

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "B" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA.No.3955/Del./2019  
Assessment Year 2011-12

Trip Advisor Travel India Pvt. Ltd., E-20, 1 <sup>st</sup> & 2 <sup>nd</sup> Floor, Hauz Khas Main Market, New Delhi 110016 PAN AACCT9945Q (Appellant)	vs.	The ACIT, Circle-25(2), Room No. 192A, C.R Building, New Delhi 110002 (Respondent)
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For Assessee :	Shri Vishal Kalra, Advocate Ms. Sumisha Murgai, CA
For Revenue :	Ms. Kirti Sankratyayan, SR.DR

Date of Hearing :	19.12.2022
Date of Pronouncement :	26.12.2022

**ORDER**

**PER ANIL CHATURVEDI, A.M. :**

This appeal filed by the assessee has been directed against the order of the Ld. CIT(A)-28, New Delhi in Appeal No.93/18-19/1121 dated 01.03.2019 relating to the A.Y. 2011-12.

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

2.1. The assessee is a company stated to be engaged in providing marketing and other services to Trip Advisor Ltd., The assessee electronically filed its return of income for A.Y 2011-12 on 29.11.2011 declaring total of income at Rs. 62,04,833/-. A.O. has noted that during the year under consideration, assessee had entered into international transactions with its Associate Enterprises (AE's) and the A.O. referred the case to Transfer Pricing Officer (TPO) to determining the Arm's Length Price (ALP) of international transactions. The TPO vide order dated 21.01.2015 recommended an adjustment of Rs. 26,10,163/- u/s. 92CA(3) of the Act. Consequent to the order of the TPO, A.O. in the order passed u/s. 143(3) r.w.s. 144C(3) of the I.T Act 1961 order dated 22.04.2015 determined the total income of the assessee at Rs. 91,02,630/- inter alia by enhancing the income on account of transfer pricing adjustment as suggested by TPO.

2.2. Aggrieved by the order of the A.O. assessee carried the matter before the Ld. CIT(A) who vide order dated 30.12.2016 directed the TPO to re-compute the transfer pricing adjustment after making changes suggested therein. In accordance with the directions of Ld. CIT(A) the adjustment of Rs. 26,10,163/- on account of Transfer Pricing was revised to Rs. 49,45,059/-. On the aforesaid transfer pricing adjustment made, A.O. vide order dated 19.03.2018 passed u/s. 271(1)(c) imposed penalty of Rs. 16,42,625/- u/s. 271(1)(c) of the Act.

2.3 Aggrieved by the penalty order of the A.O. assessee carried the matter before the Ld. CIT(A) who vide order dated 01.03.2019 in appeal no. 93/18-19/1121 dismissed the appeal of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal and has raised the following grounds:-

1. *That on the facts and circumstances of the case and in law, the Assessing Officer ("AO") erred in levying*

*and CIT(A) erred in upholding the penalty of INR 16,42,625 under section 271(1)(c) of the Act for concealing income by furnishing inaccurate particulars.*

*2. That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the penalty levied under section 271(1)(c) of the Act, without appreciating that satisfaction has not been recorded by the AO before initiating penalty proceedings.*

*3. That on the facts and circumstances of the case and in law, the penalty levied by the AO in respect of the adjustment enhanced by the CIT(A) is bad in law as no satisfaction, which is a sine qua non for initiating penalty, was recorded by the CIT(A).*

*3.1 That on the facts and circumstances of the case and in law, the AO exceeded his jurisdiction in levying penalty on the quantum of adjustment enhanced by the CIT(A) in respect of which the CIT(A) only had the jurisdiction to initiate and levy penalty.*

4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO to invoke Explanation 7 to section 271(1)(c) of the Act, alleging that the Appellant had not acted in good faith and with due diligence in computing the arm's length price ("ALP") of the international transaction pertaining to provision of marketing support services ("MSS").*

5. *That on the facts and in the circumstances of the case, the CIT(A) erred in upholding the action of the AO levying penalty without appreciating that there was only bonafide difference in computing the ALP pertaining to provision of MSS, which was computed in accordance with the provisions of section 92C of the Act.*

4. Before us at the outset, Ld.AR submitted that though the assessee has raised various grounds but without arguing on the grounds raised therein he submitted that the addition that has been proposed by the Ld. CIT(A) has been set aside by the Tribunal and therefore the basis of levy of penalty does not survive and therefore the penalty levied by

A.O. and upheld by Ld. CIT(A) be deleted. To substantiate his aforesaid contentions, he submitted that against the quantum addition that was proposed by Ld. CIT(A), assessee had carried the matter before the Tribunal, wherein assessee had challenged the inclusion of certain comparables which had resulted into the upward adjustment. He submitted that the Tribunal vide order passed in ITA No. 1422/Del/2017 order dated 01.08.2019 had directed the inclusion of Goldmine Advertising Ltd, as a comparable company and directed Media Research Users Council (MRUC) to be excluded from the list of comparables. He submitted that if the directions given by Hon'ble ITAT are considered, then there would remain no adjustment on account of transfer pricing issue and in such a situation since the basis of levy of penalty would not survive, therefore penalty would not be leviable. He submitted that the assessee has vide letter dated 05.09.2022 and 07.12.2022 addressed to A.O. had filed the detailed calculation after taking into account the directions of ITAT and submitted that once the directions of Hon'ble Tribunal

are carried out, no adjustment would be required. He pointed to the copy of the letter addressed to A.O. dated 05.09.2022 and 07.12.2022 which are placed at page 84 to 90 of the paper book. He pointed to the working given in the table. He further stated that the A.O. has not yet given the appeal effect to the ITAT order. He therefore submitted that once the appeal effect is given by the A.O. there would be no addition and the basis of penalty would not survive. He therefore prayed that the penalty be deleted.

5. Ld. DR on the other hand did not controvert the factual submissions made by Ld.AR but however supported the order of A.O.

6. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to levy of penalty u/s. 271(1)(c) on that transfer pricing adjustment that were initially suggested by TPO but were subsequently enhanced by Ld. CIT(A). We find that the enhancement to transfer pricing adjustments directed by Ld. CIT(A), was challenged by the

assessee before the Tribunal. The co-ordinate Bench of Tribunal vide order dated 01.08.2019 had directed the inclusion/exclusion of certain comparables. We further find that the assessee has also made correspondence with the A.O. wherein assessee has *inter alia* requested him to carry out the appeal effect consequent to the directions of Tribunal, which is yet to be carried out by the A.O. It is the contention of the assessee that if the directions of the Tribunal for inclusion/exclusion of comparables are carried out by the A.O. then there would remain no basis for making any Transfer Pricing adjustments. The aforesaid factual contention of the Ld.AR has not been controverted by the Revenue. In such a situation, considering the totality of the aforesaid facts we find force in the contentions of the Ld.AR that no adjustment on transfer pricing issue would subsist and therefore there is no question of penalty u/s. 271(1)(c) on such addition. We therefore direct the deletion of penalty u/s. 271(1)(c) in the present case. **Thus the grounds of assessee are allowed.**

**7. In the result, appeal of the Assessee is allowed.**

Order pronounced in the open Court on 26.12.2022.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 26<sup>th</sup> December, 2022

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'B' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.