

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.103/SRT/2020**

**(निर्धारणवर्ष / Assessment Year: (2016-17)**

**(Physical Court Hearing)**

Assistant Commissioner of Income Tax, Circle-3(2), Surat, Room No.410, Aaykar Bhavan, Majura Gate, Surat-395001	<b>Vs.</b>	M/s Vinay Diamonds 201 to 205, 2 <sup>nd</sup> Floor, Avad Building, Opp. Mehta Petrol Pump, Katargam, Surat-395004
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAJFV 5089 M</b>		
<b>(अपीलार्थी /Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Appellant by : Shri Vinod Kumar– Sr. DR

राजस्व की ओर से /Respondent by : Shri Sapnesh R. Sheth, CA

सुनवाईकीतारीख/ **Date of Hearing** : 14/06/2023

घोषणाकीतारीख/**Date of Pronouncement**: 26/06/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the Revenue, pertaining to the assessment year 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-3, Surat [for short to as ‘CIT(A)’] dated 13.02.2020, which in turn arises out of a penalty order passed by the Asstt. Commissioner of Income Tax Circle-3(2), Surat /Assessing Officer (‘assessing officer’ for short) u/s 271-I of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 28.06.2019.

2. Grounds of appeal raised by Revenue are as follows:

*“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not upholding the penalty imposed u/s 271-I of the I.T. Act of Rs.70,00,000/-?”*

*2. Whether on the facts and in circumstances of the case and in law, the Ld CIT(A) has erred in deleting the penalty u/s 271-I of Rs.70,00,000/- by applying the Notification of the C.B.D.T. No. G.S.R.978(E) dated 16.12.2015 in spite of the fact that the said notification had come into effect only on 01.04.2016 and the assessing officer had levied penalty for the default committed by the assessee prior to that period?”*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the A.O may be restored.”*

3. All the above grounds of appeal raised by the Revenue are interconnected and mix, therefore, we shall adjudicate them together. Succinct facts qua the issue are that the assessee filed the return of income on 15.10.2016. The assessee is in the business of trading, import and manufacturing of diamonds. The rough diamonds are imported and payments are made through foreign outward remittance in foreign currency. The assessing officer observed that the provision of section 195(6) was amended by Finance Act 2015 and came w.e.f. 01.06.2015 and as per the amended provision the assessee had to provide the Form 15CA to the assessing officer for each transaction. The assessee had made 80 transactions of foreign remittance, out of which 10 transactions were made between the period 01-04-2015 to 31-05-2015, where provisions of section 195(6) of the Act, were not in force. The assessing officer held that section 195(6) of the Act, lays down that any person responsible for paying a sum to a non-resident or to a foreign company, whether it is chargeable to tax or not, has to furnish the information related to transaction in the form No.15CA/15CB. The assessing officer found on the verification that the 70 payments had been made to a non-resident from 1.06.2015 to 31.03.2016, in which requisite Form No.15CA was required to be submitted before the assessing officer. Since the assessee failed to provide FormNo.15CA/15CB, in 70 cases, therefore assessing officer held that the penalty provision u/s 271-I of the Act is applicable. The section 271-I of the Act was inserted w.e.f 01.06.2015, which mandates, that if the person failed to furnish such information before the assessing officer or furnishes inaccurate particulars, the assessing officer may levy a penalty of Rs.10000/-. In response to the notice of the assessing officer, the assessee furnished its reply before the assessing officer on dated 04.06.2019 and explained before the assessing

officer that relevant Form was not amended by the government, so penalty should not be levied. However, assessing officer rejected the contention of the assessee and held that considering the facts and circumstances of the case and legal position, the assessee committed a default by not furnishing the requisite Form 15CA/certificate before him in respect of 70 foreign remittance and therefore liable for levy of penalty u/s 271-I of the Act and hence assessing officer imposed penalty of Rs.70,00,000/-u/s 271-I of the Act, for the defaults.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A), who has deleted the penalty. The ld CIT(A) observed that the remittance made by the assessee was against the import of goods and does not attract the provision of withholding tax and therefore the requirement to furnish the details u/s 195(6) read with Rule 37BB is not mandatory. The form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and therefore later on the government amended the provision of section 195(6) by issuing notification no. G.S.R. 978(E) dated 16<sup>th</sup> December, 2015. The remittances which were made were against the import of goods and do not attract the provision of withholding tax and the requirement to furnish the details u/s 195(6) read with Rule 37BB is not mandatory, therefore, ld CIT(A) deleted the penalty. Aggrieved by the order of Ld. CIT(A) the Revenue is in appeal before us.

5. Learned Sr. Departmental Representative (Ld. Sr. DR) for the Revenue, argued that as per Section 195(6) of the Income Tax Act, 1961, the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed. This was substituted by the

Finance Act, 2015 with effect from 01.06.2015. As per this amendment and considering the provisions of this Section, the assessee has to provide the Form No. 15CA before the assessing officer for each transaction. While deciding the penalty matter in the appellate order, the Ld.CIT(A) has taken into consideration the Notification of the C.B.D.T. bearing No. 978(E) dated 16.12.2015. As per this Notification, the Ld.CIT(A) has observed that the remittance made by the assessee were against the import of goods and does not attract the provisions of withholding tax and the requirement to furnish the details u/s 195(6) r.w. Rules 37BB is not mandatory. The Ld.CIT(A) has also observed that there is lack of clarification of words expressively in the provisions only during the A.Y. and no specification has been made for penalty for each default. The above observations of the Ld.CIT(A) is not acceptable as the CBDT Notification No. G.S.R. 978(E) dated 16.12.2015, mentioned by the Ld.CIT(A), had come into force only on 01.04.2016 and the period of default for which the penalty u/s 271-1, levied by the assessing officer was prior to this period i.e. 01.06.2015 to 31.03.2016. Thus, the amendments mentioned in the said Notification are not applicable in the case of the assessee for the year under consideration. The retrospective operation of this amendment is not mentioned in the said Notification. Therefore, Id DR contended that penalty levied by the assessing officer should be confirmed.

6. On the other hand, Shri Sapnesh R Sheth, Ld. Counsel for the assessee defended the order passed by the Ld. CIT(A) and pleaded that all the details were filed online before the assessing officer. The remittance made by the assessee was against the import of goods and does not attract the provision of withholding tax and therefore the requirement to furnish the details u/s 195(6) r.w. Rule 37BB is not mandatory. The Form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and therefore later on the Government amended the provision of

section 195(6) of the Act by issuing notification no. G.S.R. 978(E) dated 16th December, 2015. Besides, there was conflict between section 195 and rule 37BB regarding the compliance of Form 15CA, which was later on amended by the government by Notification No. G.S.R. 978(E) dated 16<sup>th</sup> December, 2015. Therefore, penalty under section 271-I should not be levied for non-furnishing of Form 15CA. The Id Counsel, prays the Bench that speaking order passed by the Id CIT(A) may be confirmed.

7. We have considered the rival submissions and perused the relevant finding given in the impugned order Id CIT(A). We note that assessee is in the business of trading, import and manufacturing of diamonds. The rough diamonds are imported and payments are made through foreign outward remittance in foreign currency. The assessing officer held that the provision of section 195(6) was amended by Finance Act, 2015 which came w.e.f. 01.06.2015 and as per the amended provision the assessee had to provide the Form 15CA to the assessing officer for each transaction. The assessee had made 80 transactions of foreign remittance out of which 10 transactions, were made between the period 01-04-2015 to 31-05-2015, where provisions of section 195(6) were not in force. During the appellate proceedings, the assessee submitted that all the details were filed online before the assessing officer but he has not considered the submissions made on 23.05.2019. The remittance made by the assessee was against the import of goods and does not attract the provision of withholding tax and therefore the requirement to furnish the details u/s 195(6) r.w. Rule 37BB is not mandatory. The Form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and therefore later on the Government amended the provision of section 195(6) by issuing notification no. G.S.R. 978(E) dated 16th December, 2015. It was further submitted that Section 195 of the Income Tax Act, empowers the CBDT to capture information in respect of payment made to non-residents, whether chargeable to tax or not. On

another side, Rule 37BB of the Income-tax Rules has been amended vide Notification No.G.S.R.978(E) dated 16<sup>th</sup> December, 2015, to strike a balance between reducing the burden of compliance and collection of information under section 195 of the Act. The significant changes under the amended Rules are as follows:

- No Form 15CA and 15CB will be required to be furnished by an individual for remittance which do not require RBI approval under its Liberalized Remittance Scheme (LRS)
- Further the list of payments of specified nature mentioned in Rule 37BB which do not require submission of Forms 15CA and 15CB has been expanded from 28 to 33 including payments for imports. Following are the five new example payment types:
  1. “Advance payment against imports
  2. Payment towards imports-settlement of invoice
  3. Imports diplomatic missions
  4. Intermediary trade
  5. Imports below Rs.5,00,000/- (For use by ECD officers)”

8. Therefore, assessee submitted before Id CIT(A) that there was conflict between section 195 and rule 37BB regarding the compliance of Form 15CA, which was later on amended by the government by Notification No.G.S.R.978(E) dated 16<sup>th</sup> December, 2015. So, there is lack of clarification of words expressively in the provisions only during this assessment year and no express specification have been made for penalty for each default. So, penalty under section 271-I should not be levied for non-furnishing of Form 15CA.

9. The Id CIT(A), after considering the submission of the assessee, observed that the remittance made by the assessee was against the import of goods and does not attract the provision of withholding tax and therefore the

requirement to furnish the details u/s 195(6) r.Rule 37BB is not mandatory. The form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and therefore later on the government amended the provision of section 195(6) by issuing notification no. G.S.R. 978(E) dated 16<sup>th</sup> December, 2015. The remittances which were made were against the import of goods and do not attract the provision of withholding tax and the requirement to furnish the details u/s 195(6) r.wRule 37BB is not mandatory. The Form 15CA/15CB are required to be submitted only for those payments which are chargeable to tax in India and do not require RBI approval under its Liberalized Remittance Scheme (LRS).

10. The Id CIT(A) also noted that the list of payments of specified nature mentioned in Rule 37BB, which do not require submission of Forms 15CA and 15CB, has been expanded from 28 to 33, including 'payments for imports'. Hence, apparently there was conflict between section 195 and rule 37BB regarding the compliance of Form 15CA, which was later on amended by the government by Notification No. G.S.R. 978(E) dated 16<sup>th</sup> December, 2015. Since, the remittances which were made, were against the import of goods and does not attract the provision of withholding tax and the requirement to furnish the details u/s 195(6) r.w. Rule 37BB is not mandatory. Therefore, Id CIT(A) held that there is lack of clarification of words expressively in the provisions, and only during this assessment year and no express specification have been made for penalty for each default. The Income Tax Rules were amended w.e.f. from 16/12/2015, in which the list of payments of specified nature mentioned in Rule 37BB, which do not require submission of Forms 15CA and 15CB, has been expanded from 28 to 33. The amendment though came into effect from 16<sup>th</sup> December 2015, but it is a settled law that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. Therefore, Id CIT(A) held that the penalty provisions u/s 271-I of the Act will not be

applicable in the case and therefore Id CIT(A) deleted the same. We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the conclusion reached by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

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

Order is pronounced on 26/06/2023 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

Surat/दिनांक/ Date: 26/06/2023

*Dkp Outsourcing Sr.P.S./SAMANTA\*\**

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
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By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat