

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.641/Ahd/2024
(Assessment Year: 2018-19)

Deputy Commissioner of Income Tax, Ahmedabad	Vs.	Priya Blue Recycling LLP, 1563/A, Aashirwad Rupani, Sardarnagar Road, Bhavnagar, Gujarat-364001
[PAN No.AAIFB9789R]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Sanjay Kumar, Sr. DR
Respondent by:	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.

Date of Hearing	22.10.2024
Date of Pronouncement	11.12.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-11, (in short “Ld. CIT(A)”), Ahmedabad vide order dated 04.01.2024 passed for A.Y. 2018-19.

2. The Revenue has taken the following grounds of appeal:-

“1. In the facts and on the circumstances of the case and in law, the ld.CIT(A) has erred in deleting the penalty u/s.271AAA of Rs.1,20,78,927/- levied for non-maintaining documents as specified in section 92D r.w.r. 10D, without discussing the case on merits.”

3. The brief facts of the case are that the assessee is in the ship-breaking business, and a search operation was conducted on Priya Blue Group under section 132 of the Act on November 19, 2019, which also covered the premises of the assessee. Thereafter, notices under sections 153A and 148 of the Act. were

issued, and the assessment was carried out by the Deputy Commissioner of Income Tax (DCIT). During the assessment proceedings, the AO referred the matter to the Transfer Pricing Officer (TPO) to determine the arm's length price for the assessee's international transactions. **The TPO passed an order under section 92CA(3) of the Act on January 27, 2022, wherein he made no adjustments to the arm's length prices of the transactions. Additionally, the TPO did not initiate any penalty proceedings under sections 271AA or 271G for the non-submission of required documents during the transfer pricing proceedings.** After the TPO's order, the AO passed the assessment order on February 24, 2022, accepting the return of income filed by the appellant. **The AO, however, noted that the appellant had failed to maintain the requisite documents specified in section 92D and Rule 10D of the Income Tax Rules, and thus issued a penalty notice under section 271AA for non-compliance with these provisions.** The AO imposed a penalty of Rs. 47,92,352, being 2% of the international transactions conducted by the assessee. This penalty was levied on purchase transactions with Best Oasis Limited amounting to Rs. 23.96 crore.

4. The assessee filed appeal before Ld. CIT(A) against the aforesaid order passed by the Assessing Officer. In appeal before Ld. CIT(A), the assessee claimed that there were no international transactions with Best Oasis Limited in Assessment Years (AY) 2017-18 and 2018-19. Instead, the assessee had made purchases from from Priya Blue Industries Pvt. Ltd., a domestic company, and this was duly supported in the Tax Audit Report submitted by the assessee, which gave details of the purchases made by the assessee from related parties under section 40A(2)(b) of the Act. The assessee further submitted that if it had failed to maintain the necessary documents for determining the arm's length

price as required under section 92D, the TPO should have made adjustments to the transfer pricing, computation which was not done in this case. It was pointed out that penalties can only be levied under section 271AA if the assessee fails to maintain the documents required by section 92D of the Act. Furthermore, the AO should have provided specific reasons for imposing such a penalty, particularly giving specific details of which documents were not submitted by the assessee. In the absence of clear reasoning and documentation, the penalty under section 271AA cannot be justified. Upon reviewing the assessment order, Ld. CIT(A) observed that while the AO initiated the penalty under section 271AA, there was no explanation given as to why this penalty was being levied or which specific documents or information required under section 92D were not furnished by the assessee. In contrast, the TPO had not initiated any penalty proceedings. As per Ld. CIT(A), the AO's penalty order lacked clarity, since the AO merely mentioned that the assessee had failed to maintain the required documents, without specifying which documents were missing. Moreover, the penalty was imposed based on the assumption that the purchases were made from Best Oasis Ltd., whereas the purchases were actually made from Priya Blue Industries Pvt. Ltd., a domestic company. This was a key error because such domestic transactions do not fall under the scope of international transactions and thus do not require transfer pricing documentation and therefore, do not attract penalty under section 271AA of the Act. Further investigation showed that the assessee had not engaged in any transactions with Best Oasis Ltd. in AY 2017-18 and 2018-19. The purchases were from Priya Blue Industries Pvt. Ltd., and the transactions were reported in the Tax Audit Report, which the AO had overlooked. Additionally, the TPO had not levied any penalty under section 271BA for failure to submit the transfer pricing report, supporting the assessee's claim that there were no international transactions in those years. Accordingly,

in light these facts, Ld. CIT(A) held that the penalty under section 271AA had been imposed without proper grounds, as no material evidence was presented to show which documents were missing or not submitted. The TPO had already confirmed that all the relevant details regarding vessel purchases had been provided by the assessee, and no adjustments were made to the arm's length price of the transactions. Given these facts, Ld. CIT(A) held that there was no justification for the levy of penalty under section 271AA of the Act, and therefore, the penalty imposed by the AO was deleted.

5. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) allowing relief to the assessee. Ld. Departmental Representative placed reliance on the observations made by the Assessing Officer in the penalty order. In response, the counsel for the assessee placed reliance on the observations made by Ld. CIT(A) in the appellate order. The counsel for the assessee submitted that no transfer pricing adjustments were made by the Transfer Pricing Officer concerning the underlying transactions, specifically the purchase of vessels. This implies that the TPO accepted that these transactions were conducted at arm's length price (ALP). The TPO's order indicates that the relevant details were provided by the assessee and kept on record, as mentioned in Paragraph 3 of the TPO's order. There is no indication in the TPO's order that the assessee failed to maintain the documents required under section 92D r.w.r. 10D of the Income Tax Act. After reviewing the available material, the TPO accepted the transactions as executed by the assessee at ALP, and did not make any adjustments to the transfer prices, nor did he recommend initiating penalty proceedings under section 271AA of the Act. Furthermore, no additions were made by the Assessing Officer concerning these transactions while finalizing the assessment. The counsel for the assessee submitted that if no transfer pricing

adjustments have been made in respect of the underlying transactions, penalty under section 271AA cannot be levied. Reliance was placed on several judicial decisions to support this view, including the case of DCIT v. Indian Taxmann.com (Chennai), Additives Express Highway (2017), ACIT v. Smith & Nephew Healthcare Pvt. Ltd. (2011), and DCIT v. Bebo Technologies Pvt. Ltd. (2014). Further, the counsel for the assessee submitted that the AO's order initiating the penalty proceedings is vague, scanty, and non-specific. The AO did not point out any specific document that the assessee allegedly failed to maintain, despite the documents being prescribed under section 92D r.w.r. 10D. In the assessment order, the AO merely stated in Paragraph 6 that since the assessee failed to maintain the documents required under section 92D r.w.r. 10D, penalty under section 271AA was initiated. Similarly, the penalty notices issued by the AO on February 24, 2022, and August 17, 2022, were also vague and did not specify which documents were not maintained by the assessee. Even in the penalty order itself, the AO simply mentioned that, under the provisions of section 271AA, the assessee had committed a default, but failed to specify the exact documents that were not provided. The counsel for the assessee placed reliance on several cases to support the argument that a penalty under section 271AA cannot be levied when the AO's order is vague and non-specific. Lastly, the counsel for the assessee submitted that no international transaction was involved in the purchase of the ship "M.V. Jin V" from Priya Blue Industries Pvt. Ltd. (PBIPL), which is a domestic company. PBIPL had purchased the ship from Best Oasis Ltd. (BOL), a foreign company, but the assessee did not directly engage in an international transaction with BOL. As such, the assessee is not required to maintain the documents specified under section 92D, and no penalty under section 271BA for failure to furnish Form 3CEB was levied. Given these circumstances, the counsel for the assessee submitted that there is no

justification for levying penalty under section 271AA of the Act. Accordingly, the primary argument of the assessee is that no penalty is warranted since the transactions involved were not international transactions and the AO's orders were vague and non-specific.

6. We have heard the rival contentions and perused the material on record.

7. On going through the order passed by Transfer Pricing Officer, we observe that no transfer pricing adjustment were made by the TPO. The primary contention of the counsel for the assessee before us is that during the impugned year under consideration, the penalty was initiated for non-maintenance of documents on an incorrect assumption of fact that the assessee had international transaction with an Associated Enterprise. However, while passing the order, Ld. CIT(A) has correctly taken note of the fact that the assessee did not have any international transactions, but had only transactions with a domestic associated enterprise. On perusal of the Tax Audit Report (at page 11 of the Paper Book at Column 23) and also the relevant extract of purchase ledger, submitted by the assessee before the TPO, it is observed that the assessee had made purchases from Priya Blue Industries Pvt. Ltd., a domestic company and not from Best Oasis Ltd. a foreign enterprise, as alleged. Further, so far as applicability of specified domestic transaction, within the meaning of Section 92BA of the Act is concerned, we observe that the provisions of Section 40(A)(2)(b) of the Act have been omitted by the Finance Act, 2017 w.e.f. 01.04.2017 and the same would not apply to the impugned assessment year. Further, we also observe that the AO has also not made out a case for applicability of specified domestic transaction to assessee's set of facts, while imposing penalty under section 271AA of the Act. Accordingly, in light of the above observations, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

8. In the result, the appeal of the Department is dismissed.

This Order is pronounced in the Open Court on 11/12/2024

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad; Dated 11/12/2024

TANMAY, 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 CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad