

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 1229/Chd/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Yamuna Power & Infrastructure Ltd. Sardana Nagar, Ambala Road, Jagadhri, Yamuna Nagar-135003	बनाम	The DCIT Yamuna Nagar
स्थायी लेखा सं. / PAN NO: AAACY0554A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से / Revenue by : Shri Dharam Vir, JCIT, Sr. DR
सुनवाई की तारीख / Date of Hearing : 25/04/2024
उदघोषणा की तारीख / Date of Pronouncement : 19/07/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the assessee against the order of the Ld. CIT(A), Panchkula dt. 19/06/2019 wherein the assessee has challenged the action of the Ld. CIT(A) in sustaining the levy of penalty under section 271AA amounting to Rs. 5,55,887/- for alleged default in not reporting the specified domestic transaction in Form No. 3CEB.

2. Briefly the facts of the case are that the assessee company filed its return of income declaring total income of Rs. 1,44,79,523/- which was subsequently revised and thereafter the case of the assessee was selected for scrutiny and notices were issued.

2.1 During the course of assessment proceedings, the AO referred the matter to the Transfer Pricing Officer (TPO) for determining the Arms Length Price in respect of International transactions and specified domestic transactions entered into by the assessee with Associate Enterprises. Thereafter, the TPO examined the Transfer Pricing documentation which contained the functional and economic analysis of the assessee and the comparables and no adverse inference was drawn in respect of International and Specified Domestic Transactions so undertaken by the assessee in terms of his order passed under section 92CA(3) dt. 28/09/2017. At the same time, the TPO in his order has stated that the assessee has not reported transactions, relating to purchase amounting

to Rs. 2,35,34,333/-, rent paid amounting to Rs. 60,000/- and remuneration paid to Directors amounting to Rs. 42,00,000/-, in Form 3CEB and it was stated that the AO shall examine the initiation of penalty proceedings under section 271AA for not reporting the said transaction in Form No. 3CEB.

2.2 The AO, thereafter, concluded the assessment proceedings vide order passed under section 143(3) dt. 03/11/2017 wherein the assessed income was determined at Rs. 2,53,88,510/- and referring to the order passed by the TPO under section 92CA(3), the AO stated that the facts have been examined and it has been found that the assessee has not reported transactions relating to rent paid, Directors remunerations and Purchase in Form 3CEB and accordingly the penalty proceedings under section 271AA were separately initiated against the assessee for not reporting the said transaction in Form No. 3CEB.

2.3 During the course of penalty proceedings, the notices were issued and considering the submissions filed by the assessee but not finding the same acceptable, the AO held the assessee to be liable for penalty under section 271AA and levied the penalty of Rs. 5,55,887/- @ 2% of the total specified domestic transactions amounting to Rs. 2,77,94,337/-.

2.4 As per the AO, the assessee has entered into following specified domestic transactions with related parties namely purchase made from M/s Yamuna Insutech Private Limited amounting to Rs. 2,35,34,337/-, rent paid to SS Sardana (HUF) amounting to Rs. 60,000/-, remuneration paid to Shri Sanjeev Sardana (Director) amounting to Rs. 30,00,000/-, and remuneration paid to Director, Shri Rajeev Sardana amounting to Rs. 12,00,000/-.

2.5 As per the AO, the assessee did not furnish the details of related parties transactions in Form 3CEB and even didn't furnish the copy of the relevant ledger account during the course of penalty proceedings inspite of being asked from time to time, otherwise the assessee could have proved bonafides of the transactions by putting on record the ledger account as well as bank accounts co-relating the purchases with respective payments have been made and the same shows the laxity

on the part of the assessee and the fact that it did never try to elaborate on the matter to establish the genuineness of the transaction so executed with the related parties.

2.6 As per the AO, Form 3CEB is a specified form where every assessee is under obligation to report the transactions executed with AE to enable the authority including the TPO to examine the reasonableness of the rates charged for the particular transactions executed with the related parties to obfuscate any unreasonable passing of profits from one concern to other particularly in respect of concerns claiming deduction under Section 80IA which is particularly relevant in the case of the assessee where it has been claiming deduction under section 80IA for last many years which is under challenge by the Department.

2.7 It was stated by the AO that the assessee did not put on record even the ledger account of the party which could have been examined during the course of proceeding in respect of purchases made from M/s Yamuna Insutech Private Limited and neither the other ledger accounts in respect of rent and remuneration payments to the Directors was furnished and in absence of these documentation, the authenticity of the books of account are in doubt.

2.8 It was held by the AO that the assessee has been repeatedly asked to furnish the ledger account which it has failed to produce and it was under legal obligation to maintain accounts as required under Section 92E whereas it failed to do so and did not make any effort to establish that all the accounts are being maintained and accordingly, the assessee was held liable for levy of penalty under section 271AA of the Act.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and the following submissions were made before the Ld. CIT(A):

"4.1 During the appellate proceedings, the AR of the appellant filed written submissions relevant parts of which are reproduced below:

"1.1 The year under review is the first year in which the appellant was covered under Chapter-X/Section-92 of the Income Tax Act. For the purpose of complying with the relevant provisions, the appellant sought the advice of its professionals' consultants (Chartered Accountant-Auditors). The appellant was given to understand that the provisions of Section-92D are applicable only on such transactions, as are above the specified amount for such transactions individually (the quantum of specified amount of transaction(s) was Rs. 500.00 Lakh during the year under review). The above contention of the appellant finds support from the fact that such professional(s)/Auditors in the report

u/s.92E (in form No.3CEBi dt. 01.07.2014 had reported only such transactions of that quantum/nature (Copy of report u/s. 92E of the Act enclosed at Page-8 to 14).

It may not be out of place to say that the auditors in the report u/s.44AB of the Act (in Form CD) dt. 23.09.20/4 had reported all the details of payments made to persons covered u/s.40A(2)(b) of the Act including those reported in the report u/s.92E. (Copy enclosed at Page-15 to 27).

1.2 It was under the above said circumstances the appellant though had readily available all the details of such transactions as are alleged to have not been reported in report WS.92E of the Act with it but did not report the same. Having all the details with it, the maintenance of relevant details/record with regard to the impugned transaction(s) was not difficult for the appellant along with the record maintained by it in respect of the other transactions reportable u/s.92E of the Act. The detail(s) of such impugned transaction(s) was submitted to the Transfer Pricing Officer (TPO) by the appellant - suo-moto. No discrepancy(ies)/short fall was found in the information furnished to the Ld. Transfer Pricing Officer, who after examination of the documents placed on record and application of his mind did not deem expedient to interfere in the pricing of any of the transaction(s) covered u/s.92D of the Act including the impugned transaction(s) which were not reported in the report u/s. 92 E . (Copy of the order dt. 28.09.2017 enclosed at Page-28 & 29).

2. A copy of the report u/s.44AB of the Act (in Form 3CD) was filed with the Ld. Assessing Officer vide letter dt. 07.01.2016 (Copy at Page-30) where in the details of all the transactions entered in to by the appellant with the persons covered u/s.40A(2)(b) of the Act were furnished. No where during the course of assessment proceedings and/or preceding u/s 271 AA of the Act the appellant was asked to provide any details/copies of account of such transactions. No such notice/questionnaire/order sheet entry in this regard is available on record/file of the appellant with the department. The Ld. Assessing Officer while levying the impugned penalty has time and again referred to the failure on part of the appellant to provide the details. The allegation of the Ld. Assessing Officer in this regard is baseless and devoid of any factual, documentary evidence.

2.1 All the details/information/copies of account etc. of the impugned transactions alleged to have not been reported were supplied to the Ld. TPO who after considering the same and application of his mind did not deem it expedient to interfere in the pricing of any of the specified transaction(s). All such details being available with the appellant, there was no reason for it, not to supply the same to the Ld. Assessing Officer, had, it been asked for. This fact itself supports the contention of the appellant and refutes the allegation of the Ld. Assessing Officer.

2.2 The appellant during the course of penalty proceedings had filed its submission dt. 2J . 02.2018 with the Ld. Assessing Officer, (Copy at Page -31 to 33/ where at Para-4 it was requested as under:

"Please let the assessee know, if any, further clarification/explanations is required to be made with regard to the proceedings under review".

In spite of the same, no communication by to the Ld. Assessing Officer was made to the appellant. The allegation of the Ld. Assessing Officer that the appellant did not file the copies of account etc. of the impugned specified transactions being wrong is denied.

2.3 The details/copies of account(s) etc. of the impugned transactions did not have any bearing on the proceedings u/s.271AA of the Act. The details thereof were relevant for assessing the Transfer Pricing of the impugned transactions, which exercise had already been done by the Ld. TPO and the predecessor of the Ld. Assessing Officer. None of the above officers took any adverse inference on the Pricing of any of the specified transaction(s), including the impugned ones.

3. It may not be out of place to say that the alleged non disclosure of impugned transaction(s) was neither because of any malafide intention on the part of the appellant nor it resulted in to any loss to the revenue at all. but was only a technical/venial omission, if any. on the part of appellant.

4. Your honour will please appreciate that the appellant having acted on the advice of his consultants was under a bona-fide/reasonable belief of its having made the requisite disclosures. Any alleged omission on its part was a result of a bona-fide/reasonable cause as such is squarely covered u/s.293BB of the Act.

5 The above submission(s) lead to the following matrix in the case of the appellant.

a. The appellant on the basis of advice of its professional(s)/consultant(s) had acted in good faith and did not maintain record of the impugned transactions in the manner as required u/s.92 of the Act, though all the details required were available with it.

b. All the relevant details were furnished to the Ld. TPO by the appellant suo-moto, who after considering the material on record, submissions of the appellant and application of his mind did not deem fit to interfere in the pricing of any of the specified transactions.

c. All the specified transactions required to be disclosed u/s.92E were duly disclosed in the report u/s.44AB of the Act and were brought to the notice of the Ld. Assessing Officer/available on assessment record. The default in this regard, if any, on the part of the appellant was only a Technical/Venial default which resulted in no loss to the revenue.

d. The appellant had no malafide intention/reason to suppress the disclosures/ furnishing of the details-documents with regard to the impugned specified transactions, specially in view of the fact that all relevant details were available with it, and it had filed the same with the Ld. TPO/Ld. Assessing Officer during the Transfer Pricing/assessment proceedings. The allegation of the Ld. Assessing Officer that the details/copy of account etc. were not filed by the appellant, as stated above stands refuted.

e. Under the circumstances, as stated above the appellant had a bonafide/reasonable belief that the record/documents maintained by it with regard to the specified transactions was duly maintained by it to the extent required. There was no deliberate omission on its part in maintaining record in accordance with the requirements of Section-92D of the Act with regard to impugned transactions as such it is squarely covered u/s. 293BB of the Act.

Under the aforesaid state of affairs, the appellant having acted upon the advice of his Chartered Accountant, having disclosed all the required details u/s.44AB-of the Act and providing the same to the Ld. TPO, having no malafide intentions in this regard, and having a bonafide/reasonable belief of having disclosed all the required details, the default, if any, on its part being only a Technical/ Venial on account of which no loss was resulted to the revenue, no penalty u/s.271AA is warranted on it. The penalty levied by the Ld. Assessing Officer deserved to be deleted."

3.1 The submissions so filed were considered but not found acceptable to the Ld. CIT(A) and levy of penalty under section 271AA was upheld. As per the Ld. CIT(A), the assessee company undertook transactions with related parties which were covered under the provisions of Section 92E and it was therefore required to furnish the details of such transactions in Form No. 3CEB and it is undisputed fact that the assessee company did not report said transaction as so required under Section 92E and reporting of transactions with AE is necessary for the AO and the TPO to examine the transfer pricing charged by the assessee and in absence of reporting the same, the issue may escape the attention of the AO and given the fact that the assessee has claimed deduction under section 80IA which is under challenge by the Revenue before the Judicial Forum for the past several years, the compliance by the assessee company with all the statutory requirement is all the more necessary. It was held by the Ld. CIT(A) that non reporting of the transaction will cause a hindrance to the AO in examination of unreasonable passing of profits from one concern to another. And the plea of the assessee that the transaction were not reported in Form 3CEB on the advice of professionals/chartered accountant does not come to the aid of the assessee

company as it is the duty of the assessee company to comply with all the statutory requirements.

3.2 It was further held by the Ld. CIT(A) that the various case laws cited by the assessee in its favour do not apply in the instant case as in those case laws, the assessee had produced an Affidavit from the professionals that the said omission / error was made on their advise, however in the instant case the assessee has failed to produce any such evidence.

3.3 It was further held by the Ld. CIT(A) that the reporting of the transaction in the audit report under section 44AB of the Act does not absolve the assessee from its default of not reporting the same in Form 3CEB under the provisions of Section 92D of the Act and accordingly, levy of penalty under section 271AA was held to be justified and the action of the AO was upheld and the ground of appeal so taken by the assessee was dismissed.

4. Against the said findings and directions of the Ld. CIT(A), the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that the complete details relating to the transactions entered into with the sister concerns covered under section 40A(2)(b) were duly disclosed as part of the Form No. 3CD which has been placed as part of the assessee's paper book at page 1 to 13. It was further submitted that while filing Form 3CEB, only transaction entered into with M/s Yamuna Cable Accessories Private Limited totalling Rs. 2,05,71,980/- were reported as the assessee was under the bonafide belief that only the transaction that exceeded Rs. 5 Crores qualified as specific domestic transaction and which are required to be reported in Form 3CEB.

5.1 It was further submitted that during the course of proceedings before the TPO, all the relevant details and documents in the context of the specified domestic transactions were submitted and the said fact has also been acknowledged and stated in the order so passed by the TPO under section 92CA(3). It was submitted that it was only on the basis of details submitted by the assessee that the TPO determined the ALP without making any adverse comment and thereafter the assessment order was

framed and therefore there is no truth in the allegation so made that the appellant intended that the transactions may escape the attention of the AO/TPO.

5.2 It was further submitted that the TPO passed the order on 25/09/2017 and thereafter the assessment order under section 143(3) was passed on 27/12/2017 and therefore it is clear that as on the date of passing of the TP order as well as the assessment order, the requisite documents were available before the authorities and based on such documents, the transfer Pricing assessment as well as regular assessment proceedings were completed. It was submitted that it is a fact on record that no adverse comment was made by the TPO about the documentation or production thereof as it was only after the examination made by the TPO, the assessment order was framed by the AO. Therefore the allegation that non-reporting of transaction could cause hindrance to the TPO/AO in examining of the unreasonable passing of profits has no basis.

5.3 It was further submitted that there is no malafide intention in not reporting the transaction in Form 3CEB as the assessee has already disclosed all these transactions in Form 3CD and given the fact that the assessee was under the impression under advise of the Counsel that only transaction exceeding Rs 5 Crores were to be reported in Form 3CEB, the transaction undertaken with M/s Yamuna Cable Accessories Private Limited were only reported. In this regard, during the course of hearing, our reference was drawn to the submissions made before the DCIT/TPO dt. 13/09/2017 wherein the assessee has submitted as under:

"The assessee has filed the details of its associates with whom it had dealing (s)/transaction(s) above the specified value of the transactions of Rs.500 Lakhs and above. The year under review was the first year of the assessee to fulfill the requirement of the chapter X of the Income Tax Act, The assessee depended on the advice of its Professional's/Auditor's for the purpose. The Auditor's of the assessee who audited its accounts, advised it that the provisions of the section 92D are applicable only on those transactions which are above the specific amount of such transactions(s)as defined 92BA for the purpose. The specific amount as per said-section during the year under review was Rs. 500 Lakhs. It may not out of place to say the auditor's in their report under section 92E in form no. 3CEB dt. 01.07.2014 had reported the transaction(s) of that nature/quantum only. It was on the basis of professional advised by its auditor's that the record as required under chapter X of the act was prepared and maintained by the assessee for the purposes. Under the said matrix, the assessee had been under a bonafide belief of the facts as stated above. The failure of assessee, if any, to comply with, provisions of the chapter X Of the act was, because of the above facts/ circumstances."

5.4 It was further submitted that the books of accounts of the assessee have been duly audited by a Chartered Accountant and no adverse findings have been recorded

by the AO or that by the TPO in terms of non-maintaining of the documents and it was the mere case of a technical and venial error on the part of the Counsel of the assessee whereby he advised the assessee not to report the transaction under consideration. Further, reference was drawn to the various authorities wherein it has been held that where there is no deliberate default, the levy of penalty under section 271AA of the Act is not sustainable.

5.5 Further, our reference was drawn to the representation letter issued by the statutory Auditors of the assessee company M/s K.M. Agrawal & Co. wherein referring to the definition of "Associated Enterprises" and "specified domestic transaction", it has been stated that there was no wrong reporting in Form No. 3CEB and in this regard, it was stated that on perusal of notes on account of the company forming part of the audited financial statement as on 31/03/2014, it can be seen that the reporting has been done for all the persons and are covered under section 40A(2)(b) of the Act. However for the purpose of reporting of specified domestic transaction in Form 3CEB, what has been to be seen is the transaction which have been undertaken with AE as so defined in Section 92A of the Act and in the instant case, only Yamuna Cable Associates (P) Ltd. qualify as Associated Enterprises as per Section 92A and the transaction so undertaken with Yamuna Cable Associates (P) Ltd. have been duly reported in Form No. 3CEB. However as far as the transaction with Yamuna Insutech (P) Ltd. is concerned, the said enterprise though qualify as the related enterprises as per the provision of Section 40A(2)(b) of the Act, it does not fall in the ambit of definition of Section 92A as no person holds more than 26% shares in Yamuna Insutech (P) Ltd. and regarding other three transactions, the same are transaction with SS Sardana (HUF), Sanjeev Sardana, and Rajeev Sardana and they doesn't fall in the definition of "Associated Enterprises" as so defined under Section 92A of the Act.

5.6 It was submitted that similar transactions with the specified entities/persons have been undertaken in the subsequent assessment years and no adverse view have been taken by the Revenue wherein the assessee continue to follow the same fact pattern wherein the transaction with Yamuna Cable Associates (P) Ltd. have been reported as part of Form No. 3CEB, however as far as the other transactions are concerned, the

same have not been reported in the subsequent assessment years and our reference was drawn to Form 3CEB and assessment order passed u/s 14(3) for A.Y 2015-16.

5.7 It was further submitted that the levy of penalty under section 271AA is discretionary in nature and therefore considering the facts and circumstances of the present case, the penalty so levied and confirmed by the Ld. CIT(A) be directed to be deleted.

6. Per contra, the Id DR has vehemently argued the matter and has relied on the findings of the AO and that of the Id CIT(A) which we have duly noted as above.

7. We have heard the rival contentions and perused the material available on record. The penalty under provisions of section 271AA is leviable under the following situations namely, where the person (entering into an international transaction/a specified domestic transaction) fails to keep/ maintain information and documents as required under section 92D(1) or section 92D(2) of the Act, secondly, where the person (entering into an international transaction/a specified domestic transaction) fails to report the said transaction and thirdly, where the person (entering into an international transaction/a specified domestic transaction) maintains incorrect information / documents or furnishes incorrect information/documents. There are thus three separate charges/offences which have been specified in the statute and on satisfaction of one or more of such charges, the penalty u/s 271AA can be levied. In a particular case, it needs to be seen on what ground(s) the proceedings have been initiated and on what ground(s), the proceedings have been completed and penalty levied. Once the proceedings are initiated on one or more grounds, the penalty should also be imposed on the same grounds. It is a settled legal proposition that where the basis of the initiation of penalty proceedings are not identical with the ground on which the penalty is finally imposed, the imposition of penalty cannot be sustained and deserve to be set-aside.

8. In the instant case, the levy of penalty has been initiated for non-reporting of the specified domestic transactions in Form 3CEB entered into by the assessee. From the perusal of the penalty order, it is noted that even the AO initially talked about the initiation of penalty for non-reporting of the specified domestic transactions entered

into by the assessee in Form 3CEB, however, if we examine the latter part of the penalty order, it is noticed that the AO has talked repeatedly and has laid great emphasis about non-furnishing of the ledger accounts and bank accounts during the penalty proceedings to establish the genuineness of transactions with related parties and has stated that the authenticity of the books of accounts are in doubt and finally, he has held that the assessee was under legal obligation to maintain accounts as required u/s 92E which it has failed to do so and it didn't take any efforts to establish that the accounts are properly maintained and has levied the penalty. We therefore find that the penalty has been initiated for failure to report specified domestic transactions in Form 3CEB whereas the penalty has been finally levied for failure to maintain accounts as required u/s 92E of the Act. The requirement to maintain information and documents are specified in section 92D and not section 92E and even if, we ignore wrong mention of the section, the basis for initiation and finally levy of penalty are clearly distinct and on this ground itself, the imposition of penalty cannot be sustained and deserve to be set-aside.

9. Having said that, if we look at the explanation furnished by the assessee for non-reporting of the specified domestic transactions, the assessee has explained that it has acted on the professional advice of its auditors who have advised to report only those transactions that exceeded the threshold of Rs 5 crores and basis such advice, the transaction undertaken with M/s Yamuna Cable Accessories Private Limited were duly reported in Form 3CEB and as far as other transactions are concerned, since they didn't exceed the prescribed threshold, the same were not reported. In this regard, during the course of hearing, our reference was drawn to the submissions made before the DCIT/TPO dt. 13/09/2017 and we find that the TPO in his order has not commented anything adversely against the said explanation and even the AO while levying the penalty has not recorded any adverse finding in this regard. In view of the same, we find that where the assessee has acted on the professional advice of its auditors, it has a reasonable basis for non-reporting such transactions in terms of section 273B of the Act and no adverse view need to be taken penalising the assessee for its conduct in absence of any malafide being alleged by the authorities for non-reporting these transactions or disputing the explanation so furnished by the assessee. In any case, the

TPO has examined these specific domestic transactions during the course of transfer pricing proceedings basis information/documentation submitted by the assessee and no adverse view has been taken by him in terms of any transfer pricing adjustment been proposed by him.

10. In light of the aforesaid discussion and in the entirety of facts and circumstances of the case, we are of the considered view that the penalty u/s 271AA cannot be sustained and is hereby set-aside.

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

Order pronounced in the open Court on 19/07/2024.

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar