

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA NO. 4236/MUM/2023 (A.Y: 2011-12)**

Saint Gobain Abrasives Inc C/o. Kalyaniwalla & Mistry LLP Chartered Accountants Esplanade House, 29 Hazarimal Somani Marg, Fort Mumbai, Maharashtra 400001  <b>PAN: AAICS4348A</b>	v.	Assistant Commissioner of Income-Tax (International Taxation), Circle - 4(2)(1) Room No. 1708, 17 <sup>th</sup> Floor Air India Building Nariman Point, Mumbai Mumbai, Maharashtra- 400021
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Akram Khan &amp; Shri Jinit Shah</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Veerbhandra Mahajan</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>29.04.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>30.04.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

1. This appeal by the assessee is preferred against the order of Learned Commissioner of Income-Tax (Appeals)-58, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 28.09.2023 pertaining to A.Y.2011-12.

**2.** The solitary grievance of the assessee is that the Ld. CIT(A) erred in confirming the levy of penalty under section 271BA of Income-tax Act, 1961 (in short "Act") amounting to ₹.1,00,000/-.

**3.** Briefly stated the facts of the case are that the, assessee is a Foreign Company incorporated and resident in USA. It did not file its return of income and therefore notice under section 148 of the Act was issued by the Assessing Officer. In response to which the assessee filed its return of income. While scrutinizing the return of income the Assessing Officer noticed that the assessee had transaction with its Indian AE and therefore the assessee should have filed Accountant's Report under section 92E in Form 3CEB. On finding that the assessee did not file the report, the Assessing Officer initiated the penalty proceedings under section 271BA for failure to furnish report under section 92E of the Act and levied penalty of ₹.1,00,000/-.

**4.** Assessee carried the matter before the Ld. CIT(A) but without any success.

**5.** Representatives of both the sides were heard at length. Case records carefully perused. The undisputed fact is that the assessee is a

resident of USA and being a foreign national was under a bonafide belief that it is not required to file return of income in India. It is also true that pursuant to the notice under section 148 of the Act the assessee filed its return of income declaring income of ₹.3,55,37,509/-. This income was received by the assessee as Royalty which was subjected to TDS @15% as per the Article 12 of India – USA DTAA. We find that the assessment has been framed under section 143(3) r.w.s. 147 of the Act at the returned income of the assessee. This shows that no Transfer Pricing adjustment has been made by the Assessing Officer in framing the assessment.

**6.** We are of the considered view that the assessee was under a bonafide belief that it was not required to file any return of income as its income has been subjected to tax deducted at source. We find that the assessee did furnish report under section 92E of the Act during the course of the scrutiny assessment proceedings itself. Considering the facts of the case in totality, we do not find this to be a fit case for the levy of penalty under section 271BA of the Act. We therefore direct the Assessing Officer to delete the impugned Penalty of ₹.1,00,000/-.

7. The assessee has also raised grounds challenging the validity of the assessment. Since the legal issue has not been contested seriously, we do not find any reason to adjudicate on this issue. Penalty is deleted.

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

Order pronounced in the open court on 30<sup>th</sup> April, 2024.

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

Mumbai / Dated 30.04.2024  
Giridhar, Sr.PS

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**