

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.4632/Del/2016 for A.Y. 2011-12

ACIT, Central Circle-20, New Delhi PAN-AABCR 8863 N	Vs.	M/s. Micromax Informatics Ltd.,90B, Sector-18, Gurgaon, Haryana - 122015
(APPELLANT)		(RESPONDENT)

Assessee by	Ms. Rakhi Vimal, Sr. D.R.
Revenue by	Shri Ved Jain, Adv. Ms. Surbhi Goyal, C.A.

Date of hearing:	13/10/2020
Date of Pronouncement:	15/10/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 29.06.2016 of the Commissioner of Income Tax (A)-27, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a member of Micromax Group. A search and seizure operation u/s 132 of the Income Tax Act was conducted in the Micromax Group of cases and on assessee's premises on 10.02.2011. Assessee filed its return of income for A.Y. 2011-12 on 30.09.2011 showing total income of Rs.299,42,85,775/-. Subsequently, the assessment was framed u/s 144C r.w.s 143(3) vide order dated 21.10.2014 and the total income was determined at Rs.769,70,64,640/-. Penalty proceedings u/s 271AA was initiated along with the assessment order. The assessee was called upon to show-cause as to why penalty u/s 271AA of the Act not be levied to which assessee made the detailed submissions *inter alia* contending that it has kept and maintained all the information about the international transaction in its transfer pricing report, the books of the assessee company are audited and the report was furnished in Form 3CEB during the assessment proceedings. The submissions of the assessee was not found acceptable to AO. AO noted that assessee did not file Form 3CEB before 30.09.2011 for A.Y. 2011-12, being the specified date for its filing but the same was filed only on 18.07.2013 after the fact of non-compliance was confronted to assessee. He also noted that the special Auditor had reported that assessee did not keep and maintain the information/ documents in respect of international transactions implying that assessee was not keeping and maintaining the information as mandated by sub section (1) of Section 92D r.w.r. 10D of the I.T. Rules. He

also noted that the special auditor has given a finding of assessee's failure to comply with the provisions of Section 92/92D/92E of the I.T. Act. AO therefore, held that the assessee to be liable for penalty u/s 271AA and accordingly vide order dated 30.09.2015 levied penalty of Rs.52,83,853/- u/s 271AA of the Act. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 29.06.2016 (in Appeal No.216/15-16) deleted the penalty by observing as under:

“7. I have considered the facts of the case, written submissions of the appellant with regard to penalty of Rs. 52,83,853/- In which assessee explained the reason for the addition. Assessee is seen to have kept and maintained the information about the international transaction pertaining to A.Y 2011-12 in it's transfer pricing report which was submitted to Transfer pricing officer during the assessment proceedings. Books of the assessee company were seen to have been audited by Chartered Accountant and the report furnished in Form 3CEB and the same was submitted by the assessee during the assessment proceedings. These facts are evidence enough that assessee was maintaining the information and documents as prescribed under the law regarding International Transactions. Assessee had reported the international transaction which in it's opinion is liable to be transfer pricing study, in it's transfer pricing study and in Form 3CEB which was furnished by the assessee during the assessment proceedings, a copy of acknowledgement of filling of 3CEB was filed for reference during appeal proceedings. These facts justify that assessee has not failed in reporting of any international transaction which is applicable on the assessee.

*7.2 In view of the facts described above and the case laws relied upon by the appellant, it is proved that the assessee had disclosed all correct and accurate particulars of his income in return of Income tax. Accordingly, the penalty of Rs.52,83,853/- levied u/s 271AA deserves to be **deleted.**”*

4. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

5. Before us, Learned DR took us the findings and observation of the AO and supported the order of AO. Reliance was also placed on the decision of Hon'ble Apex Court in the case of Mak Data Pvt. Ltd. reported in (2013)258 ITR 593. The Learned AR on the other hand submitted that penalty u/s 271AA was initiated and levied on the total international transactions of Rs.26,41,92,634/-, comprising of loan advanced to AE amounting to Rs.25 crores and interest charged by the assessee amounting to Rs.1,41,92,634/- on such loans. He submitted that TPO in its order had computed the ALP of interest at Rs.2,47,59,085/- as against the interest on such loans of Rs.1,41,92,634/- declared by the assessee. However, after the direction of Hon'ble DRP, the adjustment was finally made by the AO to the extent of Rs.7,71,349/- which has been also deleted by the Tribunal vide order dated 20.02.2015. He therefore, submitted that finally no adjustment has been made in respect of Rs. 26,41,92,634/- on which penalty was levied by TPO and ALP is determined at the

value declared by the assessee. He further submitted that AO has levied penalty u/s 271AA on the ground that assessee had failed to report the international transactions and had initiated the penalty by invoking Clause – (ii) and (iii) of Section 271AA of the Act. He submitted that provision of Section 271AA were substituted by Finance Act 2012 w.e.f 1st April 2012 wherein Clause (ii) & (iii) were inserted and as per earlier provisions, penalty u/s 271AA could be levied only on the issue of failure to keep and maintain any such information/ document in support of international transactions and that there was no condition to impose penalty of failure of reporting international transaction in the return of income and/ or furnishing of incorrect information. He therefore, submitted that the condition of failure to report the transaction was inserted w.e.f 1st April 2012 and accordingly it cannot be imposed for A.Y. 2011-12. In support of the aforesaid contention, he relied on the decision of Kolkata Bench of Tribunal in the case of JCIT (OSD), Circle-8 (1) , Kolkata Vs. M/S. Kunjal Synergies Pvt. Ltd. AND (Vice- Versa)- 2019 (2) TMI 55 - ITAT Kolkata. He further submitted that Form 3CEB was furnished by the assessee during the course of assessment proceedings and TPO after due consideration of the documents information furnished by the assessee determined the adjustment which was subsequently deleted by the ITAT. He further pointing to the notice issued u/s 271AA dated 21.10.2014 submitted that no specific charge or allegation for which the penalty has been pointed by the AO. He submitted that in the absence of any

specific allegation in the notice issued by the AO, penalty levied by AO is unsustainable for which he placed reliance on the decision of Hon'ble Apex Court in the case of CIT v. SSA's Emerald Meadows. He therefore, submitted that CIT(A) has rightly deleted the penalty.

6. We have heard both the parties and perused all the relevant materials available on record. The issue in the present ground is with respect to levy of penalty u/s 271AA of the Act. We find that CIT(A) while deleting the penalty has given a finding that assessee has kept and maintained the information about the international transactions, the discussion of which is also in the Transfer Pricing Report which was submitted to the TPO during the assessment proceedings. CIT(A) thus concluded that the assessee was maintaining the information and documents as prescribed under the law regarding international transactions and that assessee has not failed in reporting any international transactions. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A). We further find that the ratio of the decision of Hon'ble Apex Court relied before us by Revenue is not applicable to the facts of the present case. Considering the totality of the aforesaid facts and the submissions made by Learned AR, we find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

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

Order pronounced in the open court on 15.10.2020

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Priti Yadav, Sr.PS

Date- 15.10.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	13.10.2020
Date on which the typed draft is placed before the dictating Member	13.10.2020
Date on which the approved draft comes to the Sr.PS/PS	15.10.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	15.10.2020
Date on which the fair order comes back to the Sr. PS/ PS	15.10.2020
Date on which the final order is uploaded on the website of ITAT	15.10.2020
Date on which the file goes to the Bench Clerk	15.10.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	