

## Delay in furnishing of TP report condoned as assessee had belief that transaction was not covered under TP

**Summary – The Mumbai ITAT in a recent case of IL & FS Maritime Infrastructure Co. (P.) Ltd., (the Assessee) held that where assessee gave a reasonable cause for his failure in furnishing report as required under section 92E, penalty imposed under section 271BA would be deleted.**

### Facts

- The assessee-company filed belated transfer pricing report in Form 3CEB wherein international transactions of Rs. 143.89 crores were reported.
- The Assessing Officer initiated penalty proceedings against the assessee under section 271BA and issued notice to the assessee.
- The assessee submitted that the executive in charge of taxation matters of the assessee-company was under a *bona fide* belief that the transactions of investments in shares of subsidiary company did not fall within the scope of 'international transactions' as defined under section 92B. It was further submitted that the delay in obtaining the report under section 92E was not intentional, rather was due to *bona fide* mistaken belief.
- The Assessing Officer did not consider the explanation of reasonable cause of *bona fide* belief given by the assessee and imposed penalty of Rs. 1 lakh under section 271BA.
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On second appeal:

### Held

- It may be observed that as per the wording of section 271BA, the Assessing Officer may direct the concerned person to pay the penalty. The word 'may' used in the section denotes that it is the discretion of the Assessing Officer to impose or not to impose the penalty. This discretion is subject to the restrictions as imposed by section 273B. However, the word 'shall' used in section 273B provides that it is mandatory not to impose penalty, if the assessee gives a reasonable cause for his failure in furnishing the particulars as required by the provisions of section 271BA.
- The Assessing Officer did not consider the explanation of reasonable cause of *bona fide* belief given by the assessee in its failure to furnish the report under section 92E in time. Even, the Commissioner (Appeals) did not bother to look into or consider the said explanation given by the assessee. The revenue authorities below have imposed the penalty holding that the same is mandatorily imposable under the provisions of section 271BA. The revenue authorities below failed to take note of provisions of section 273B as well as the use of word 'may' in section 271BA.
- The explanation given by the assessee to the effect that the delay in furnishing the report under section 92E was not intentional, rather due to mistaken *bona fide* belief that the transaction

involving the investment of money in equity shares of its subsidiary company by the assessee-company was not within the scope of International transactions as defined under section 92B. As soon as, the assessee-company came to know that it was required to furnish the report under section 92E, it filed the same before the Assessing Officer. The explanation put forth by the assessee-company, falls within the scope of phrase 'reasonable cause' as provided under section 273B. So, the penalty imposed upon the assessee by the Assessing Officer and further confirmed by the Commissioner (Appeals) is hereby ordered to be deleted.