to capture information in respect of payment made to non-residents, whether chargeable to tax or not. On another side, Rule 37BB of the Income-tax Rules has been amended vide Notification No.G.S.R.978(E) dated 16th December, 2015, to strike a balance between reducing the burden of compliance and collection of information under section 195 of the Act. The significant changes under the amended Rules are as follows:*
>
> - *No Form 15CA and 15CB will be required to be furnished by an individual for remittance which do not require RBI approval under its Liberalized Remittance Scheme (LRS)*
> - *Further the list of payments of specified nature mentioned in Rule 37BB which do not require submission of Forms 15CA and 15CB has been*

expanded from 28 to 33 including payments for imports. Following are the five new example payment types:

1. *"Advance payment against imports*
2. *Payment towards imports-settlement of invoice*
3. *Imports diplomatic missions*
4. *Intermediary trade*
5. *Imports below Rs.5,00,000/- (For use by ECD officers)"*

8. Therefore, assessee submitted before ld CIT(A) that there was conflict between section 195 and rule 37BB regarding the compliance of Form 15CA, which was later on amended by the government by Notification No.G.S.R.978(E) dated 16th December, 2015. So, there is lack of clarification of words expressively in the provisions only during this assessment year and no express specification have been made for penalty for each default. So, penalty under section 271-I should not be levied for non-furnishing of Form 15CA.

9. The ld CIT(A), after considering the submission of the assessee, observed that the remittance made by the assessee was against the import of goods and does not attract the provision of withholding tax and therefore the requirement to furnish the details u/s 195(6) r.Rule 37BB is not mandatory. The form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and therefore later on the government amended the provision of section195(6) by issuing notification no. G.S.R. 978(E) dated 16th December, 2015. The remittances which were made were against the import of goods and do not attract the provision of withholding tax and the requirement to furnish the details u/s 195(6) r.wRule 37BB is not mandatory. The Form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and do not require RBI approval under its Liberalized Remittance Scheme (LRS).

10. The ld CIT(A) also noted that the list of payments of specified nature mentioned in Rule 37BB, which do not require submission of Forms 15CA and 15CB, has been expanded from 28 to 33, including 'payments for imports'. Hence, apparently there was conflict between section 195 and rule 37BB regarding the compliance of Form 15CA, which was later on amended by the government by Notification No. G.S.R. 978(E) dated 16th December, 2015. Since, the remittances which were made, were against the import of goods and does not attract the provision of withholding tax and the requirement to furnish the details u/s 195(6) r.w. Rule 37BB is not mandatory. Therefore, ld CIT(A) held that there is lack of clarification of words expressively in the provisions, and only during this assessment year and no express specification have been made for penalty for each default. The Income Tax Rules were amended w.e.f. from 16/12/215, in which the list of payments of specified nature mentioned in Rule 37BB, which do not require submission of Forms 15CA and 15CB, has been expanded from 28 to 33. The amendment though came into effect from 16th December 2015, but it is a settled law that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. Therefore, ld CIT(A) held that the penalty provisions u/s 271-I of the Act will not be applicable in the case and therefore

ld CIT(A) deleted the same. We have gone through the above findings of ld CIT(A) and noted that there is no infirmity in the conclusion reached by ld CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

11. In the result, appeal of the Revenue is dismissed.

11. As the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench in the case of Vinay Diamonds in ITA No.103/SRT/2020 (supra) , and there is no change in facts and law and the Ld. Sr-DR for the Revenue is unable to produce any material to controvert the aforesaid findings of the Co-ordinate Bench (supra). We find no reason to interfere in the said order of the Co-ordinate Bench (supra), therefore, respectfully following the judgment of the Coordinate Bench, we delete the penalty imposed by the Assessing Officer of Rs.4,00,000/- (four lakh). We order accordingly.

12. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 28/07/2023 in the open court.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 28/ 07/2023
SAMANTA /DKP
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat