

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI GEORGE MATHAN, JUDICIAL MEMBER**

I.T.A. No. 544/Mds/2011
(Assessment Year : 2006-07)

The Assistant Commissioner
of Income Tax,
Company Circle VI(1),
Chennai - 600 034 .

(Appellant)

M/s SSL-TTK Ltd.,
No.6, Cathedral Road,
Chennai - 600 086.
v.

PAN: AAFCS5498E
(Respondent)

Appellant by : Shri Anirudh Rai, CIT –DR &
Shri K.E.B. Rengarajan,
Junior Standing Counsel
Respondent by : Shri R. Vijayaraghavan, Advocate
Shri S.P. Chidambaram, Advocate

Date of Hearing : 15.02.2012
Date of Pronouncement : 15.02.2012

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by the Revenue, it assails an order dated 19.1.2011 of Commissioner of Income Tax (Appeals)-V, Chennai, for the impugned assessment year, whereby he deleted penalty levied on assessee under Section 271G of Income-tax Act, 1961 (in short 'the Act').

2. Short facts apropos are that assessee had filed its return for impugned assessment year on 29.11.2006. There being some international transactions exceeding the limit prescribed, there was a reference to Transfer Pricing Officer for determination of arms length price. During the course of proceedings, the Transfer Pricing Officer issued a letter on 25.11.2008 requiring the assessee to furnish information as required under Section 92D and 92E of the Act, on or before 24.12.2008. However, as per the TPO, assessee did not comply with the said letter nor did it seek any adjournment. Thereafter, the TPO issued a letter on 30.12.2008 whereby assessee was informed the penal provisions for failure to produce records called upon by the TPO. As per the TPO, assessee filed only part of the documents on 24.12.2008 and much of information required under Section 92D & 92E were not available. According to him, assessee filed documents only on 9.6.2009 after the statutory time limit of 30 days. Based on the above observations of the TPO, A.O. was of the opinion that assessee was liable for penalty under Section 271G of the Act. Assessee was put on notice in this regard. Reply of the assessee was that it had filed the required information before the TPO on 24th December, 2008 and such information covered 12 items out of 16 items requisitioned in the notice. As per the assessee, it

was the initial year of its operations and it had no experience regarding transfer pricing regulations. As per the assessee, it had made every endeavour to file the required records within the time allowed. However, A.O. was of the opinion that ignorance of law was not an excuse. He proceeded to levy penalty under Section 271G the sum equivalent to 2% on international transaction. Such a levy came to ₹ 2,31,32,759/-.

3. In its appeal before Id. CIT(Appeals), argument of the assessee was that the letter dated 25.11.2008 of Transfer Pricing Officer was a general one requiring it to furnish documents/ details as prescribed under Section 92D and 92E by 24.12.2008. As per the assessee, it had substantially complied with the said letter since 12 out of 16 items were filed before the TPO on 24.12.2008. The allegation of TPO that it had failed to comply with the notice was, as per the assessee, incorrect. Assessee also submitted that the notice issued by the TPO was not one under Section 92D(3) of the Act and letter of the TPO dated 25.11.2008 was only a notice issued under Section 92CA(3) of the Act. Reliance was also placed by the assessee on the decision of Delhi Bench of the Tribunal in the case of Cargill India Pvt Ltd vs DCIT (110 ITD 616). Id. CIT(Appeals) was appreciative of these contentions. According to him, TPO's letter dated 25.11.2008 did not

mention that it was issued under Section 92D(3) of the Act. Ld. CIT(Appeals) also noted that the TPO in his transfer pricing order had also mentioned that notice under Section 92CA of the Act was issued to the assessee on 25.11.2008 and this by implication clearly meant that the letter issued by the TPO to the assessee was not a notice under Section 92D(3) of the Act. He, therefore, was of the opinion that it was not a fit case for penalty under Section 271G of the Act and deleted the penalty imposed by the A.O.

4. Now before us, learned D.R., strongly assailing the order of Id. CIT(Appeals), submitted that Section 271G clearly gave power to the Assessing Officer to levy penalty where assessee had entered into international transaction and had failed to furnish documents or information required under sub-section (3) of Section 92D of the Act. As per learned D.R., the TPO had issued notice to the assessee on 25.11.2008 and such notice was nothing but a notice issued under Section 92D(3) of the Act. According to learned D.R., assessee had admittedly not furnished the information required within 30 days period under Section 92D(3) of the Act. Therefore, levy of penalty was justified.

5. Per contra, learned A.R. supported the order of Id. CIT(Appeals) .

6. We have perused the orders and heard the rival submissions. The facts on record are not disputed. The TPO's notice dated 25.11.2008 issued to the assessee, which appears at paper-book pages 18 and 19 filed by the assessee, is reproduced hereunder:-

"Sir,

Sub: Reference to Transfer Pricing Officer u/s.92CA of the Income-tax Act, 1961 - Maintenance and keeping of documents u/s.92D and 92E of the Act - Assessment year 2006-07 - reg.

Your case has been referred to me u/s.92CA by your Assessing Officer. In this connection, you are requested to furnish certain information in terms of Section 92D and 92E of the Act, as given in the enclosed questionnaire. These details may please be furnished to this office by 24th December, 2008. You are also requested to send the copies of Annual Reports for the last 3 years and also the copy of computation of total income.

Sd/-

(A.S. BINDHU)

Joint Commissioner of Income Tax
Transfer Pricing Officer -III (i/c)
Chennai.

Encl: Questionnaire."

The questionnaire mentioned was enclosed as an annexure to the above letter and such questionnaire required the assessee to produce records justifying the method adopted by the assessee for determination of arm's length price. Argument of the assessee is that the above letter could not be considered as a notice issued under

Section 92D(3) of the Act. Sub-section (3) of Section 92D reads as under:-

“(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard :

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.”

The question here is whether the letter issued by the TPO mentioned supra can be considered as a notice under Section 92D(3) of the Act. The finding of the Id. CIT(Appeals) that Transfer Pricing Officer himself had mentioned in the transfer pricing order that his letter dated 25.11.208 was one issued under Section 92CA of the Act has not been rebutted by the Revenue. In any case, assessee had by 24.11.2008 made substantial compliance with the requirements by filing information on 12 out of 16 items required by the letter dated 25th November, 2008. The specific failure of the assessee, if any, has not been pointed out by the Assessing Officer. If the Revenue alleges that there has been failure of the assessee with regard to production of any of the record, it was required to point out which record it had failed to produce and whether such record was one

which was prescribed under Section 92D(1) to be maintained by an assessee in respect of the international transactions entered into by it. It is also not disputed that finally the arm's length price adopted by the assessee was accepted by the TPO. This, in other words, would mean that even if we presume there was a procedural violation, it was a benign one. Looked from any angle, we are of the opinion that this was not a fit case for levy of penalty under Section 271G of the Act. Ld. CIT(Appeals) was justified in deleting such penalty. No interference is required.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court after conclusion of hearing on 15th February, 2012.

sd/-
(George Mathan)
Judicial Member

sd/-
(Abraham P. George)
Accountant Member

Chennai,
Dated the 15th February, 2012.

Kri.

Copy to: Appellant/Respondent/CIT(A)-V, Chennai-34/
CIT, Chennai-III, Chennai/D.R./Guard file