

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON. VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON.JUDICIAL MEMBER

ITA No.702/PUN/2023
(A.Y. 2013-14)

M/s. Jyoti Paper Udyog Ltd., Plot No.B67, Nice, MIDC Satpur, Nashik - 422 007	vs	ACIT, Circle-1, Nashik.
PAN: AAACJ 7288 E		
Appellant		Respondent

Assessee by	:	Shri Sanket M. Joshi, CA
Revenue by	:	Shri Ramnath P Murkunde, DR
Date of hearing	:	06/09/2023
Date of pronouncement	:	20/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 28.04.2023 for A.Y.2013-14 as per the grounds of appeal on record.

2. This is a case of levy of penalty u/sec. 271AA of the Income Tax Act, 1961 (for short, 'the Act') for non-compliance of requirements u/sec. 92D of the Act.

3. The relevant facts of the case are that on verification of the audit report as submitted by the assessee, it was noticed by the Assessing Officer (AO) that assessee had reported transactions qualifying the amount exceeding Rs. 5 crores under the provisions of sec. 40A(2)(b)

of the Act. The Id.AR of the assessee was asked to furnish Form No.3 CEB report. The assessee was unable to produce audit report in Form No.3 CEB as required under the provisions of sec.92E of the Act. That, in response to the show-cause notice issued u/sec. 271AA of the Act, the assessee had submitted that this was the first year, in which the transfer pricing provisions were made applicable to specified domestic transactions as well. The assessee had approached its CA regarding implication and applicability of the said provisions to the assessee company. The CA has opined that the said provisions would not be applicable to the assessee. The submissions of the assessee were considered by the AO and held that since the assessee had specified domestic transaction above Rs. 5 crores it was mandatory to file audit report in Form No.3 CEB and since the assessee has not complied with the provisions of sec.92E of the Act, penalty u/sec. 271AA of the Act was levied on the assessee. The NFAC had upheld the findings of the AO.

4. We have perused the materials/documents on record. Heard the submissions of the parties and have considered the said submissions placed on record and the orders of the AO as well as the NFAC.

5. In this case, the assessee is neither denying that there was no specified domestic transaction nor the assessee is denying that such specified domestic transactions had exceeded Rs. 5 crores and that the assessee falls within the mandatory requirement to file audit report in

Form No.3 CEB. The assessee is only saying that non-compliance of the provisions of sec.92D and 92E had occurred because of the opinion given by the CA of the assessee and being bonafide, the assessee had complied with the opinion of its CA which ultimately resulted in the said violation. The assessee has always complied with the provisions of the Act and also this was the first year in which the transfer pricing provisions were made applicable to specified domestic transactions as well. Considering all these facts, let us examine the issue whether the case of the assessee falls within the ambit of 'reasonable cause' as provided u/sec. 273B of the Act or not. Sec.273B of the Act encompasses various situations where penalty may not be levied, if reasonable cause for such failure is established. One of the provisions included u/sec. 273B is also the penalty imposed u/sec. 271AA of the Act, which is the case of the assessee. When we say 'reasonable cause' it essentially attributes so far as income tax legislation is concerned, that in a given set of facts and circumstances, how the responsible man would behave and act upon. We have also to see that as a prudent taxpayer whether he has undertaken enough steps to ensure proper compliance with the provisions of the Act, having said so in the case of the assessee, the income tax matters were looked into on a day to day basis by the CA of the assessee company. It is, but, natural that assessee would rely upon the opinion given by the CA. We observe from paper book page No.170, the opinion of the CA of the assessee has been enclosed with. The relevant opinion is

extracted as follows:-

"I have considered the facts, provisions of the Income Tax Act, legislative history and relevant judicial pronouncements. On perusal of the same, I am of the considered opinion that the provisions of section 92C, 92D and 92E have been introduced in order to reduce litigation pertaining to determination of FMV of the related party transactions u/sec. 40A(2). Thus, the said provisions have been introduced to determine the quantification of disallowance to be made, if any, u/sec. 40A(2). Therefore, these provisions would apply only for the purpose of computing the FMV of related party transactions in cases where the disallowance u/sec. 40A(2) could be made. However, in the instant case, it is noticed that even if the FMV is found to be lower than the actual price paid by the assessee company to the two sister concerns, still there would be no loss of revenue and hence, in view of the settled position of law, as also held in Indo Saudi Travel Services P. Ltd. [310 ITR 306 (Bom)] and Glaxo SmithKline Asia Pvt. Ltd. (SC), the disallowance u/sec. 40A(2) would not be attracted. Accordingly, considering the intention of Legislature behind bringing the specified domestic transactions within the ambit of Transfer Pricing Regulations, in my opinion, the provisions of section 92C, 92D and 92E would not have application in the case of the assessee company."

The assessee, on a bonafide belief, has referred to the CA as a matter of normal practice, for his opinion and once the CA had said that these provisions were not applicable, the assessee had acted accordingly. We further find that assessee has taken all necessary steps which a prudent taxpayer would have taken so as to comply with the provisions of this Act.

6. Considering the totality of the facts and circumstances, we are of the considered view, the case of the assessee falls within the definition of 'reasonable cause' as enshrined u/sec. 273B of the Act. In view thereof, we set aside the order of NFAC and direct the AO to delete the penalty from the hands of the assessee. The grounds of appeal of the assessee stands allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in open Court on 20th September, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 20th September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.