

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "K" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA Nos. 1704, 1721 & 1719/MUM/2024  
Assessment Years: 2013-14 to 2015-16**

Dy. CIT-5(1)(1),  
Room 568, Aayakar Bhavan,  
M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** Blue Star Diamonds Pvt. Ltd.,  
CE-9010, 9013, 9<sup>th</sup> floor, Tower-C,  
Bharat Diamond Bourse, BKC,  
Bandra (E),  
Mumbai-400051.  
**PAN NO. AADCB 6475 E**  
**Respondent**

Assessee by : Mr. Madhur Agrawal  
Revenue by : Ms. Neena Jeph, CIT-DR

Date of Hearing : 16/10/2024  
Date of pronouncement : 22/10/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

The captioned appeals by the Revenue are directed against a common order dated 08.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 55, Mumbai [in short ‘the Ld. CIT(A)’] for assessment years 2013-14, 2014-15 and 2015-16 respectively, in relation to penalty u/s 271G of the Income-tax Act, 1961 (in short



‘the Act’) levied by the Assessing Officer for non-maintenance of the documents/information for computation of arm’s length value of international transactions carried out by the assessee with its associated enterprises (AEs). As common grounds have been raised in these appeal and therefore same were heard together and disposed off by way of this consolidated order for convenience.

2. Briefly stated, facts of the case are that the assessee was engaged in the business of trading/manufacturing of rough and polished diamonds. In the assessment year involved in captioned appeals, the assessee had entered into international transaction with its associated enterprises for purchase/sale of rough diamonds as well as purchase/sale of polished diamonds. The assessee benchmarked the transaction of purchase and sale of rough and polished diamonds by taking transactional net margin method (TNMM) as the most appropriate method using gross profit over sales as profit level indicator (PLI). The assessee took margin at entity level and compared with the margin of the comparable companies. However, according to the Ld. Transfer Pricing Officer (TPO), the assessee was required to compare profitability of the AE segment with the comparables and therefore, the assessee was required to maintain documents/information for providing segmental profitability between AEs and Non-AEs as required under Rule 10D(1) r.w.r. 92D of the Act. However, the assessee explained that in view of the intricacies involved in diamond industry it was



practically difficult for the assessee to furnish the information of segmental results of the assess for AE and nonAE, which was called for by the TPO. The Ld. TPO rejected the contention of the assessee and levied penalty invoking section 271G of the Act for all the three assessment years involved in present appeals.

3. On further appeals, the Ld. CIT(A) however following the finding of the Co-ordinate Bench of the Tribunal in the case of the assessee for assessment year 2012-13 in ITA No. 6553/Mum/2017 deleted the penalties.

4. Aggrieved, the Revenue is in appeals before us, by way of raising the grounds as reproduced above.

5. We have heard rival submission of the parties and perused the relevant material on record. The Ld. CIT(A) has summarized the facts of the case and following the finding of the Tribunal (supra) for assessment year 2012-13 has deleted the penalties for all the three assessment years from AY 2013-14 to AY 2015-16 observing as under:

*“5.3.1 The facts of the case of the appellant are that during A.Y.2013-14, the appellant had entered into international transaction with AE as under;*

S. No.	Nature of international transactions	Amount in Rs.
1.	Purchase/sale of rough diamonds	298,69,23,843/-
2.	Purchase/sale of polished diamonds	129,96,54,693/-

*The appellant bench marked the transaction of purchase and sale of rough diamond and polished diamond from/to the AE by taking TNNM as most appropriate method using operating profit/sales as Profit Level Indicator (PLI). The appellant took the margin at entity level and compared the transactions with the comparable companies. The profit margin of the comparable was*



4.04% and that of the appellant was 5.36%. Thus, the appellant considered the transaction at arm's length price. During the transfer pricing proceedings, the TPO was not satisfied with the method adopted by the appellant to benchmark the transactions at entity level and applying TNNM as most appropriate method. The TPO asked the appellant to provide segmental financials of transactions of purchase and sales with AEs as well as non-AEs. The appellant had stated that due to peculiar nature of diamond business, it was not possible to give the precise details of segmental financial of transactions with the AEs and non-AEs. The TPO held that in absence of providing segmental financials by the appellant it was not possible to apply the TNNM properly. Further, in absence of sufficient details provided by the appellant, it was not possible to apply for CUP or PSM as most appropriate method. The TPO held that the appellant had not maintained the documents as provided in clause d, g, h, i and j of Rule 10D(1) r.w.s. 92D of the I.T. Act. The appellant failed to comply to the provisions of notice u/s.92D(3) of the Act, therefore, the TPO levied penalty of Rs. 11,68,06,050/-u/s. 271G of the Act.”

5.1 Before us, the Ld. counsel for the assessee also relied on the decision of the Co-ordinate Bench in the case of Asst. CIT v. Kapu Gems (141 taxmann.com 14) and Dy. CIT v. Ratnakala Exports Pvt. Ltd. (ITA No. 5454/Mum/2017).

5.2 In view of identical question involved in the year under consideration as was available in assessment year 2012-13, we do not find any infirmity in the order of the Ld. CIT(A) in following the binding precedent in the case of the assessee itself, unless, reversed or stayed by the Hon'ble High Court . The grounds raised by the Revenue in all the three appeals are accordingly dismissed.

6. In the result, all the three appeals of the Revenue are dismissed.

**Order pronounced in the open Court on 22/10/2024.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**



Mumbai;  
Dated: 22/10/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**