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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: September 03, 2014

+ ITA 440/2014

COMMISSIONER OF INCOME TAX-I

..... Appellant

Through: Mr. Kamal Sawhney, Sr. Standing Counsel

versus

M/S BUMI HIWAY (I) P. LTD

..... Respondent

Through: Ms. Shashi M. Kapila, Advocate with Mr. R. R. Maurya and Mr. Pravesh Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

1. This appeal by revenue, impugns order dated 09.01.2014 passed by Income Tax Appellate Tribunal ('Tribunal' in short) upholding the order passed by Commissioner of Income Tax (Appeals) deleting penalty of Rs.14,84,099/- imposed under Section 271G of the Income Tax Act, 1961 ('Act' in short).

2. Tribunal in the impugned order has specifically records and notices that the Transfer Pricing Officer in his order dated 17.10.2008 had accepted and recorded that required documents were submitted. After discussion with the representative of the respondent assessee no adverse conclusion was



drawn. No addition was made to the Arm's Length Price on international transactions entered into by the respondent assessee during the period in question.

3. Thus, it is not the case of the revenue that the relevant documents as mandated under Section 92D read with Rule 10D were not furnished to the Transfer Pricing Officer. The question raised is whether there was any delay in submission of the said documents. The Assessing Officer vide order dated 29.03.2011 imposed penalty under Section 271G recording that return of income for the assessment year 2005-06 was filed on 31.10.2005 declaring income of Rs.33.99 Crores turnover included international transactions amounting to Rs.74.20 Crores. Penalty order records that the Transfer Pricing Officer by order under Section 92CA(3) had recommended that since the respondent assessee had failed to furnish information and documents under Section 92D, the Assessing Officer "shall" impose penalty under Section 271G of the Act.

4. The assessee had filed a reply stating that documents prescribed under Rule 10D were filed and placed on record before the Transfer Pricing Officer and penalty should not be imposed and in fact should not have been initiated.



5. The Assessing Officer rejected the said contention observing as under:-

"The submission of the assessee has been considered and found to be unacceptable no doubt the documents are filed by the assessee but the same were filed beyond the time allowed under section 92D(3) of the Act. Moreover, the assessee not filed any documentary evidence to show that the documents are filed by the assessee within the time allowed under section 92D(3) of the I.T.Act. Further the TPO officer vide note No.2 directed the A.O. as under:-

"The assessee has failed to submit documentation prescribed under rule 10D within the time allowed under section 92D(3) of the Act. The AO may initiate penalty u/s 271 G of the Act. "

Therefore, it is clear that it is a deliberate default of the assessee. Therefore, I am convinced that the assessee had committed default for imposition of penalty u/s, 271 G of the Act. Hence, penalty u/s. 271G of the Act, 1961 leviable in this case is Rs.1484099/- (2% of 74204992/-). Therefore, penalty of Rs.1484099 is hereby imposed.

This penalty order is being passed with the prior approval of the Addl. CIT, Range-3, New Delhi vide letter No. Addl. CITIR-3/Approval-Penalty/2010-1113244 dated 29.3.2011.

Issue necessary forms."

6. What is clearly discernable from the penalty order is that reference was not made to any particular or specific date by which assessee was required to submit the documents; or whether the same were furnished within 30 days or within the extended period of 30 days thereafter. Penalty under Section 271G cannot be imposed in this manner. A specific finding



should be recorded on the date by which the assessee was required to furnish documents and whether documents were furnished, if not which documents were not furnished and whether any extension of time was granted by the Transfer Pricing Officer and if the required documents were then actually filed. The penalty order is bereft and devoid of the said details and, therefore, shows lack of application of mind. Transfer Pricing Officer had indicated that the Assessing Officer might initiate proceedings under Section 271G but he also did not refer to date of notice, date of furnishing of information/documents etc. There was no mandate or affirmative direction that penalty shall be imposed by the Assessing Officer, as has been observed in the first part at the penalty order.

7. Commissioner of Income Tax (Appeals) deleted the penalty after noticing the factual matrix that the Transfer Pricing Officer vide notice dated 12.03.2003 asked the assessee to furnish copy of balance sheet, profit and loss account and other supporting documents. These were furnished on 20.06.2007.

8. Copy of the notice dated 23.03.2011 issued by the Assessing Officer has not been filed on record by the Revenue along with the present grounds of appeal. We do not know what was requisitioned and asked for by the said



notice and which/what documents and details were supplied. We also do not know whether any extension of time was prayed for or granted by the Transfer Pricing Officer and whether any hearing was fixed by the Transfer Pricing Officer pursuant to notice dated 12.03.2007. It appears that the Transfer Pricing Officer had asked for specific details and documents vide letter dated 12.06.2008 and these details were fully complied with on 25.06.2008 and 23.07.2008. Compliance of the letter dated 12.06.2008 was made within period of 30 days on 25.06.2008 and then subsequently on 23.07.2008. The date 23.07.2008 is within 60 days of issue of notice/letter dated 12.06.2008. We do not know the documents filed on 25.06.2008 and which documents or details were subsequently filed on 23.07.2008. There is no discussion on the said aspect in the order passed by the Assessing Officer, imposing penalty. In these circumstances, we do not find any merit in the present appeal and the same is dismissed.

6. No costs.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

SEPTEMBER 03, 2014/km