

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA NO. 3232/Del/2024		
A.YR. : 2018-19		
Assotech Moonshine Urban Developers Pvt. Ltd., 105, First Floor, Supreme Enclave Society, Pankaj Tower, Mayur Vihar, Phase-I, New Delhi – 110 091 (PAN: AAECM8184A)	VS.	DCIT, Circle 1(1), New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by : Ms. Mansi Jain, CA
Respondent by : Sh. N.K. Bansal, Sr. DR.

Date of hearing : 10.10.2024
Date of pronouncement : 15.10.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 27.5.2024, relating to assessment year 2018-19 on the following grounds:-

1. On the facts and circumstances of the case, the order passed by the NFAC, is bad both in the ye of law and on facts.
2. On the facts and circumstances of the case, NFAC has erred, both on facts and in law, in confirming the action of the AO in levying penalty of Rs. 22,75,195/- under section 271G of the Act.
3. On the facts and circumstances of the case, NFAC has erred, both on facts and in law in passing the order without giving

assessee a fair and adequate opportunity of being heard in clear violation of principle of natural justice.

4. On the facts and circumstances of the case, NFAC has erred, both on facts and in law, in confirming the penalty despite the fact that there is no failure on the part of assessee to furnish any such information or document as required by sub-section (3) of section 92D of the Act.
5. On the facts and circumstances of the case, NFAC has erred, both on facts and in law, in confirming the penalty despite the fact that the TPO himself had accepted that the relevant document/information were submitted and placed on record.
6. That the provisions for levying of penalty under section 271G are discriminatory and not mandatory in nature.
7. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. Briefly stated facts are that the assessee filed its Income Tax Return on 29.11.2018 at income of Rs. (-) 1,58,23,037/-. The assessment order u/s. 143(3) of the Act was issued on 24.11.2021 at an assessed income of Rs. 1,78,62,290/- after making addition of Rs. 3,36,85,328/- on account of adjustment as advised by the TPO. The Assessing Officer has also initiated penalty proceedings u/s. 271G of the I.T. Act, since the assessee has not furnished information and timely transfer pricing documents before the Transfer Pricing Officer as intimated by the TPO. AO imposed the penalty of Rs. 22,75,195/- u/s. 271G of the Act vide order dated 31.05.2022. Against the penalty order dated 31.5.2022, assessee appealed before the Ld. CIT(A).

3. Upon assessee's appeal, Ld. CIT(A) dismissed the appeal for non-prosecution.

4. Against the above action of the Ld. CIT(A), assessee is in appeal before us.

5. We have heard both the parties and perused the records.

5.1 At the time of hearing, Ld. Counsel for the assessee pointed out that the TPO vide his order in the first paragraph itself has noted that the document prescribed under Rule 10D of the Income Tax Rules was submitted and placed on record. Referring to this, she contended that there is no violation on the part of the assessee.

5.2 Per contra, Ld. DR insisted that there has been failure on the part of the assessee to supply the necessary document and he insisted that since Ld. CIT(A) has not passed an order on merits, the issues may be remitted back to the file of the ld. CIT(A) for fresh adjudication.

5.3 Upon careful consideration and on perusal of the records, we find that TPO in his order vide para no. 4 has observed as under:-

“The assessee has not submitted Transfer Pricing Documents or any other documents as required u/s. 92D of the I.T. Act, 1961 despite multiple opportunities to provide submission dated vide Notices dated 30.03.2021, 08.06.2021 and 04.07.2021 wherein till date no compliance has been made.”

6. On perusing of the aforesaid observations of the TPO, we find that the contentions made by the Ld. Counsel for the Assessee are contradictory to that of the aforesaid observations of the TPO. Hence, keeping in view of the aforesaid factual matrix, in the interest of justice and after considering the request of the Ld. DR, we remit back the issues in dispute to the file of the ld.

CIT(A) with the directions to pass a speaking order on the merits of the case, in accordance with law, after giving adequate opportunity of being heard to the assessee,

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 15/10/2024.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar