

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No. 2325/Mum/2024
(Assessment Year 2012-13)**

Assistant Commissioner of Income Tax, Central Circle 1(4), 903, Prathistha Bhavan, Old CGO Complex, M.K. Road, Churchgate (E), Mumbai-400020 PAN-AABCL1815G	vs	Laxmi Diamond Private Limited, EW-200, G Block Bharat Diamond Course, Bandra Kurla Complex, Bandra East, Mumbai-400051
APPELLANT		RESPONDENT

Assessee by : Shri K.A. Vaidyalingan
Respondent by : Shri Amol Kirtane(CIT - DR)

Date of hearing : 09/07/2024
Date of pronouncement : 22/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

This is an appeal filed by the revenue against the order of the Learned Commissioner of Income-tax(A)-57, Mumbai [for brevity, 'Ld.CIT(A)'] passed U/s 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 27.02.2024. The impugned order was emanated from the order of the Id. Deputy Commissioner of Income-tax (Transfer Pricing)-3(1)(1), Mumbai (in short, 'the A.O.')

passed under section 271G of the Act date of order 29/07/2016.

2. The revenue has taken the following grounds: -

“1. Whether on facts & circumstances of case & in law, the Ld. CIT(A) was correct in deleting the penalty levied u/s.271G by holding that the assessee had made substantial compliance, failing to note that under TNMM adopted by the assessee, the profit including segmental account of the international transaction has to be furnished as asked for where the assessee has only furnished the entity level margins in spite of having been given the opportunity to furnish segment account,

2. Whether on facts & circumstances of case & in law, the Ld. CIT(A) is justified in deleting the penalty U/s 271G without discussing on merit how the assessee has complied with clause (d), (g), (h) and (m) of Rule 10D (1), that have been specifically invoiced by the TPO.

3. Whether on facts & circumstances of case & in law, the Ld. CIT(A) has erred by completely ignoring the clear cut in the observation in the order of TPO that the assessee had failed to furnish details and documents required u/s 92D(3) of the IT Act, and by deciding the case merely by relying on the decision of the First and Second Appellate Authority on the matter of penalty levied u/s 271G of the Act in respect of the preceding AY 2011-12, without giving any finding regarding the non-submission of details by the assessee as required u/s.92D(3).

4. Whether on facts & circumstances of case & in law, the Ld. CIT(A) has erred by deleting the penalty imposed u/s 271G of the Act, on the incorrect premise that, when there is no adjustment made in the Arm's Length Price, penalty so imposed is not justified, without appreciating that penalty u/s 271G is imposable for failure to furnish any such information or documents pertaining to any international transaction or specified domestic transaction as, required by the TPO u/s 92D(3), and not only when Adjustment is made to the Arm's Length Price, as penalty in respect of ALP adjustment is imposable in deserving cases under other sections of the Act.

5. Whether on facts & circumstances of case & in law, the Ld. CIT(A) erred in deleting the penalty for the reason that no adjustment was made to the ALP, falling to note that by not producing the material documents necessary to determine the ALP under any of the prescribed

methods u/s.92C(1), the assessee effectively and deviously prevented the TPO to make Arm's length determination as recorded by the TPO in para 6 of the order u/s.92CA(3).

6. Whether on facts & circumstances of case & in law, the Id. CIT(A) failed to appreciate, the judicial precedents in case of Shatrunjay Diamonds (261 ITR 258; 2003} in which it is stated by Hon'able Bombay High Court that the excuse of business practice and assessee's difficulty in maintaining the documents cannot be a base for non-submission of the documents prescribed by the Act for Arm's length determination."

3. The facts in brief are that the assessee is mainly engaged in diamond business related to manufacturing and training segment of diamond industries. The assessee is a flagship entity of the group. During the proceedings before the TPO, the assessee was unable to submit the documents as per the provisions of section 92D(3) of the Act read with rule 10(B)(1)(e) of the Income-tax Rules, 1962 (in short, 'the rule'). The Ld.AO initiated the penalty proceedings under section 271G and finally, the penalty was levied amount to Rs.27,63,68,939/-which is 2% of the total value of relevant international transaction amount to Rs.1381,,84,46,946/-. The aggrieved assessee filed an appeal before the LD. CIT(A). The Id.CIT(A), considering the submission of the assessee deleted the penalty and appeal of the assessee was allowed. Being aggrieved on the appeal order, the revenue filed an appeal before us.

3. The Ld.AR first argued and filed a written submission which is kept in the record. The Ld.AR placed that after the TP study, there is no adjustment made by the TPO and that the addition was made only under section 14A and section 36(1)(iii) of the Act under the domestic tax.

4. The Ld. DR relied on the impugned penalty order and argued vehemently.

5. We heard the rival submission and considered the documents available in the record. For understanding the fact, we make a quick look in section 92D(3) of the Act.

“Maintenance, keeping and furnishing of information and document by certain persons.

92D. (1) Every person, —

xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(3) *The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person referred to in clause (i) of sub-section (1) to furnish any information or document referred therein, within a period of 64a[ten] days from the date of receipt of a notice issued in this regard:*

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of 64a[ten] days by a further period not exceeding thirty days.”

For better explanation of the fact, the Rule 10(D)(1)(g) is reproduced as below: -

“Information and documents to be kept and maintained under section 92D.

“10D. (1) Every person who has entered into an international transaction [or a specified domestic transaction] shall keep and maintain the following information and documents, namely: —

(g) a record of uncontrolled transactions taken into account for analysing their comparability with the international transactions [or the specified domestic transactions] entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions [or specified domestic transactions, as the case may be];”

It is found that there is no adjustment made in TP study by the Id.TPO. Only the adjustment was made in domestic tax. The Id. AR relied on the appeal order. The relevant paragraphs 5.3.3 to 7 of appeal order are reproduced as below: -

“5.3.3 During appellate proceedings, the appellant has submitted that on similar facts, the TPO had levied penalty u/s.271G of the Act for A.Y.2011-12. The CIT(A)-57,

Mumbai vide order dated 31.01.2017 had deleted the penalty and on further appeal by the revenue, the ITAT, Mumbai vide order dated 27.12.2018 has dismissed the appeal of the revenue. Therefore, the facts and circumstances of levy of penalty u/s.271G for A.Y.2011-12 being identical to that for AY.2012-13, the penalty levied u/s.271G for A.Y 2012-13 should also be deleted. The appellant provided copies of orders of CIT(A) and ITAT for AY. 2011-12.

5.3.4 The order of the CIT(A) against the order of levy of penalty u/s.271G for AY. 2011-12 and also the order of ITAT Mumbai for AY. 2011-12 in the case of the appellant has been perused. For ready reference, the order of the ITAT Mumbai in ITA No.2643/Mum/2017 for AY.2011-12 is reproduced as under:

“6. We have considered rival contentions and carefully gone through the orders of the authorities below and found that the CIT(A) has deleted the penalty by observing that keeping in view nature of diamond business in which the Assessee is engaged, it has sustainably complied with the requirement of filing documents with respect to segmental amount relating to transactions with AE & non-AEs for determination of arm’s length price of international transaction. Accordingly, Id. CIT(A) observed that when there is no adjustment made in the arm’s length price, the penalty so imposed is not justified. The Id. CIT(A) has also relied on various judicial pronouncement having similar facts, wherein penalty has been deleted u/s 271G of the Act, when no adjustment in arm’s length price was made. Detailed findings recorded by the CIT(A) have not been controverted by Ld. DR, accordingly we do not find any reason to interfere with the order of the Ld. CIT(A).

7. In the result, the appeal filed by the Revenue is dismissed.”

The requirement of rule 10(D)(1)(g) is not duly covered as per any requirement under 92D(3) of the Act. The Ld.AR relied on the order of the assessee’s own case

in **ITA No.2643/Mum/2017** date of order **27/12/2018**. The relevant paragraph is extracted as below:-

“6. We have considered rival contentions and carefully gone through the orders of the authorities below and found that the CIT(A) has deleted the penalty by observing that keeping in view nature of diamond business in which the Assessee is engaged, it has sustainably complied with the requirement of filing documents with respect to segmental amount relating to transactions with AE & non-AEs for determination of arms length price of international transaction. Accordingly, the CIT(A) observed that when there is no adjustment made in the arms length price, penalty so imposed is not justified. The CIT(A) has also relied on various judicial pronouncement having similar facts, wherein penalty has been deleted u/s 271G of the Act, when no adjustment in arms length price was made. Detailed findings recorded by the CIT(A) have not been controverted by Ld. DR, accordingly we do not find any reason to interfere with the order of the Ld. CIT(A).

7. In the result, the appeal filed by the Revenue is dismissed.”

In our opinion, there is no breach of section 92D in conjunction with Rule 10(B)(1) of the Rules. The Id. TPO did not make any adjustments during the Transfer Pricing Study. We have relied respectfully on the case of the assessee in **ITA No.2643/Mum/2017** (supra). Hence, there is no violation of Section 92D of the Act, and consequently, the penalty of Rs.27,63,68,939/- has been waived. We do not find it necessary to intervene in the decision of the appeal.

7. In the result, appeal of the revenue **ITA No.2325/Mum/2024** is dismissed.

Order pronounced in the open court on 22nd day of July, 2024.

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 22/07/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai