

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER AND
SHRI K.D. RANJAN, ACCOUNTANT MEMBER**

I.T.A.No.2704/Del/2011
Assessment Year : 2006-07

Nectar Lifesciences Ltd.,
1596, Bhagirath Place,
Delhi.
PAN: AABCS6468G

Dy. Commissioner of Income-tax,
Vs. Circle 13(1), New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Pratap Gupta, CA
Respondent by : Shri R. S. Negi, Sr. DR

ORDER

PER K.D. RANJAN, ACCOUNTANT MEMBER

This appeal by the assessee for Assessment Year 2006-07 arises out of the order of Commissioner of Income-tax (Appeals)-XX, New Delhi. The solitary ground raised by the assessee is reproduced as under:-

“Ld. CIT(Appeals) without appreciating the correct facts of case, is not justified in law and facts and circumstances of the case in confirming the penalty of Rs.1,00,000/- under section 271BA of the I.T. Act imposed by DCIT Circle 13(1) New Delhi.”

2. The only issue for consideration relates to confirming the penalty of Rs.1,00,000/- imposed under sec. 271BA of the Act. The facts of the case stated in brief are that during the year under consideration the assessee had

international transactions and was required to furnish Transfer Pricing Report under sec. 92E of the Income-tax Act, 1961 on or before the specified due date in respect of the year under consideration. Since the assessee failed to furnish report by due date i.e. 31st October, 2006, the AO initiated penalty proceedings under sec. 271BA of the Act. During the course of penalty proceedings the assessee filed accountant's report in Form No.3CEB on 25.07.2008 on DAK counter. However, no written submissions were advanced by the assessee for non-levy of penalty u/s 271BA of the Act. The AO again allowed opportunity fixing the case for hearing on 16.03.2009. The assessee vide its reply dated 20th March, 2009 submitted that the assessee being a corporate assessee was required to furnish the return electronically in prescribed form as per Rule 12 of the Income-tax Rules and physical return was to be filed within 15 days of filing electronic return. Further no documents were required to be annexed as per Rule 12(2) of the Income-tax Rules. Therefore, penalty proceedings u/s 271BA had been initiated without considering Rule 12 of the Income-tax rules. Since audit report u/s 92E had been furnished along with reply dated 25.07.2008, it was prayed that penalty proceedings initiated u/s 271BA of the Act should be dropped. The AO considered the reply of the assessee. He observed that as per proforma prepared for filing the return of income

electronically, most of the items of Tax Audit Report had duly been taken care of and the same were required to be punched in the electronic return. Because of this reason the assessee was spared from filing of all the reports of the auditor except the accountant's report in Form 3CEB relating to international transaction with associate enterprises. Since the assessee had filed auditor's report u/s 92E on 25.07.2008 i.e. after the due date, penalty u/s 271BA was to be imposed. The AO accordingly levied the penalty of Rs.1,00,000/- u/s 271BA of the Act.

3. On appeal before the CIT(A) the assessee reiterated the similar arguments. The learned CIT(A) after consideration of the submissions made by the assessee and the contents of the order passed by the AO observed that the assessee was required to furnish accountant's report in Form No.3CEB on or before 31st October, 2006. Since the assessee had failed to furnish accountant's report in Form No.3CEB as required u/s 92E of the Act on or before the due date, penalty under sec. 271BA of the Act was leviable. The learned CIT(A) accordingly upheld the levy of penalty u/s 271BA of the Act.

4. Before us the learned AR of the assessee submitted that audit report was ready on 27th September, 2006. However, since the assessee filed return of income electronically, annexures were not required to be furnished. The Audit Report in physical form was filed on 16.03.2008 i.e. before

completion of assessment. The return of income was also revised electronically on 12.3.2008. He further submitted that conduct of the assessee is bona fide and therefore, penalty u/s 271BA is not imposable. On the other hand, the learned Sr. DR submitted that the audit report in form No.3CEB was filed belatedly. The report was to be filed on or before the due date for filing the return of income. Therefore, penalty u/s 271BA is imposable.

5. We have heard both the parties and gone through the material available on record. U/s 92E every person who had entered into an international transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed. From the language of sec. 92E it is clear that the assessee has to obtain report in respect of international transaction from an accountant and the same is to be filed before the AO before the due date for filing of the return. Under Rule 10E the report from the accountant required to be furnished u/s 92E by every person who has entered into international transaction during the previous year shall be in form No.3CEB and verified in the manner indicated therein. From the language of sec. 92E it is clear that the report in Form 3CEB is to

be filed by the specified date i.e. due date for filing the return. Nowhere in sec. 92E or Rule 10E it is mentioned that such report should be annexed with return of income. Therefore, the contention of the learned AR of the assessee that as per Rule 12(2) the assessee was not required to file the report in Form 3CEB. Rule 12(2) of the Income-tax Rules, 1962 specifies that the return of income and return of fringe benefits shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self assessment, if any, claimed to have been paid or any document or copy of any account or form or report of audit required to be attached with the return of income or the return of fringe benefits under any of the provisions of the Act, shall not be filed. As per Rule 12(2), the return of income/Fringe Benefits shall not be accompanied by report of Audit. The report in form 3CEB from an accountant is not a report of audit. It is a report in respect of international transaction certifying the claim of the assessee. Therefore, the contention of the assessee that return of income in electronic form was not to accompany the report in Form 3CEB is not correct. The assessee was required to file the report u/s 92E read with Rule 10E before the specified date i.e. the due date for filing of the return. Since the assessee has not filed a report in Form

3CEB before the due date of filing of the return, penalty u/s 271BA is leviable. Accordingly, in our considered view the Assessing Officer has rightly imposed penalty u/s 271BA and the learned CIT(A) has confirmed the same. Accordingly, we do not find any infirmity in the order passed by the learned CIT(A) confirming the penalty u/s 271BA of the Act.

6. In the result, the appeal filed by the assessee is dismissed.
7. This decision is pronounced in the Open Court on 14th August, 2012.

Sd/-
(R.P. TOLANI)
JUDICIAL MEMBER

Sd/-
(K.D. RANJAN)
ACCOUNTANT MEMBER

Dated: 14th August, 2012.

Copy of the order forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

By Order

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Deputy Registrar, ITAT.