

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT  
JAIPUR**

D.B. Income Tax Appeal No. 104 / 2015  
Commissioner of Income Tax, Alwar.

----Appellant

Versus

M/S Gillette India Ltd. 65-A, Bhiwadi Industrial Area, Bhiwadi,  
Distt. Alwar.

----Respondent



For Appellant(s) : Mrs. Parinitoo Jain with Mr. Mukesh Meena

For Respondent(s) : Mr. Sanjay Jhanwar with Mr. Prakul Khurana  
& Ms. Archana

**HON'BLE MR. JUSTICE K.S. JHAVERI**

**HON'BLE DR. JUSTICE VIRENDRA KUMAR MATHUR**

**Judgment**

**Per Hon'ble Jhaveri, J.**

**23/05/2017**

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal of the revenue.

2. Counsel for the appellant has framed the following substantial question of law:

“Whether the Tribunal was legally justified in cancelling the penalty levied under Section 271G read with Section 274 for Rs.2,16,47,823/- specifically when the assessee deliberately avoided the production of T.P. documentation as required u/s 92D?”

3. In view of the fact that the identical issue has been decided today in the case of same assessee in Income Tax Appeal

No.134/2014, in view of decision of in the case of **Commissioner of Income Tax vs. Bumi Hiway (I) P.LTD.[2014] 110 DTR 0321 (Del.)** where in it has been held as under:



“6. What is clearly discernable from the penalty order is that reference was not made to any particular or specific date by which assessee was required to submit the documents; or whether the same were furnished within 30 days or within the extended period of 30 days thereafter. Penalty under Section 271G cannot be imposed in this manner. A specific finding should be recorded on the date by which the assessee was required to furnish documents and whether documents were furnished, if not which documents were not furnished and whether any extension of time was granted by the Transfer Pricing Officer and if the required documents were then actually filed. The penalty order is bereft and devoid of the said details and, therefore, shows lack of application of mind. Transfer Pricing Officer had indicated that the Assessing Officer might initiate proceedings under Section 271G but he also did not refer to date of notice, date of furnishing of information/documents etc. There was no mandate or affirmative direction that penalty shall be imposed by the Assessing Officer, as has been observed in the first part at the penalty order.

7. Commissioner of Income Tax (Appeals) deleted the penalty after noticing the factual matrix that the Transfer Pricing Officer vide notice dated 12.03.2003 asked the assessee to furnish copy of balance sheet, profit and loss account and other supporting documents. These were furnished on 20.06.2007.

8. Copy of the notice dated 23.03.2011 issued by the Assessing Officer has not been filed on record by the Revenue along with the present grounds of appeal. We do not know what was requisitioned and asked for by the said notice and which/what documents and details were supplied. We also do not know whether any extension of time was prayed for or granted by the

Transfer Pricing Officer and whether any hearing was fixed by the Transfer Pricing Officer pursuant to notice dated 12.03.2007. It appears that the Transfer Pricing Officer had asked for specific details and documents vide letter dated 12.06.2008 and these details were fully complied with on 25.06.2008 and 23.07.2008. Compliance of the letter dated 12.06.2008 was made within period of 30 days on 25.06.2008 and then subsequently on 23.07.2008. The date 23.07.2008 is within 60 days of issue of notice/letter dated 12.06.2008. We do not know the documents filed on 25.06.2008 and which documents or details were subsequently filed on 23.07.2008. There is no discussion on the said aspect in the order passed by the Assessing Officer, imposing penalty. In these circumstances, we do not find any merit in the present appeal and the same is dismissed."



4. In that view of the matter, the issue is answered in favour of the assessee and against the department.
5. The appeal stands dismissed summarily.

(VIRENDRA KUMAR MATHUR),J.

(K.S. JHAVERI),J.

Asheesh Kr. Yadav/191

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