

| आयकरअपीलीयअधिकरणन्यायपीठ,मुंबई|
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No.2914/Mum/2024
(Assessment Year:2016-17)

Twentieth Century Fox Telecommunications International Inc. C/o. SRBC and Associates LLP, 14 th Floor, The Ruby 29 Senapati, Bapat Marg Dadar West, Mumbai-400 028 [PAN: AADCT5005E]	Vs	Dy. Commissioner of Income Tax (International Tax)-4(1)(2) Mumbai
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I.T.A. No.2915/Mum/2024
(Assessment Year:2016-17)

Twentieth Century Fox International Television Inc. C/o. SRBC and Associates LLP, 14 th Floor, The Ruby 29 Senapati, Bapat Marg Dadar West, Mumbai-400 028 [PAN: AADCT5005E]	Vs	Dy. Commissioner of Income Tax (International Tax)-4(1)(2) Mumbai
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Porus Kaka a/w. Shri Divesh Chawla
Revenue by :	Shri Uodal Raj Singh

सुनवाई की तारीख/Date of Hearing : 25.09.2024
घोषणा की तारीख /Date of Pronouncement: 27.09.2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM

ITA No.2914/Mum/2024 and 2915/Mum/2024 are two separate appeals by two separate assessee preferred against two separate orders of CIT(A)-58, Mumbai dated 27/03/2024 pertaining to A.Y.2016-17.

2. Since identical facts are involved therefore, both these appeals are disposed of by this common order for the sake of convenience and brevity.
3. The common ground in both the appeals relates to levy of penalty u/s.271G of the Act though, the quantum of penalty may differ.
4. The underlined facts in the issues are that the assessee is a non-resident company incorporated in USA with tax residence in USA. It is engaged in distribution of motion pictures and its operations are carried on from outside India. During the year under consideration assessee has received license fee from its AE towards exhibition of motion pictures over television in various territories including India.
5. The assessee does not have any place of business in India and also does not have a permanent establishment in India as per Article 5 of India US DTAA. The assessee had filed its return of income on gross

basis offering license fee received from India during the year under consideration. The assessee had reported income earned from licensing of content to its AEs in the Form 3CEB. The case of the assessee was referred u/s.92CA(1) of the Act to the office of DCIT-Transfer Pricing, Mumbai. The TPO subsequently issued a notice raising certain queries which were duly replied by the assessee. The assessee filed part of information and documents requested by the TPO and subsequently, the assessee furnished point by point response to the TPO's notice indicating its compliance with the requirements of Section 92D(3) of the Act r.w.r.10D of the Income Tax Rules. The assessee filed further information / documents requested by the TPO during the course of the transfer pricing assessment proceedings and the transfer pricing assessments were duly completed by the TPO.

6. Notice u/s.274 r.w.s. 271G of the Act was issued on the assessee for failing to furnish documents and information u/s.92CA / 92D of the Act and accordingly, penalty was levied u/s.271G of the Act in the captioned assessment years.

7. Assessee carried the matter before the CIT(A), but without any success.

8. Before us, the Counsel for the assessee vehemently stated that the assessee was not required to maintain information under Rule 10D of the Rules and therefore, application of penalty u/s.271G for non-furnishing of financial statements and non-maintenance of information

required under Rule 10D of the Rules does not arise. It is the say of the Counsel that the assessee has complied with notice furnished by the TPO therefore, penalty u/s.271G of the Act should not be levied. Per contra, the DR strongly supported the findings of the lower authorities.

9. We have given a thoughtful consideration to the orders of the authorities below.

10. We are of the considered view that there is no finding by the TPO / AO in the transfer pricing orders stating that the information / explanations provided by the assessee during the transfer pricing assessment proceedings were inaccurate or that there was any insufficient information / explanation preventing the TPO from determining the arm's length price. On the contrary, the Transfer Pricing Officer has acknowledged that the assessee has furnished the details and information.

11. Further, there is no finding recorded by the TPO that the conduct of the assessee lacks bonafides or there any indifference on the part of the assessee in not producing the records called for by the TPO leading to inability on the part of the TPO to determine the arm's length price.

12. The most important factor is that whatever TP adjustment has been done by the TPO has been deleted by the DRP and the Revenue has accepted the order of the DRP. On similar facts the Co-ordinate

Bench in the case of Ankit Gems (P) Ltd. 106 taxmann.com 243 has held that “where TPO had accepted benchmarking done by assessee under TNMM and no variation / adjustment was made by him to ALP imposition of penalty u/s.271G would be unsustainable. The Hon’ble High Court of Judicature at Madras in the case of SSL-TTK Ltd in T.C.A. No.776 of 2014 had the occasion to consider the following substantial question of law:-

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the order of the CIT(A) directing the Assessing Officer to delete the penalty levied under Section 271G of the Income Tax Act, 1961?”

13. And the Hon’ble High Court *inter alia* held as under:-

“12.Be that as it may, it is not a case of total failure, but it may be a case of belated compliance. The learned Senior Standing Counsel appearing for the respondent submitted that no leniency is required to be extended to the assessee and in fact, on an individual assessee, the High Court of Kerala did not show any indulgence with regard to the penalty, which was imposed under Section 271C and Section 273B of the Act in the case of CIT v. Thomas Muthoot reported in (2015) 61 taxmann.com 76 (Kerala). The assessee pleaded that he was under the bonafide belief that under Section 194A, they were not liable to deduct tax at source on the interest paid by a partner to the firm and thus, pleaded ignorance of the statutory liability to deduct tax. This plea was held to be not acceptable and not bonafide. We find, factually the case cannot be compared with that of the case on hand, where there are several distinguishing factual features, which would go to justify the decision taken by the Tribunal affirming the order passed by the CIT(A). Though we have held that the explanation offered by the assessee stating that they are a novice to transfer pricing transactions, which is not prima facie acceptable, but the conduct of the assessee in complying with 12 items out of 16 items as called for by the TPO can be considered to be reasonable and the act cannot be held to be an unreasonable act, but can be

considered as a reasonable act of an organization acting with prudence under normal circumstances without negligence or inaction or want of bonafides. There is no finding recorded by the Assessing Officer that the conduct of the assessee lacks bonafide or there was supine indifference on the part of the assessee in not producing the records called for by the TPO, despite notice and despite fixing time frame and not furnishing all the details was on account of inaction leading to failure on the part of the assessee to invoke Section 271G of the Act. Therefore, we are of the view that on facts, the Tribunal rightly held in favour of the assessee by affirming the order passed by the CIT(A)."

14. Considering the facts of the case in totality in the light of judicial decision discussed hereinabove, we do not find merit in levy of the impugned penalty, the AO is therefore, directed to delete the same.

15. Both the appeals by the assessee are allowed.

Order pronounced in the Court on 27th September, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated: 27/09/2024
Karuna, Sr. Ps.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्ड फाई/Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai