

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.2550/M/2024
Assessment Year: 2016-17**

M/s. Total Energies Marketing Services, France (Previously known as Total marketing Services), Shweta Shah, Total Energies Marketing Services India Pvt. Ltd., 3 rd Floor, Leela Galleria, Andheri Kurla Road, Andheri East, Mumbai – 400 059 PAN: AACCT6484G	Vs.	Dy. Commissioner of Income Tax-(Transfer Pricing)-4(2)(2), Air India Building, Nariman Point, Mumbai, Maharashtra – 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ketan Ved, A.R.
Revenue by : Ms. Dhivya Ruth J. Sr. DR.

Date of Hearing : 10 . 07 . 2024
Date of Pronouncement : 31 . 07 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 27.03.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2016-17.

2. In this case, a reference u/s 92CA(1) of the Act was received from DCIT(IT)-4(1)(2), Mumbai for determining the arms length price qua international transactions entered into by the Assessee with its Associated Enterprises(AEs) as reported in form 3CEB filed on 30.11.2016. Accordingly notice u/s 92CA(2)/92D(3) of the Act was issued to the Assessee on 18.12.2018 calling for various details and documents maintained in support of the ALP determination of the transactions reported in form No.3CEB. In response to the said notice the Assessee submitted its reply dated 04.01.2019 and claimed that the Assessee Company was in the process of appointing their authorized representative and therefore the Assessee needs time to submit the details. Accordingly, the hearing was re-fixed by the Assessing Officer (AO) on 10.01.2019. The Assessee neither attended nor filed any details till completion of statutory time limit of 60 days. Consequently penalty proceedings u/s 271G of the Act were initiated vide notice dated 11.03.2019 u/s 274A r.w.s 271G of the Act for non-compliance to the notice u/s 92D(3) of the Act issued on 18.12.2018.

2.1 In response to the penalty proceeding notice, the Assessee vide letter dated 19.03.2019 filed in IT office Tapal on 25.03.2019 submitted part details such as form 3CEB, copy of return of income, copy of inter-company agreement and the inter-company invoices. The Assessee in the said letter also claimed that transfer pricing proceedings have already been concluded without any TP adjustments and therefore no penalty u/s 271G of the Act is warranted, as the Assessee had submitted some of the details vide letter dated 19.03.2019 and most of the details mentioned in the notice issued u/s 92D(3) of the Act are not applicable to this case. The Assessee further claimed that initiation of penalty u/s 271G of the Act is not automatic, since the section provides for element of discretion. The Assessee has not made any willful intent defraud with the Income Tax Authorities

and is ready to cooperate with all the queries which will be raised during the assessment and therefore no penalty should be levied.

2.2 The AO though considered the aforesaid submissions of the Assessee, however, not being satisfied again sent a reminder vide notice dated 06.09.2019 in response to which the Assessee by filing a letter dated 28.09.2019 reiterated the earlier submissions and requested to drop the proceedings. The Assessee also submitted a copy of TPSR along with this submission.

2.3 The AO though considered the afforested contentions raised by the Assessee, however not being convinced with the same, ultimately levied the penalty of Rs.98,89,964/- u/s 271G of the Act, by holding as under:

“That the details were filed by the Assessee only after 25.03.2019 in response to the notice dated 18.12.2018 issued u/s 92D(3) r.w.rule 10D(1) & 10D(3) of the Income Tax Rules, 1962 (in short ‘the Rules’). The Assessee has not denied the fact that the requisite details such as TPSR and all other supporting documents which were requisitioned vide notice dated 18.12.2018 were filed only after 25.03.2019 which is beyond stipulated period of 60 days. Acceptance of some or all transactions to be at ALP based on submissions made subsequently and found to be benchmarked correctly, does not absolve the Assessee from statutory penal provisions as provided under the Act for initiation of penalty for non compliances. It is further evident from the submission of the Assessee that the Assessee has brought nothing on record whatsoever nor attributed any reasons for non-submission of the requisite documents and details as requisite vide notice dated 18.12.2018 within the prescribed time limit of 60 days. The Assessee company failed to comply with the terms of notices issued u/s 92D(3) of the Act within the prescribed time limit of 60 days and therefore attracted the penalty u/s 271G of the Act. Therefore, he is satisfied that this is a fit case to levy the penalty and accordingly the Assessee is directed to pay an amount of Rs.98,89,964/- being 2% of the relevant transactions of Rs.49,44,98,227/-“.

3. The Assessee being aggrieved challenged the levy of penalty before the Ld. Commissioner who by considering the peculiar facts and circumstances of the case observed that ascertaining of some or all

transactions to be at ALP based on the submissions made subsequently and found to be benchmarked correctly, does not absolve the Assessee from statutory penal provisions as provided under the Act for non-compliance. A multi-national company like the Assessee which is being managed by qualified tax professionals and non-submission of documents because of non-availability of authorized representative for more than 2 months is at all not convincing. Thus, it is proved that it was not a reasonable cause for non-submission of the requisite documents sought by the TPO vide notice dated 18.12.2018 within a period of 60 days. The Assessee had not furnished all the information/documents as sought by the TPO and also there was not a reasonable cause for failure to comply with the said notice of penalty, hence the penalty of Rs.98,89,964/- levied by the TPO u/s 271G of the Act, is confirmed.

4. The Assessee, being aggrieved, is in appeal before us. The Assessee at the outset claimed that as the TPO vide order dated 31.10.2019 has not disturbed the value of the international transactions carried out by the Assessee with its AE qua ALP, hence in view of the judgment passed by the co-ordinate Bench of the Tribunal in the case of M/s. Excel Biolife Private Limited vs. National Faceless Appeal Center (ITA No.122/M/2024) and ACIT vs. Euro Star Diamonds Pvt. Ltd. (2024) 158 taxmann.com 410 (Mumbai-Trib.) the penalty is liable to be deleted.

5. On the contrary, the Ld. D.R. refuted the claim of the Assessee.

6. We have heard the parties and given thoughtful considerations to the peculiar facts and circumstances of the case. It appears from the penalty order dated 25.09.2019 that vide notice dated 18-12-2018 u/s

92CA(2)/92D(3) of the Act issued to the Assessee, various details and documents in support of ALP determination of the transactions reported in form No.3CEB were called for. The Assessee vide letter dated 04.01.2019 sought further time for filing of the details as requisitioned. Accordingly, the hearing was re-fixed on 10.01.2019. However, on that day, the Assessee neither attended nor filed any details, therefore penalty proceedings u/s 271G of the Act were initiated vide notice dated 19.03.2019, in pursuance to which the Assessee filed certain details/documents in Tapal/ITBA Portal of the Department on 25.03.2019, which goes to show that before 25.03.2019, the Assessee filed no details and therefore if we subtract 60 days from the date of notice dated 18.12.2018 then the default would be 38 days only. It is also a fact that in response to further reminder to the penalty notice u/s 271G of the Act issued on 06.09.2019, the Assessee filed its response along with TPSR on 20.09.2019. In overall consideration, it goes to show that the Assessee has made the compliance after the expiry of statutory period of 60 days, as the Assessee responded to the notice dated 18.12.2018 by filing its response along with part details/documents on 25.03.2019, therefore considering the delay of 38 days as miniscule and the peculiar facts and circumstances of the case in totality as the Assessee is a foreign based company and was in the process of appointing new authorized representative and therefore sought further time by filing its letter dated 04.01.2019 but the AO extended the time only up to 10.01.2019 admittedly a shorter period which resulted into non-compliance, however subsequently the Assessee complied with the notices by filling relevant details/documents specifically on 25-03-2019. Accordingly, the reasons submitted for non-compliance by the Assessee prima facie appears to be bonafide and unintentional and therefore considering the reasons for the minuscule delay in filing of the relevant documents, as reasonable and inadvertent, we are

inclined to delete the penalty under consideration. Thus, the penalty under consideration is deleted.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31.07.2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

* Kishore, Sr. P.S.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.