

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K", MUMBAI**

BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER

&

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 5643/MUM/2016 (A.Y: 2011-12)

ACIT – 3(1)(2) Room No. 607, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Eurostar Diamonds India Pvt Ltd., 710-711, Raheja Chambers Nariman Point, Mumbai - 400021 PAN: AACCE1920A
(Appellant)		(Respondent)

Assessee Represented by	:	None
Department Represented by	:	Ms. Shilpa N.C
Date of conclusion of Hearing	:	01.01.2024
Date of Pronouncement	:	03.01.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of Learned Commissioner of Income-Tax (Appeals)-56, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.06.2016 for the A.Y.2011-12.

2. Brief facts of the case are, assessee has entered into international transactions as under and benchmarked the transaction by adopting

TNMM Method: -

S.No.	Description	Amount in Rs.	Benchmarking
1	Purchase of rough diamond	5,590,675	TNMM
2	Purchase of polished diamond	391,958,131	TNMM
3	Sale of rough diamond	118,572,194	TNMM
4	Sale of polished diamond	169,244,715	TNMM
5	Sales of Jewellery	933,645	TNMM
	Total	686,299,360	

3. During the course of assessment proceedings, the Transfer Pricing Officer asked the assessee to furnish separate profit level indicator (PLI) in AE and Non-AE segment-wise either profit and loss account and / or some other evidences to show that the international transactions were at Arm's Length Price. The assessee had made an attempt to segregate the segment wise figures of sales, purchase and expenses and submitted the segment wise data on AE and Non-AE sales and worked out the OP/Sales Margins. The above said data was submitted before Transfer Pricing Officer. The Transfer Pricing Officer has not discussed anything in his report and considering the difficulties in the diamond industry and complication involved in polished and non-polished

diamonds, the Transfer Pricing Officer has accepted the ALP and not proposed any adjustment. However, proceeded to levy penalty under section 271G of the Act, for the reason that assessee has not furnished required informations.

4. Based on the above facts on record and none appeared on behalf of the assessee from the date of initiation of the appeal proceedings in this case. Considering the fact that this appeal is filed by the revenue in the year 2016 and none appeared on behalf of the assessee, we proceeded to hear the case with the assistance of Ld. DR.

5. Ld. DR brought to our notice relevant facts on record and supported the order of the Transfer Pricing Officer in levy of penalty.

6. Considered the submissions of Ld. DR and material placed on record, we observe from the record that the assessee has not filed the segment wise results of purchase and sales of polished and unpolished diamonds relating to international transactions. However, on the query raised by the Transfer Pricing Officer assessee has made an attempt to segregate the figures of sales and purchases segment-wise and

submitted the same before Transfer Pricing Officer. The Transfer Pricing Officer has considered the same or atleast not discussed anything in his order. However, proceeded to levy the penalty under section 271G of the Act and at the same time has not proposed any Arm's Length Price adjustment. In the similar facts on record, there are several decisions where various Coordinate Bench of this Tribunal has deleted the penalties. We observe that Ld. CIT(A) has relied on the decision of Annapurna Business Solutions v. ACIT [52 SOT 0140] and DCIT v. Magick Woods Exports (2012) 32 CCH 0422; in which the relevant Coordinate Bench has deleted the penalty under section 271G of the Act. Even in this case Ld. CIT(A) has deleted penalty under section 271G of the Act with the observation that levy of penalty under section 271G of the Act is neither fair nor reasonable and it is not justified in the present facts of the case viz., the nature of diamond trade, substantial compliance made by the assessee and the reasonable cause submitted before Transfer Pricing Officer and above all when there is no adjustment made in the Arm's Length Price, the levy of penalty under section 271G is hereby deleted. After considering the facts on record and findings of the Ld. CIT(A) we do not find any reason to interfere

with the findings of the Ld. CIT(A). Accordingly, ground raised by the revenue is dismissed.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 03rd January, 2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 03/01/2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum