

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 90/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2020-21)

Freyr Software Private Limited,
Hyderabad
[PAN : AACCF1274G]

ACIT, Circle-8(1),
Vs. Hyderabad

अपीलार्थी/Appellant

प्रत्यर्थी/Respondent

निर्धारिती द्वारा/Assessee by: Shri R. Mohan Kumar, AR
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 22/04/2024
घोषणा की तारीख/Pronouncement on: 14/05/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 06/12/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Freyr Software Services Private Limited ("the assessee") for the assessment year 2020-21, assessee preferred this appeal.

2. The assessee is a full-service global regulatory solutions and services Company supporting, large, medium and small size global life sciences companies, namely, Pharmaceutical, Generics, Medical Device, Biotechnology, Biosimilar, Consumer Healthcare, Cosmetics in their entire Regulatory value-chain ranging from Regulatory Strategy, Intelligence, Dossiers, Submissions etc. to Post- Approval/Legacy Product Maintenance, Labeling, Artwork Change Management and other related functions. It filed the return of income for the assessment year 2020-21 on 13/02/2021 declaring a total income of Rs. 3,94,59,120/- under the normal provisions and Rs. 10,47,92,402/- under section 115JB of the Income Tax Act, 1961 ('the Act').

3. Assessee has been registered in SEZ on 15/02/2013 and subsequently started manufacture/production on 10/04/2013, i.e., financial year 2013-14, relevant to assessment year 2014-15. Assessment year 2020-21 is, therefore, the 7th year of claim of deduction for the assessment year 2020-21. Though the assessee claimed deduction under section 10AA of the Act has been correctly at 50% of profit for the earlier previous year, i.e., assessment year 2019-20, being 6th year of claim of deduction, assessee has claimed 100% deduction of the profit of the undertaking for the year under consideration. On being asked, the assessee admitted that it is eligible for 50% deduction under section 10AA of the Act for this year also, but stated that there would not be any change in the tax values, by submitting comparative computation of income with 100% deduction and 50% deduction under section 10AA of the Act, wherein the final tax was calculated on MAT income.

4. Assessment was, therefore, complete under section 143(3) of the Act by making an addition of Rs. 3,58,77,320/-. Penalty proceedings under section 270A of the Act were initiated. Assessee pleaded inadvertent mistake due to software problem. But the learned Assessing Officer concluded the proceedings with order dated 30/03/2023 by levying penalty of Rs. 1,99,62,142/- at 200% of the tax on the underreporting income, holding that when once misreporting/under reporting under section 270A(9) of the Act is admitted, no other view could be taken. On similar lines, learned CIT(A) also confirmed the levy of penalty. Hence this appeal.

5. Learned AR submitted that for levy of penalty under section 270A(8) of the Act, as a pre-condition, Revenue has to prove that the case of the assessee falls in any of the categories mentioned in (a) to (f) of 270A(9) of the Act, but in this case, the learned Assessing Officer did not spell out any such category being attracted and, therefore, in terms of the decision of the Hon'ble Delhi High Court reported in the case of Prem Brothers Infrastructure LLP vs. NFAC [2022] 142 taxmann.com 38 (Delhi) and decisions of the Co-ordinate Bench of the Tribunal in the case of Saltwater Studio LLP vs. NFAC, Delhi in ITA No. 13/Mum/2023, dated 22/05/2023 and in the case of Shri Duraisamy Senthil Kumar vs. ITO in ITA No. 552/Chny/2023, dated 27/09/2023, the penalty cannot be sustained. Further he submitted that it is only due to the software problem, the unintended lapse occurred and as a matter of fact, the assessee does not stand to gain by under reporting the income because the deemed income under section 115JB of the Act is more than the income computed after reducing the claim under 10AA of the Act by 50%.

6. Per contra, learned DR submitted that the lapse on the part of the assessee and the consequent under reporting go uncontroverted and, in such case, seeking immunity for imposition of penalty would not be maintainable as held by the Hon'ble Kerala High Court in the case of IBS Software (P) Ltd., vs. Union of India [2024] 158 taxmann.com 209 (Kerala).

7. We have gone through the record in the light of the submissions made on either side. Insofar as the assessee claiming the deduction under section 10AA of the Act for the seventh year of claim at 100% instead of 50% is concerned, it remains an undisputed fact. Assessee admitted that such a lapse occurred, but mistakenly due to the software issues. Assessee further submitted that since the income declared under section 115JB of the Act is much more than the income completed taking 50% of deduction under section 10AA into consideration, there is no loss to the Revenue.

8. In the cases of Prem Brothers Infrastructure LLP, Saltwater Studio LLP and Shri Duraisamy Senthil Kumar (supra), the consistent view taken is that in order to levy penalty under section 270A(8) of the Act, the learned Assessing Officer has to bring the omission or commission of the assessee in the ken of sub-section (9) of section 270A of the Act, without which the penalty cannot be sustained. Insofar as stand of the Revenue that there is under reporting in the matter is concerned, we deem it just and necessary to refer to the instances of under reporting as given in Section 270A(2) of the Act, which reads as under:

“Penalty for under-reporting and misreporting of income.

270A. (1)

(2) A person shall be considered to have under-reported his income, if—

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;

(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;

(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

9. There is no dispute that the assessee declared the income at Rs. 3,94,59,120/- under the normal provisions and Rs. 10,47,92,402/- under section 115JB of the Act. It is also undisputed that even after making the addition under section 143(3) of the Act, the income under normal provisions is far less than the deemed income under section 115JB of the Act, on which the assessee paid the taxes. In this sense, there is no loss to the Revenue and at the same time, it cannot be said that there is any under

reporting of the income. Even from this angle also assessee succeeds. We, therefore, find it difficult to sustain the penalty under section 270A(9) of the Act and direct the learned Assessing Officer to delete the same.

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

Order pronounced in the open court on this the 14th day of May, 2024.

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 14/05/2024

TNMM

Copy forwarded to:

1. Freyr Software Private Limited, 2-3/AC/83, Aparna County, Miyapur, Hyderabad.
2. The ACIT, Circle-8(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ITAT, HYDERABAD