

Since benchmarking done by assessee was accepted by the TPO penalty u/s 271G was to be deleted

Summary – The Mumbai ITAT in a recent case of Ankit Gems (P.) Ltd., (the Assessee) held that since benchmarking done by assessee was accepted by the TPO penalty u/s 271G was to be deleted

Facts

- The assessee was an Indian company engaged in the business of manufacturing and sale of polished diamond as well as diamond studded jewellery. The assessee had entered into international transaction with its AE.
- During the course of assessment proceedings, the TPO initially alleged that the assessee has not furnished segment-wise details of sales to the AEs and non-AEs and the TPO is unable to determine the ALP of the international transaction by applying CUP method. Subsequently the TPO accepted the benchmarking of the international transaction done by the assessee under TNMM. The TPO in his order alleged that the assessee had not maintained information/documents required under section 92D(1) read with rule 10D for enabling him to determine the ALP and initiated penalty proceedings under section 271G and imposed penalty for an amount of Rs. 16.11 crores.
- On appeal, the Commissioner (Appeals) deleted the penalty.
- On appeal to the Tribunal:

Held

- The ITAT noticed that the assessee has maintained books of account and other information to benchmark the international transaction with AE by applying TNMM and the transfer pricing study report alongwith other details were furnished before the TPO.
- The TPO had ultimately accepted the benchmarking done by the assessee under TNMM method even though initially the TPO had wanted to apply the CUP method.
- The facts on record clearly indicate that the assessee indeed has maintained the information and documents as required under the statutory provisions. Further, the TPO had accepted the benchmarking done by the assessee under TNMM . Hence, the allegation of the TPO that the non-furnishing of documents by the assessee prevented him from determining the arm's length price under CUP method is unacceptable and the imposition of penalty under section 271G is unsustainable.
- In the result, revenue's appeal is dismissed.