

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7087/Del/2018 : Asstt. Year : 2013-14

Mahanagar Telephone Nigam Ltd., 5 th Floor, MDS, 9, CGO Complex, Lodhi Road, New Delhi-110003	Vs	DCIT, Circle-1, LTU New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM0828R		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. B. M. Singh, Sr. DR

Date of Hearing: 09.11.2021

Date of Pronouncement: 14.02.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-22, New Delhi dated 27.08.2018.

2. Following grounds have been raised by the assessee:

"1. Commissioner of Income Tax (Appeals) [(CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) [CIT(A)] has erred both on facts and in law in confirming the action of the AO in levying penalty amounting to Rs,1,00,000/- under Section 271 BA of the Act on account of not filing the report of the accountant as required by section 92E of the Income Tax Act.

3. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals)

[CIT(A)] has erred both on facts and in law in confirming the penalty despite the fact that there being a 'reasonable cause' for not filing the report of the accountant as required by section 92E of the Income Tax Act.

4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) [CIT(A)] has erred both on facts and in law in rejecting the contention of the assessee that the assessee was under the bonafide belief that the alleged transaction is not an international transaction and thereby the assessee is not required to file report under section 92E of the Act.

5. On the facts and circumstances of the case, the learned A.O. has erred both on facts and in law in levying penalty u/s 271 BA of the Income Tax Act, ignoring the contention of the assessee that the appellant being a Government Undertaking, it cannot be said that it has an intention to fraud or has deliberately avoided the disclosure of alleged transaction by not filing the report section 92E of the Act."

3. The assessee filed return of income on 28.09.2013 declaring total loss of Rs.4716,99,71,358/-. The assessee company is engaged in the business of providing basic telephone and mobile services in the city of Delhi and Mumbai. The assessee company is Government of India PSU and a major player in the country in Telephone Services. It has also host of services like internet service provider services, IN services, integrated service digital network services, multimedia services, paging services and other value added services and to carry on the business of telephone, telegraph cable and wireless company etc. MTNL is also engaged in providing telecommunication services like internet, e-tendering, cyber café services and sale of ISP packs & Anmol Cards.

4. The AO levied penalty of Rs.1,00,000/- u/s 271BA of the Income Tax Act, 1961 on account of non-filing of report of accountant as required u/s 92E of the Act.

5. The Id. CIT(A) confirmed the order of the AO holding that as per the mandate of Section 92E, the assessee was to obtain audit report and file it before the due date for filing the return and since, the assessee defaulted the penalty was rightly levied.

6. Heard the arguments of both the parties and perused the material available on record.

7. MTML is responsible to pay salaries to the deputed employees and the Salary, cost of these employees are a charge on the profits of the Mahanagar Telephone Mauritius Limited (MTML). Also, the employees who are deputed to Mauritius are employees of Mahanagar Telephone Mauritius Limited (MTML) and the said employees are under direct control and supervision of MTML. The staff which was sent on deputation from MTNL was paid salaries in India by MTNL on the behalf of MTML. The said payment was made in India on the account of payment of salary in the bank accounts of the employees sent on deputation to MTML. Such payment was done in India and in Indian rupees by MTNL on the behalf of MTML which are reimbursable by the MTML. Further, in the instant case, MTML is responsible to pay salaries to the deputed employees and the Salary, cost of these employees are a charge on the profits of the Mahanagar Telephone Mauritius Limited (MTML). Also, the employees who are deputed to Mauritius are employees of Mahanagar Telephone

Mauritius Limited (MTML) and the said employees are under direct control and supervision of MTML.

8. MTNL was under a bonafide belief that the above transaction is not an international transaction. However, when made aware it was realized that such a transaction would be covered under the ambit of International Transaction. The salary payment made by the MTNL to the employees of MTNL deputed to MTML has been reimbursed by the MTML. It is also a matter on record that the Form No. 3CEB has been filed before the AO.

9. We have also considered the issue of loans & advances outstanding as on 30.01.2013 between MTNL and MTML.

10. Based on the adjustments as suggested by TPO, the revised statement of income for the relevant assessment year and form 3CEB was filed before the assessment of the said year and the assessment was completed by the AO on 6th October 2016. No ill intention of MTNL could be attributed of evading tax or non-compliance of the tax laws as the report was filed as required by the authorities

11. From the above mentioned facts and law, it is evident that MTNL was under bonafide belief that it is not required to file form 3CEB but later on realization of the facts and law, MTNL filed the same with the concerned authority.

12. We have gone through the provisions of the Act.

13. Section 271BA reads as under:

"Penalty for failure to furnish report under section 92E.

271BA. If any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of one hundred thousand rupees."

14. Section 92E reads as under:

"Report from an accountant to be furnished by persons entering into international transaction or specified domestic transaction.

92E. Every person who has entered into an international transaction or specified domestic 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."

15. Section 273B reads as under:

"Penalty not to be imposed in certain cases.

*273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, **section 271BA**, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271-I, 59[section 271J], clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of*

sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.”

16. Thus, we find that the provisions of Section 273B can be invoked in the case of the assessee as a reasonable cause for failure could be substantiated.

17. Further, in the case of CIT Vs. MP Electricity Board (MP HC) based on the judgment of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa held that the authority competent to impose the penalty would be justified in refusing to impose the penalty when there is a technical or venial breach of the provision of the Act are where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by statue. The assessee is a public sector undertaking cannot be deemed to have any deliberate inclination to avoid payment of tax or to follow the statutory provisions.

18. Hence, keeping in view the entire facts of the instant case, the law laid down and the provisions of the Section 92E, Section 271BA and Section 273B of the Act, we hereby direct that the penalty levied be obliterated.

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

Order Pronounced in the Open Court on 14/02/2022.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 14/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR