

Additions made in total income of assessee after determination of ALP would invite concealment penalty

Summary – The Mumbai ITAT in a recent case of Clestra Life Sciences (P.) Ltd., (the Assessee) held that In case of assessee who has entered into an international transaction, any amount added or disallowed in computing total income under section 92C(4), would represent income in respect of which particulars have been concealed or inaccurate particulars have been furnished and, thus, it would attract application of Explanation 7 for levy of penalty under section 271(1)(c)

Facts

- The assessee-company, engaged in the business of export of pharmaceutical products, filed its return of income declaring *NIL* income.
- In the course of assessment, the Assessing Officer noticed that the assessee had sold medicines to its AE at a price lower than what was charged from non-AEs. In order to benchmark said transactions, assessee adopted CUP method as most appropriate method.
- The Assessing Officer accepted CUP method adopted by assessee. However, he made addition to assessee's income in respect of difference of selling price of medicine charged from AE and non-AEs.
- The Assessing Officer also passed penalty order under section 271(1)(c) in respect of aforesaid addition.
- The Commissioner (Appeals) confirmed the penalty order.
- On second appeal:

Held

- On an appreciation of the facts on record, it is seen that the assessee adopted the CUP method for demonstrating that its international transactions were at ALP. The TPO on examination thereof accepted CUP method adopted by the assessee as the most appropriate method (MAM), but observed that the assessee had sold cold flu tablets to its AEs at \$1.807 per unit, whereas the same were sold to non-AEs at the rate of \$1.95 per unit. This led to a difference of Rs. 3,86,810/- (*i.e.* Rs. 6,78,71,791/p less Rs. 6,74,84,891/-) under the CUP method and the transfer pricing adjustment to that extent was made. Though this factual discrepancy was detected, the assessee did not voluntarily revise its income and challenged the same in assessment proceedings, but, it did not prefer any quantum appeal, due to the smallness of the amount involved.
- A reading of the provisions of *Explanation-7* to section 271(1)(c), provides that where in the case of an assessee who has entered into an international transaction, defined in section 92B, any amount added or disallowed in computing the total income under section 92C(4), then for the purposes of section 271(1)(c), such addition or disallowance is deemed to represent income in respect of which particulars have been concealed or inaccurate particulars have been furnished.

- The facts of the case on hand would clearly attract the application of *Explanation-7* for levy of penalty under section 271(1)(c) for furnishing of inaccurate particulars leading to concealment of income. *Explanation-7* to section 271(1)(c) further provides that the penalty thereunder is to be levied, unless the assessee proves to the satisfaction of the authorities below that the price charged in such transactions was computed in the manner prescribed, in good faith and with due diligence.
- In the case on hand, the finding rendered by the Commissioner (Appeals) in the impugned order, that the price charged by the assessee in international transactions has not been computed in accordance with the provisions contained in section 92C, nor in the manner provided thereunder or in good faith and with due diligence is correct.
- In this factual and legal matrix of this case, as discussed above, the levy of penalty under section 271(1)(c) by the Commissioner (Appeals) is upheld.
- In the result, the assessee's appeal is dismissed.