

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 633 to 640/Ahd/2024  
(निर्धारण वर्ष / Assessment Years : 2012-13 to 2019-20)

<b>DCIT</b> Room No.303, 3 <sup>rd</sup> Floor, Aayakar Bhavan,Ashram Road, Ahmedabad, Gujarat - 380009	<b>बनाम/</b> Vs.	<b>Best Oasis Limited</b> Kesar Orion Hindu Colony Lane Nos, Dadar Eadt, Mumbai, Maharashtra - 400014
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICB9490J		
(Appellant)	..	(Respondent)

<b>Revenue by :</b>	Shri Abhay Thakur, CIT.DR & Shri B. P. Srivastava, Sr. DR
<b>Assessee by :</b>	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, A.R.

<b>Date of Hearing</b>	30/12/2024
<b>Date of Pronouncement</b>	25 /02/2025

**ORDER**

**PER BENCH:**

These groups of 8 appeals are filed by the Revenue against the common order dated 10.01.2024 of the Commissioner of Income-Tax (Appeals)-11, Ahmedabad, (in short ‘the CIT(A)’), in respect of penalty orders passed under Section 271AA of the Income Tax Act, 1961 (in short ‘the Act’) relating to Assessment Years 2012-13 to 2019-20.

2. Since, the facts of all the cases are identical and common issue is involved, all the 8 appeals were heard together and are

being disposed of vide this common order for the sake of convenience.

3. We will take ITA No.633/Ahd/2024 for A.Y. 2012-13 as the lead case.

4. The brief facts of the case are that a search operation u/s.132 of the Act was conducted on Priya Blue group on 19.11.2019 in the course of which the premise of the assessee company M/s. Best Oasis Ltd. was also covered. Thereafter, proceeding u/s. 153A of the Act was initiated in the case of the assessee for A.Ys. 2012-13 to 2019-20. The assessee had filed its return of income for A.Y. 2012-13 on 23.07.2021 declaring Nil income. The assessee is a non-resident company and wholly owned subsidiary of Priya Blue Industries Pvt. Ltd. (PBIPL). In the course of search at Mumbai Office of PBIPL, it was found that the said office was also functioning as the key office of Best Oasis Ltd. (Hong Kong) and a number of important functions of assessee company were being carried out from Mumbai office premises. The activities of the assessee company being carried out in India from the office of PBIPL constituted a business connection in India and the income of the assessee was deemed to accrue or arise out of such business connection and was liable to be taxed in India. It further transpired that the assessee company had entered into various international transactions with its associated/related enterprise (AEs) which included sale, securing guarantee and getting managerial/office services from its AE. The international transaction entered into by the assessee

company with its AEs in India in respect of sale of vessels in different years was found to be as under:

Sr. No	A.Y.	M/s Priya Blue Industries Pvt. Ltd.	M/s Bhuvan Industries	M/s Priya Blue Shipping Pvt. Ltd	Total amount in Rs.
		Amount in Rs.	Amount in Rs.	Amount in Rs.	
1	2012-13	268,12,90,414			268,12,90,414
2	2013-14	2,24,95,81,529			2,24,95,81,529
3	2014-15	197,41,69,240			197,41,69,240
4	2015-16	296,86,07,453			296,86,07,453
5	2016-17	44,08,66,166			44,08,66,166
6	2017-18	212,58,07,822	239617631		236,54,25,453
7	2018-19	288,08,90,575	603946396	382018200	386,68,55,171
8	2019-20	45,45,82,530	88259872	265540827	80,83,83,229

5. In the course of assessment proceedings, the AO had referred the matter to the TPO to compute the Arm's Length Price (ALP) in relation to international transactions carried out by the assessee with its AEs. The TPO after making detailed enquiries had passed order u/s.92CA(3) of the Act dated 28.01.2022, wherein it was found that the transaction of the assessee with its AEs in respect of receipt of services and corporate guarantee was not at ALP. However, as the revision of ALP had impact of reducing the income of the assessee, no adjustment was proposed in accordance with the provision of Section 92(3) of the Act. Thereafter, the AO had passed the final assessment order u/s.153A/143(3) of the Act on 31.03.2022 at total income of Rs.4,98,11,360/-. The AO had computed the income of the

assessee by net profit attribution in accordance with the Proviso to Section 9(1)(i) of the Act read with Rule 10 of IT Rules. The AO had also initiated penalty proceedings u/s.271AA of the Act on the ground that the assessee had failed to maintain the requisite documents as specified u/s 92D read with Rule 10D of the IT Rules. Thereafter, a separate penalty order u/s.271AA of the Act was passed on 22.09.2022 for all the assessment years, wherein following penalties were imposed:

A.Y.	Date of penalty order passed u/s 271AA of the Act	Amount of penalty (In Rs.)	Nature of addition
2012-13	22/09/2022 (Date of service as per form no. 35 is 10.01.2023)	5,36,25,808/-	A sum of 2% of the total value of each international transaction or specified domestic transaction.
2013-14	22/09/2022 (Date of service as per form no. 35 is 10.01.2023)	4,49,91,630/-	A sum of 2% of the total value of each international transaction or specified domestic transaction.
2014-15	22/09/2022 (Date of service as per form no. 35 is 10.01.2023)	3,94,83,384/-	A sum of 2% of the total value of each international transaction or specified domestic transaction.
2015-16	22/09/2022 (Date of service as per form no. 35 is 10.01.2023)	5,93,72,149/-	A sum of 2% of the total value of each international transaction or specified domestic transaction.
2016-17	22/09/2022 (Date of service as per form no. 35 is 10.01.2023)	88,17,323/-	A sum of 2% of the total value of each international transaction or specified domestic transaction.
2017-18	22/09/2022 (Date of service	4,73,08,509/-	A sum of 2% of the total value of each international transaction or

	as per form no 35 is 10 01 2023)		specified domestic transaction
2018-19	22/09/2022 (Date of service as per form no 35 is 10 01 2023)	7,73,37,103/-	A sum of 2% of the total value of each international transaction or specified domestic transaction
2019-20	22/09/2022 (Date of service as per form no 35 is 10 01.2023)	1,61,67,664/-	A sum of 2% of the total value of each international transaction or specified domestic transaction

6. Aggrieved with the orders of the AO, the assessee had filed appeal before the First Appellate Authority, which was decided by the Ld. CIT(A) vide the impugned common order and penalties for all the years were deleted.

7. Now, the Revenue is in appeal before us against the order of the Ld. CIT(A). The only ground taken by the Revenue in this appeal is as under:

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.271AA of Rs.5,36,25,808/- levied for non-maintaining documents as specified in section 92D r.w.r. 10D, without discussing the case on merits".*

8. The ground raised by the Revenue in all eight years are identical except the amount of penalty involved in the different assessment years.

9. Shri Abhay Thakur, Ld. CIT.DR and Shri B. P. Srivastava, Ld. Sr. DR have argued the matter on behalf of the Revenue for different years. They have strongly supported the penalty order passed by the AO in all the years involved. It was submitted that neither the assessee had filed its original return nor the international transaction carried out by it, was ever reported in accordance with the provision of Section 92D(4) of the Act. It was submitted that the assessee did not maintain the requisite documents in respect of international transactions as stipulated u/s.92D r.w.r. 10D of the IT Rules. Therefore, the penalty u/s.271AA of the Act was rightly imposed by the AO.

10. Per contra, Shri Tushar Hemani, Ld. Sr. Counsel appearing for the assessee submitted that the international transactions entered into by the assessee during the year was sale of vessels worth of Rs.2,68,12,90,414/- with its AE and the Ld. TPO in his report had neither recommended for any ALP adjustment in respect of this underlying transaction nor did he recommend for

initiation of penalty proceeding u/s.271AA of the Act. He further submitted that even in the assessment order passed by the AO, there was no whisper as to which of the documents prescribed u/s.92D r.w.r. 10D were not maintained by the assessee. The Ld. AR further submitted that the TPO had examined the issue of international transaction in detail and the assessee had filed all the requisite details before the TPO. That the Ld. TPO after examining the details filed by the assessee, had accepted the underlying transaction of sale of vessels to be executed at ALP, and accordingly no TP adjustment in this regard was suggested by TPO. The Ld. Sr. Counsel submitted that since no TP adjustment was made in respect of underlying international transactions of sale of vessels, penalty u/s.271AA of the Act cannot be levied. In this regard, he has relied upon following decisions:

- *DCIT v. Indian Additives Express High Way (2017) 88 taxmann.com 954 (Chennai);*
- *ACIT vs. Smith & Newpew Healthcare P. Ltd. (2011) 16 taxmann.com 5 (Mumbai);*
- *DCIT v. Bebo Technologies Pvt. Ltd. (2014) 40 taxmann.com 168 (Chandigarh);*

11. The Ld. Sr. Counsel further submitted that the AO's order was vague, scanty and non-specific as no specific default in respect of maintenance of the documents, as prescribed in Rule 10D, was pointed out either in the assessment order or in the penalty notices and also in the penalty order. The Ld. AR submitted that where no specific default regarding maintenance of the requisite documents has been brought on record by the AO,

the penalty u/s.271AA of the Act cannot be levied, for which reliance was placed on the following decisions:

- *DCIT v. Convergys Customer Management Group Inc. (2022) 143 taxmann.com 43 (Delhi);*
- *DCIT v. Bebo Technologies Pvt. Ltd. (2014) 40 taxmann.com 168 (Chandigarh);*
- *ITO v. PPN Power Generating Co. P. Ltd. (2012) 18 taxmann.com 127 (Chennai);*
- *ACIT v. Global One India P. Ltd. (2012) 19 taxmann.com 249 (Delhi Trib.);*
- *CIT v. M/s. Leroy Somer & Controls (India) Pvt. Ltd. (2013) 360 ITR 532 (Delhi);*
- *Tapi JWIL JV v. Income-tax Officer (2024) 158 taxmann.com 433 (Delhi Trib.);*
- *Apace Realty v. Income-tax Officer (2022) 140 taxmann.com 257 (Mum);*
- *DCIT v. Francois Compressors India P. Ltd. (2021) 129 taxmann.com 260 (Pune);*

12. Shri Tushar Hemani, Ld. Sr. Counsel, assailed the penalty order on the ground that no case was made out by the AO for levy of penalty under section 271AA of the Act. He submitted that the Ld. CIT(A) had correctly appreciated the facts of the case and rightly deleted the penalty u/s.271AA of the Act as imposed by the AO. He, therefore, requested that the order of the Ld. CIT(A) does not require any interference and all the appeals of the Revenue are liable to be dismissed.

13. We have carefully considered the rival submissions. It is found from the assessment order that the AO has not pointed out any specific default on the part of the assessee in maintenance of the documents as prescribed in section 92D read with Rule 10D of the Rules. The AO while initiating the penalty proceeding u/s

271AA of the Act, had merely recorded in the assessment order as under:

*“Since, assessee has failed to maintain the requisite documents as specified in sec. 92D r.w.r. 10D, issue penalty notice u/s 271AA of the Act for non-compliance of sec.92D r.w.r. 10D.”*

14. The provision of Section 92D of the Act stipulates that every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof as may be prescribed. The information and documents to be kept and maintained are prescribed in Rule 10D of the IT Rules, which is as under:

**Information and documents to be kept and maintained under section 92D.**

**10D.** (1) Every person who has entered into an international transaction or a specified domestic transaction shall keep and maintain the following information and documents, namely:—

- (a) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;
- (b) a profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions or specified domestic transactions, as the case may be, have been entered into by the assessee, and ownership linkages among them;
- (c) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;
- (d) the nature and terms (including prices) of international transactions or specified domestic transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction;
- (e) a description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction or the specified domestic transaction;
- (f) a record of the economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions or the specified domestic transactions entered into by the assessee;
- (g) a record of uncontrolled transactions taken into account for analysing their comparability with the international transactions or the specified domestic

transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions or specified domestic transactions, as the case may be;

- (h) a record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction or specified domestic transaction;
- (i) a description of the methods considered for determining the arm's length price in relation to each international transaction or specified domestic transaction or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case;
- (j) a record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;
- (k) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price;
- (l) details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes;
- (m) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

15. It is, thus, found that the documents to be kept and maintained in respect of international transactions fall into thirteen different categories as mentioned in Rule 10D. When the AO is initiating penalty proceeding u/s.271AA of the Act for non-maintenance of documents and information, he is duty bound to point out as to which particular document(s) as specified in Rule 10D was not maintained by the assessee. The specific default of the assessee in non-maintenance of document/information has not been brought on record by the AO in the assessment order. A copy of the penalty notices issued by the AO has been brought on record by the assessee in the paper book filed. It is found therefrom that the specific default of non-maintenance of any

particular document/information was also not mentioned in the penalty notices dated 31.03.2022 and dated 30.08.2022 issued by the AO. In the penalty order u/s.271AA of the Act dated 22.09.2022 as well, no specific default is found mentioned.

16. The issue of international transactions is normally examined by the TPO and it will be relevant to examine whether any default in respect of maintenance of information/documents was noticed by him. The AO had referred the matter to the TPO to examine the international transactions and to find out whether these transactions were undertaken at ALP. A copy of the notices issued by TPO and the reply of the assessee before the TPO has also been brought on record in the paper-book filed. It is found there from that the assessee had made detailed submission in respect of all the queries as raised by the TPO, who had given the following finding in his order u/s.92CA(3) of the Act dated 28.01.2022:

*“2. A notice u/s. 92CA(2) of the IT Act along with a questionnaire was issued to the assessee on 30.09.2021 by this office requiring the assessee to furnish all the necessary details and documents in support of the arm's length price. Further, notice u/s 92CA (2) r.w.s. 129 of the IT Act was also issued to the assessee on 01/11/2021 requesting to file the required details. Further, reminders were also issued to the assessee for furnishing the required details. In response to the notices issued, assessee furnished the details called for through ITBA portal as well as the designation email of this office.”*

17. It is, thus, found that all the details and documents as required by the TPO were furnished by the assessee and no default was pointed out by the TPO in his report. Further, the TPO had also found the international transaction of sale of

vessels to its AE at ALP and no adjustment was proposed in this respect. The TPO had proposed adjustments in respect of receipt of services and corporate guarantee provided by the AE but no adjustment in these respect was recommended in the hands of the assessee as this would have resulted in reducing the income of the assessee. Be that as it may, the fact remains that no default was noticed by the TPO regarding non-maintenance of any documents/information under section 92D read with Rule 10D of the IT Rules and neither the TPO had recommended for initiation of any penalty proceeding u/s 271AA of the Act. In view of these facts, we find that the order of the AO imposing penalty u/s.271AA of the Act for non-maintenance of the information/documents prescribed u/s.92D Rule 10D was not justified.

18. The coordinate Bench of Chandigarh Tribunal in the case of *Bebo Technologies (P.) Ltd. (supra)* had deleted the penalty under section 271AA of the Act by holding as under:

*17. The perusal of the information and documents required to be kept and maintained under section 92D of the Act as per Rule 10D of Income Tax Rules reflects voluminous documents and information are prescribed thereunder and only in rare cases all the clauses of Sub-Rule to Rule 10D would be applicable. The facts and circumstances of each case would determine the requisite documents/information to be maintained in relation to the international transactions carried on by the assessee. The requirement of law is not to maintain each and every document but maintain such documents as depending upon the facts and circumstances of the international transactions carried on by the assessee. Consequently, the application of all or more clauses of Sub Rules would not be attracted. In view thereof where the Assessing Officer has show caused the assessee to file details/documents maintained as per Rule 10D of Income Tax Rules without specifying any particulars itself, we find no merit in the order of the Assessing Officer levying penalty under section 271AA of the Act, holding the assessee not to have maintained certain documents. Further the Assessing Officer has levied the said penalty under section 271AA of the Act as the assessee had*

*defaulted in not maintaining details as per clause (g),(h) & (l) of Form No.10D, which as explained by the learned A.R. for the assessee, were not to be maintained by the assessee.*

19. On identical facts, the coordinate Bench of Delhi Tribunal had held in the case of *Convergys Customer Management Group Inc (supra)* that where the AO did not specify the documents / information required to be kept and maintained u/s 92D, the penalty under section 271AA was rightly cancelled.

20. Hon'ble Delhi High Court in *CIT vs Leroy Somer & Controls India (P) Ltd (supra)* had held that before levying penalty u/s. 271AA of the Act, the Revenue must first mention the documents or information which was required to be maintained, but not maintained or not furnished by the assessee and then proceed with penalty proceedings by observing as follows:

*14. Sub-rule (4) further states that the documents specified in subrules (1) and (2), as far as possible, be contemporaneous and should be latest by the specified date referred to in Section 92F(iv), i.e., due date in Explanation 2 below Section 139(1). Thus, indicating the documentation/information may be floating, transient and changeable. Constant assimilation may be required. Besides, data information can also vary. The tribunal has rightly concluded that with such a broad rule, which requires documentation and information voluminous and virtually unlimited, Section 271G has to be interpreted reasonably and in a rational manner. Information or documentation, which is assessee specific or specific to the associated enterprises, should be readily available, whereas other documentation or information relates to data bases or transactions entered into by third parties may require collation/collection from time to time. There cannot be any end or limit to the documentation or information relating to data bases or third parties. When there is general and substantive compliance of the provisions of Rule 10D, it is sufficient. The Legislature was conscious of this fact and, therefore, had specifically stipulated in Section 92D(3) that the Assessing Officer or Commissioner (Appeals) may require a person to furnish any information or document in respect thereof and on failure of the said person to furnish the documentation within the specified time, penalty under Section 271G can be imposed. Thus, for imposing penalty the Revenue must first mention the document and information, which was required to be furnished but was not furnished by the assessee within the specified time. The documentation or information should be one specified in Rule 10D, which has been formulated in*

*terms of Section 92D(1) of the Act. Looking from any quarter and angle, the appeal of the Revenue is misconceived, totally lacking in merits and is, therefore, dismissed. [Emphasis supplied]*

Though this judgement was delivered in the context of penalty u/s 271G of the Act for failure to furnish information or document as required u/s 92D(3) of the Act, the observations of the Hon'ble High Court are equally applicable in respect of penalty u/s 271AA of the Act for the failure to keep and maintain information and document as required by sub-section (1) or sub-section (2) of section 92D of the Act.

21. The other decisions relied upon by the assessee, which are passed by different Co-ordinate Benches of the Tribunal, are in the same line that penalty u/s.271AA cannot be levied without specifying the required documents failed to be maintained/furnished by the assessee. Thus, the issue is no more *res-integra*.

22. As already mentioned earlier the AO did not point out any specific default in maintenance of information/documents in respect of international transactions made by the assessee. On the other hand, the TPO had given a clean chit to the assessee in his report by stating that the assessee had furnished the details as called for. Thus, we do not find any infirmity in the order of the Id. CIT(A) deleting the penalty levied u/s 271AA of the Act. Therefore, the ground as raised by the Revenue is devoid of merit and is liable to be rejected.

23. In the result, the appeal of the Revenue is dismissed.

ITA No.634 to 640/Ahd/2024

24. The facts involved in ITA No.634 to 640/Ahd/2024 for assessment years 2013-14 to 2019-20 are identical to ITA No. 633/Ahd/2024. Therefore, the decision of ITA No. 633/Ahd/2024 is applicable *mutatis mutandis* to all the appeals of the Revenue in ITA No.634 to 640/Ahd/2024. Accordingly, the appeals of the Revenue in in ITA No.634 to 640/Ahd/2024 are dismissed.

25. In the final result, all the appeals of the Revenue are dismissed.

**This Order pronounced on 25/02/2025**

Sd/-  
(SUCHITRA KAMBLE)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 25/02/2025  
S. K. SINHA

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अद्येषित/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