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

BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.2579/Mum/2024
(Assessment Year: 2013-14)

ACIT-5(1)(1) R. No. 568, Aaykar Bhavan, M. K. Road, Mumbai-400 020	Vs.	**Ankit Gems Pvt. Ltd.** EE-6011, E-Tower, G-Block, Bharat Diamond Bourse, Bandra (E), Mumbai-400 051
PAN/GIR No. AAJCA 4305 Q		
(**Assessee**)	:	(**Respondent**)

Assessee by	:	Shri Sanjay Chokshi
Respondent by	:	Ms. Neena Jeph

Date of Hearing	:	14.10.2024
Date of Pronouncement	:	29.11.2024

O R D E R

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short),National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The revenue has challenged this appeal on the ground that the ld. CIT(A) has erred in deleting the penalty levied by the learned Assessing Officer (ld. A.O. for short) u/s. 271G of the Act for failure to maintain documents as required u/s. 92D(3) of the Act, by relying on the decision of the Tribunal in assessee's own case for A.Y. 2012-13.

3. Brief facts of the case are that the assessee is engaged in a business of manufacturing of polished diamonds from rough diamonds and trading of rough and polish diamonds as well as manufacturing of diamond studded jewellery. The ld. AO/TPO had observed that the assessee has entered into International transaction as per form 3CEB filed by the assessee and hence, made a reference u/s. 92CA(1) of the Act for computation of arm's length price of the international transaction. The ld. AO issued notice u/s. 92CA(2) r.w.s. 92D(3) of the Act and also initiated penalty proceedings. The ld. AO then passed the penalty order u/s. 271G of the Act dated 16.05.2017, thereby levying a penalty of Rs. 18,60,17,588/- for failure to furnish information or documents with respect to segmental accounts pertaining to the transactions amounting to Rs. 930,08,79,421/- made with AE's and non AE's for determination of arms length price of international transaction as required by the learned Transfer Pricing Officer (ld. TPO for short) under Rule 10D(1) and Rule 10D(3) of the Income Tax Rules, 1962 (herein refer to as "*Rules*").
4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 28.03.2024 deleted the penalty levied by the ld. AO/TPO on the ground that on identical facts the coordinate bench in assessee's case for A.Y. 2012-13 has deleted the penalty levied.
5. The revenue is in appeal before us, challenging the impugned order of the ld. CIT(A).
6. The learned Authorised Representative (ld. AR for short) for the assessee contended that the assessee has maintained the documentation required as per the Rules and has also provided the same to the ld. TPO /AO during the assessment proceedings. The ld. AR further stated that the assessee has prepared a complete transfer pricing study

report analyzing the various transaction of transfer pricing as per the Rules and Regulations under the ACT. The ld. AR further stated that the FAR analysis was also done in a scientific manner and the ld. AO/TPO has considered the methods adopted by the assessee for determining the arms length price, were TNNM was held to be a most appropriate method. The ld. AR also stated that on identical facts the Tribunal has held this issue in favour of the assessee for A.Y. 2012-13 and relied on the same.

7. The learned Departmental Representative (ld. DR for short) on the other hand controverted the said fact and stated that the assessee has not furnished a complete data in respect of segmental accounts with regard to transactions made with AE's and Non-AE's. The ld. DR further stated that the assessee has violated the provisions of Section 92D r.w.r. 10D(1) and 10D(3) of the Act. The ld. DR relied on the order of the ld. AO/TPO.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has entered into international transaction with its AE's for purchase and sale of rough diamond and polish diamond. The assessee has benchmarked the said transactions by taking TNNM method as most appropriate method using operating profit/sales as Profit Level Indicator (PLI). The assessee had taken the margin at entity level and had compared the transactions with the comparable companies and determined the transactions at arm's length price. The ld. AO/TPO sought for details of segmental financials of the purchase and sales transactions with AE's and Non-AE's which according to the assessee could not be furnished as to the precise details of segmental financials of the transactions owing to the peculiar nature of the diamond business. The ld. TPO concluded that TNNM was

not the appropriate method in the absence of segmental financials and CUP or PSM could also not be the appropriate method for benchmarking the transaction. The ld. TPO levied the penalty u/s. 271G of the Act for non compliance to maintain documents as per clause (d),(g),(h),(l) and (j) of Rule 10D(1) r.w. 92D of the Act. The ld. TPO also held that the assessee has not complied with the notices u/s. 92D(3) of the Act.

9. In the above facts and circumstances of the case, it is observed that the assessee has furnished quantitative and qualitative details of the products and has adopted TNNM method. It is also not a case were the assessee has not maintained any document specified u/s. 92D(1) of the Act but the assessee has furnished the required documents along with separate purchases and sales made from and to with AE's and Non-AE's together with sample bills which were furnished before the ld. AO/TPO. The assessee is said to have also furnished segmental profitability statement and had prepared a complete transfer pricing study report analyzing the various transaction of transfer pricing as per the mandate of the provisions. Pertinently, the Tribunal has dealt with identical issues in assessee's own case in *ITA No. 4840/Mum/2017, for A.Y. 2012-13, Dy. Commissioner of Income Tax Circle-5(1)(1) vs. Ankit Gems Pvt. Ltd., order dated 15.04.2019* and has decided this issue in favour of the assessee. The relevant extract of the said decision is cited hereinunder for ease of reference.

> *"5. We have considered rival submissions and perused material on record. We have also applied our mind to the decisions relied upon. On a careful reading of the penalty order passed under section 271G of the Act, it is evident, the Transfer Pricing Officer has proceeded to impose penalty under the aforesaid provision alleging that the assessee has failed to furnish certain information/documents which prevented him from determining the arm's length price properly. However, on a perusal of the orders passed by the Departmental Authorities as well as the material placed on record, it is noticed that the assessee has maintained books of account and other information to benchmark the international transaction with AE by applying TNMM and*

the transfer pricing study report containing such benchmarking was furnished before the Transfer Pricing Officer along with various other details. However, the Transfer Pricing Officer was of the view that the international transaction with AE should be benchmarked by applying CUP method and called upon the assessee to furnish segment wise details of AE and non–AE sales. It is observed, before the Transfer Pricing Officer the assessee has made submissions explaining why it is not possible for a person engaged in manufacturing and sale of diamond and diamond jewellery to maintain segment wise details of sales made to the AE and non–AEs for the purpose of applying CUP method. It was explained by the assessee that CUP method could not be applied as invoice of sale of AE and non–AE include different types of goods sold at different price. It is further observed, in the preceding years also, the assessee had benchmarked international transaction with AE by applying TNMM which was accepted by the Revenue. It is relevant to observe, the Transfer Pricing Officer has ultimately accepted the benchmarking done by the assessee under TNMM method. On going through the provisions of section 92D and rule 10D, we find that the assessee is required to maintain certain information/documents which may be required by the Transfer Pricing Officer for determining arm's length price. In the present case, it is not a fact that the assessee has not maintained any information as required under section 92D(1) r/w rule 10D(1). The facts on record clearly indicate that the assessee indeed has maintained a number of information/documents as required under the statutory provisions. Further, the assessee has also explained why it is not possible to furnish certain information sought by the Transfer Pricing Officer qua applicability of CUP method. In this regard, detailed written submission has been filed by the assessee before the Transfer Pricing Officer which has been properly evaluated by the learned Commissioner (Appeals) and the difficulty in maintaining the information sought by the Transfer Pricing Officer has been well explained and analysed. It is also necessary to observe, ultimately the Transfer Pricing Officer had accepted the benchmarking done by the assessee under TNMM and no variation/adjustment was made by him to the arm's length price. Even, assuming that the assessee has not maintained documents as required or was unable to support the benchmarking done by it under TNMM, nothing prevented the Transfer Pricing Officer in discarding the benchmarking done by the assessee and determining the arm's length price of the international transaction with the AE independently by applying any one of the prescribed method. When the statutory provisions confer enough power on the Transfer Pricing Officer to benchmark the international transaction as per the provisions of the Act, the allegation of the Transfer Pricing Officer that by non furnishing of documents by the assessee he was prevented from determining the arm's length price under CUP method is unacceptable. Therefore, when the Transfer Pricing Officer has accepted the benchmarking of the assessee, the imposition of penalty under section 271G of the Act is unsustainable. The decisions relied upon by the learned Authorised Representative dealing with identical issue of imposition of penalty under section 271G of the Act are squarely applicable to the facts of the present appeal. In view of the aforesaid, we do not find any infirmity in the order of learned Commissioner (Appeals) in deleting the penalty imposed under section 271G of the Act. Grounds are dismissed.

6. In the result, Revenue's appeal is dismissed."

10. From the above, it is noted that the issue in hand is squarely covered by the decision of the Tribunal in assessee's case for A.Y. 2012-13 and as there are no change in facts and circumstances of the case for the year under consideration we are inclined to dismiss the grounds of appeal raised by the revenue by respectfully following the above said decision.

11. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29.11.2024

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(KAVITHA RAJAGOPAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated: 29.11.2024
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai