IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH, JAIPUR

(BEFORE SHRI R.P. TOLANI AND SHRI T.R. MEENA)

ITA No. 598/JP/2012
Assessment years : 2006-07
PAN : AAACI 3924 J

The ACIT Circle- 2 Alwar (Appellant)	vs.	M/s. Gillette India Ltd. SPA-65A, Industrial Area Bhiwadi (Respondent)

C.O. No. 49/JP/2012
(Arising out of ITA No. 598/JP/2012)
Assessment years : 2006-07
PAN : AAACI 3924 J

M/s. Gillette India Ltd. SPA-65A, Industrial Area Bhiwadi (Appellant)	vs.	The ACIT Circle- 2 Alwar (Respondent)

Department by: Mrs. Rolee Agarwal, CIT - DR
Assessee by : Shri P.C. Parwal , CA

Date of Hearing: 10-11-2014
Date of Pronouncement: 16 - 01-2015

ORDER

PER R.P. TOLANI, JM

This is an appeal filed by the Revenue against the order of the ld. CIT(A)- II Jaipur dated 26-03-2012 for the assessment year 2006-07. The assessee has filed the cross objection.

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2.0 The solitary ground raised by the Revenue in its appeal is as under:-

> *''That the ld. CIT(A) has erred in law as well as on the facts and circumstances of the case in deleting penalty of Rs. 2,16,47,823/- imposed u/s 271G of the I.T. Act, 1961''*

3.0 During the course of hearing the ld. AR of the assessee in its C.O. has not pressed the Ground No. 1 (b) which is dismissed being not pressed, leaving only Ground No. 1 (a) of the assessee is that order passed u/s 271G is barred by limitation.

4.0 Brief facts of the case are that the assessee submitted Form No. 3CEB. In spite of international transactions and submitting of relevant documents, the case was referred to TPO where the assessee filed the relevant documents to ADIT (TPO) who made an observation that the assessee was served notice 92CA(2) and 92CA(3) under I.T. Act dated 22-12-2008, calling on the assessee to furnish ''copies of information and documents maintained u/s 92D(1) of I.T. Act read with rules 10D(1) & (3) alongwith copy of TP study report.'' Though other details were filed but the copy of T.P. documents were not filed and the same was filed as late as 20-07-2009. For this default, the AO may consider initiation of penalty proceedings u/s 271G of the Act.

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5.0 While completing assessment u/s 145(3), the AO on the basis of the above direction issued a show cause notice dated 29-10-2010 asking the assessee to show cause as to why penalty proceedings should not be imposed. According to the AO, the assessee did not file any reply. Thereafter, as penalty was getting time barred on 30-04-2011, again a letter fixing the date of hearing on 25-04-2011 was sent to the assessee at its Bhiwadi address through Speed Post. In response thereto on 21-04-2011 assessee replied that in its first submission filed form no. 3CEB which mentioned that for the purpose of providing relevant information in the accounts report, the management of the company has used the study done for the financial year 2004-05, conducted by an independent professional appointed by the management. The transfer pricing study for the financial year 2004-05 was provided to the TPO during the course of the assessment year for assessment year 2005-06.

6.0 The omnibus notices notice issued by AO was vague and non specific and without appreciating that relevant documents were already placed by the tax payer on record and without consideration as to which of the specific clauses of sub-rule (1) or other sub-rules of Rule 10D was attracted or which relevant information was needed in this case cannot be treated as valid and

legal to justify application of provisions of Section 271G of the Act for levy of penalty.

7.0 Assessee relied on the case of Cargill India (P) Ltd. vs. DCIT, 110 ITD 616 wherein the Hon'ble Delhi Tribunal. It was further pleaded that penalty may not be imposed in this case.

8.0 The AO however, imposed the penalty by following observations.

> *''I have carefully considered the facts & circumstances of the case vis-a-vis A.R. of the assessee's reply dated 21-04-2011 and found it not convincing. It is pertinent to mention here that as per Form _No.3_68 & grounds of appeal furnished by the assessee and a copy of the same received from Hon'ble ITAT, Jaipur, the issue of assessee company before Hon'ble ITAT Jaipur the issue of initiation of penalty proceedings u/s 271G of I.T. Act, 1961 has not been agitated by the assessee company before Hon'ble ITAT , Jaipur . The issue of adjustments made by the TPO is irrelevant in these penalty proceedings. The assessee was under the obligation to furnish all the relevant informations and documents maintained u/s 92D(1) of it read with rules 10D(1) & (3) of Income-tax Rules alongwith a copy of transfer pricing study report and T.P. documentations as called for by the Addl. CIT (TPO-I), Jaipur by issue of notice u/s 92CA(2) and 92D(3) of I.T. Act. The findings of the TPO that the T.P. documentation was not furnished have not been controverted by the assessee in the penalty proceedings u/s 271G. Thus it is an admitted fact that the T.P. documentation was not filed by the assessee before the TPO even after several opportunities afforded by the TPO. The reluctance of the assessee in submission of the required informations and documents before the TPO can be gauged from the fact that even the T.P. study report was filed by the assessee as late as on 20-07-2009. These informations and documents were important for computation of arm's length price of the international transaction entered into. What information and documents are needed to correctly compute the arm's length price of the international transactions, it is upto the TPO to decide on case to case basis. In the instant case, after*

analyzing the facts, circumstances and peculiarity of the case and applying mind, the TPO has called for the informations and documents including T.P. documentations and afforded several opportunities to the a to furnish the same. Thus the onus was on the assessee who failed to discharge the same. In this case as the assessee could not furnish the reasons for such failure in submission, the provisions of Section 273B also become irrelevant. The assessee could not adduce/ furnish any reasonable cause for such failure alongwith documentary evidences as to what effectively prevented the assessee from making the statutory compliance before the TPO. In the case of Hindustan Steel Ltd. v. State of Orissa (1972) 83 ITR 26, the Supreme Court held that - "The penalty, will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation." In the present case, the assessee has deliberately avoided the production of T.P. documentation before the TPO thereby there is a case where the company has deliberately acted in defiance of law or defied law or is guilty of conduct of dishonesty or contumacious conduct. Hence the default stands established. I consider it to be a fit case for levy of penalty u/s 271G read with Section 274 Income-tax Act,1961. The essence is that the assessee has deliberately avoided the production of T.P. documentation before the TPO thereby deliberately acted in defiance of law and the intention in doing so was not bonafide. I hereby impose a penalty of Rs.2,16,47,8231- ''

9.0 Aggrieved, the assessee preferred first appeal challenging the penalty order. Ld. CIT(A) deleted the penalty. Aggrieved revenue is in appeal against deletion of penalty and assessee in CO on limitation issue.

10.0 Ld. CIT(DR) is heard who supported the order of AO contending that it was the obligation of the assessee to file relevant TP documents in time. As it failed to comply with relevant notices in time for compliance, penalty has been rightly imposed by the AO. Apropos assessee's CO it is pleaded

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that the ground about limitation was not raised in memo of appeal before CIT(A). Without such ground or a request of additional ground before CIT(A), intelligently mentioned few lines in his written submission which have been reproduced by ld. CIT(A) without passing any order thereon. Thus this ground of C.O. does not arise out of the order of ld. CIT(A). Hence there is no merit is assessee's CO.

11.0 Ld counsel for the assessee contends that relevant provisions of law are as under:-

Section 92 D** **Maintenance, and keeping of information and document by persons entering into an international transaction.

(1) Every person who has entered into an international transaction [1259dg][or specified domestic transaction] shall keep and maintain such information and document in respect thereof, as may be prescribed.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction [1259dh][or specified domestic transaction] to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard:

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

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No delay was pointed out by TPO at the time of hearing which is evident from the fact that there is no mention in this regard in TPO's order. Otherwise assessee would have applied for the extension.

Section 271G. ***Penalty for failure to furnish information or document under section 92D.***

If any person who has entered into an international transaction fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the international transaction for each such failure.

12.0 In behalf of penalty proceedings, following contentions are raised

before us:

(i) The allegation raised by the AO are vague and not specific inasmuch as all the relevant documents were filed by the assessee only a vague allegation is made that TP report was filed late. This allegation is self contradictory as the TP compliance went on on various dates and ultimately assesses TP report has been relied on. Thus no inconvenience was cause to TPO.

(ii) The documents desired by the TPO vide letter dated 22-12-2008 were filed by the assessee on 10-02-2009. Thereafter again notice dated 12-06-2009was issued for compliance which was duly furnished by the assessee along with letter dated 25-06-2009. Various notices and dates scheduled is mentioned in ld. CIT(A)s order which demonstrates that assessee fully cooperated in TP and assessment proceedings.

(iii) Thereafter by series of letters, the assessee furnished information and explanation as desired by the TPO. However without appreciating the record ld. TPO directed the AO to initiate penalty proceedings, similarly no specification about the nature of non-compliance at all has been given.

(iv) The assessee vide letter dated 28-01-2012 requested that ADIT (TPO) to specific which documents were not furnished by the assessee. The ACIT Circle- 2, Alwar vide order dated 27-02-2012 merely stated some

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facts from the commencement of the assessment proceedings explaining general provisions and only information to the effect that TP study report was filed as late as on 20-07-2009. The assessee explained that relevant queries were in the process being asked and TPO had to consider TP Study report. Thus relevant information was on record.

(v) Reliance is placed on ITAT Delhi Bench Judgement in the case of Cargill India (P) Ltd. vs. DCIT (supra) which has deleted the penalty on similar type of facts and it has been relied on by the ld. CIT(A) which held as under:

It is clear from the consideration of r. 10D and its various sub-rules, that documents and information prescribed under the rule is voluminous and it would only be in rarest cases that all the clauses of sub-rules would be attracted. It is not possible to casually ask for information under all the clauses. One or more clauses of sub-r. (1) are applicable and not all clauses of the rule in a given case. It would all depend upon the facts and circumstances of the case more particularly the nature of international transactions carried or services involved. Likewise supporting documents, official publications, reports, market research studies, technical publications of Government or other institute of national or international repute, and all the documents mentioned in r. 10D(3) may not be needed in case of every taxpayer. It is evident from the information/documents prescribed in sub-rules of r. 10D that the taxpayer and the tax authorities are to see what information and documents and which particular clause is relevant are therefore, needed for determining ALP. The consideration of above aspect is material before issuing notice under s. ***92D****(3), if it is to serve its purpose. The prescribed information is gathered from the taxpayer through various means and at different stages of assessment proceedings. The initial or first information relating to international transactions is gathered from the taxpayer in the prescribed audit report in Form 3CEB. This report is required to be submitted along with the return of income as per s. 92E. Name and addresses of taxpayer, its associated concerns, nature of relationship with such concerns, brief description of business and details of international transactions carried on with the associated enterprises, besides the method used for determining ALP in respect of each international transaction is required to be given in the report. The AO must have the above report (Form 3CEB) with him to determine the question whether total value of the transactions is more or less than Rs. 5 crores (now enhanced to Rs. 15 crores) to consider the question whether*

determination of ALP is to be referred to the TPO or not. If the total value exceeds the prescribed limit, the AO has to refer the matter to the TPO. It is clear from above discussion that information prescribed under r. 10D in different columns is voluminous, alternative and it would have to be seen as to what information, from which clause, is required on the facts of the given case. Secondly, information from certain clauses of r. 10D is obtained in audit report on Form 3CEB required to be filed along with the return. Thirdly, the TPO before proceeding to determine ALP has above basic and initial information of international transactions carried by the assessee. The TPO is thereafter required to serve notice under sub-s. (2) of s. 92CA. The statutory scheme envisages that the TPO shall serve a notice requiring the taxpayer to produce evidence in support of his computation of ALP. Therefore, an opportunity to prove that its ALP is correct has to be allowed to the taxpayer. It is mandatory requirement of the regulations. Thereafter notices under s. ***92D****(3) may be issued requiring the taxpayer to furnish information on "specified points", depending upon the facts of the case. Where heavy penalty is attracted for non-compliance, it has to be shown that the notice under s.* ***92D****(3) is complied, both in letter and in the spirit of the statute. This conclusion is based on the scheme and the clear language used in the regulations. Under sub-s. (2) of s. 92CA, evidence in support of ALP would ordinarily include information and documents referred to in sub-s. (3) of s.* ***92D*** *which are prescribed in various clauses of r. 10D(1). Documents and information prescribed are required to be maintained to help to determine ALP and are to be filed to support ALP by the taxpayer in response to notice under s. 92CA(2). If on consideration of evidence produced by the taxpayer the TPO is satisfied that ALP has been properly and correctly determined by the taxpayer, it is the end of the matter. There is no question of issuing further notice under any provision to the taxpayer. However, if complete information is not furnished, or otherwise, TPO is of the view that more information on specified points is required from the taxpayer, the TPO can issue notice under sub-s. (3) of s.* ***92D****. TPO can also issue notice under s. 92CA(3), depending upon the facts of the case and the information needed. Only in case of failure of the taxpayer to support its ALP by filing necessary evidence, question of requiring taxpayer to furnish prescribed information would arise. There is no rationality in requiring information, documents from the taxpayer first under s.* ***92D****(3) and thereafter provide opportunity to the taxpayer to support its ALP. Further, having regard to purpose of the regulations, the notice under s.* ***92D****(3) must require specific information (or document) which the taxpayer failed to furnish under s. 92CA(2) but which according to the TPO are necessary for*

determination of ALP of international transactions. Above view is fully supported by sub-s. (3) of s. 92CA providing for the determination of the ALP by the TPO. Besides evidence/material referred to in the above sub-section, the TPO is further required to consider "such evidence as TPO may require on specified points". Thus, requirement of evidence on specific points is clearly stated. Therefore, notice under s. ***92D****(3) cannot be vague but must require specific information. This is established from clear language and scheme of the regulation. Notice under s.* ***92D****(3) is different from other statutory notices. Here the AO or CIT(A) are empowered to require from the taxpayer or any person who has entered into an international transaction to furnish any prescribed information or document. Notice under s.* ***92D****(3) has to be confined to the furnishing of information or document as may be "prescribed". It is unauthorized to require the noticee to furnish non-prescribed information. If in the notice non-prescribed information is also called for, it would not be treated as notice under s.* ***92D****(3) but under s. 92CA(3) or some other provision of the Act irrespective of the title or label given to such a notice. Relevant information can be sought under notice under s. 92CA(3) also. Further, there is no restriction of furnishing prescribed information in response to notice under s. 92CA(2) to support the computation of ALP by the taxpayer. However, there is no authority under s.* ***92D****(3) with the TPO to require the taxpayer to furnish non-specified information or such information or document already filed by the taxpayer or use of the provision without asking the taxpayer to support first its ALP of international transactions. The case of any person other than the taxpayer for notice under s.* ***92D****(3) stands on a different footing than of the taxpayer to whom notice under s. 92CA(2) has been issued. Further, under s.* ***92D****(3), it will not be possible to call for, all the information prescribed under r. 10D including supporting information and documents mentioned in sub-r. (3) in a routine or a casual manner without application of mind as to what specific information is required to achieve the purpose of the regulations. Information which has already been furnished by the taxpayer either in the audit report or in response to notice under s. 92CA(2) would be of no use and there is no point in requiring the same information again or require unprescribed information under s.* ***92D****(3) and cast additional burden on the taxpayer. In all such cases, it would no more remain valid notice under s.* ***92D****(3)/271G. Application of mind to find and consideration of material on record and to see what further information on specific point is required, is essential before issuing notice under s.* ***92D****(3) to the taxpayer.—Barium Chemicals Ltd. vs. A.J. Rana AIR 1972 SC 591* ***applied.***

The TPO in this case issued first notice on 22nd Sept., 2005. In para 1 of the notice, he asked the assessee to support and substantiate the computation of ALP in international transactions. This is required by s. 92CA(2). As per para No. 2, the TPO further required to furnish information including the balance sheet, P&L a/c, statement of computation of income, audit report, tax report and also "information and documents maintained as prescribed under s. ***92D*** *of IT Act, 1961 r/w r. 10D of IT Rules" without specifying any particular information clause of r. 10D. The aforesaid notice was a notice under s. 92CA(2) but the TPO by asking further information made it a notice under s. 92CA(3). Only under above sub-section, TPO can call for information like balance sheet, P&L a/c, and audit report, which already stood filed and which are unprescribed. Such unspecific information could not be required under s.* ***92D****(3). Why and how information already furnished and could be obtained from AO was required or needed is not clear from the notice or other material available on record. The notice was issued in a casual manner. The TPO had not examined records of the taxpayer nor nature or details of international transactions. There was total lack of application of mind as to what information was required in this case. It was a omnibus notice without any regard of unwarranted heavy burden it was likely to place on the taxpayer not authorized under s.* ***92D****(3). It was an unintelligible notice where all the information and documents maintained under r. 10D were required in addition to the information referred to above. The second notice issued on similar lines on 13th Oct., 2005 asking for submission of documents by 7th Nov., 2005 did not improve the situation. A third notice dt. 8th Nov., 2005 was again issued quoting provision of s.* ***92D*** *and calling upon the assessee to file information and documents latest by 21st Nov., 2005. The said notice also had all infirmities noted in the first notice. In the light of what is discussed above relating to requirement of valid notice under s.* ***92D****(3) abovementioned notices cannot be treated as valid and legal to justify application of provision under s. 271G and levy of penalty of more than Rs. 40 crores. These are omnibus notices issued without application of mind and without considering documents already placed by the taxpayer on record and without consideration as to which of the specific clauses of sub-r. (1) or other sub-rules was attracted or which relevant information was needed in this case. Under s.* ***92D****(3), AO or CIT(A) is authorized to require prescribed information but here both prescribed and unprescribed information like balance sheet, P&L a/c, computation of income, etc. was also required to be furnished from the taxpayer before the taxpayer could file evidence under s. 92CA(2). Not only primary documents necessary to support the computation of ALP of*

*taxpayer, but also supporting documents detailed in sub-r. (3) of r. 10D were required to be furnished without considering which supporting documents out of several mentioned in various clauses of the said sub-rule were available with the taxpayer. The burden of selection/relevancy of clauses applicable was shifted to the taxpayer. The notice only increased burden of the taxpayer and confused the noticee. Above notices issued without application of mind and without considering relevancy and requirement of all the prescribed information and documents under r. 10D vitiated the legality of the notices. Above notices could not be treated as proper and legal notices in terms of s. **92D**(3). The failure, therefore, of the taxpayer to comply such notices in time cannot justify levy of penalty. The notices being illegal, question of levy of penalty did not arise.—New Central Jute Mills Co. Ltd. vs. Dwijendralal Brahmachari & Ors. (1973) 90 ITR 467 (Cal) **applied.***

*The notice relating to specific defects and calling for their rectification could be treated as a notice under s. **92D**(3) although not so labelled by the AO. Admittedly before the end of December, 2005, all documents and information were furnished by the taxpayer. So there was no default in not submitting documents and information within the prescribed time to attract provisions of s. 271G. Therefore, there is no justification in the levy of penalty in question.*

*There is also substance in the arguments of the counsel for the assessee that not only notices as above were vague, non-specific and showed lack of application of mind, even the show-cause notice issued under s. 271G suffered from the same defect. No specific clause of the rule or detail of the international transaction relating to which default was committed, were stated in the show-cause notice issued by the AO. The notices issued were prima facie illegal and bad in law. Without detail of default, no adequate reply could be furnished. The contention of the Departmental Representative that specific clauses of r. 10D(1) under which information was not furnished within time and default was committed were mentioned in the penalty order is of no avail. The mention of above detail in the order is of no use. The details were required to be mentioned in the show-cause notice so as to afford reasonable and adequate opportunity to the assessee to meet out the case and serve the purpose of the notice. For above defect also, the penalty proceedings are held to be vitiated and liable to be cancelled.—Amrit Foods vs. CCE 2005 (190) ELT 433 (SC) **applied.***

The taxpayer had filed information bona fidely according to its understanding of regulations and legal guidance received by it. The AO failed to refute any of the claim and recorded no finding on the "reasonable cause" pleaded by the taxpayer. In other words it was not held that the delay was without a reasonable cause. The same position continue unaltered in appellate proceedings before the CIT(A). The case pleaded by the taxpayer was neither examined nor refuted before upholding the levy of penalty. Provision of s. 271G is to be read along with provision of s. 273B. The penalty under s. 271G can be imposed only if the default is held to be proved to be without reasonable cause. Once a reasonable cause for delay is pleaded then it has to be examined in accordance with law. No attempt has been made by the Revenue to look into, examine or refute the claim of reasonable cause put forth by the taxpayer. The case, therefore, cannot be taken to have been rejected. The penalty has been imposed without considering application of s. 273B which overrides provisions of s. 271G. The delay, if any, in the submission of information or documents within the prescribed time is held to be due to a reasonable cause. Therefore, the penalty is not sustainable on account of this ground also. Besides, penalty of Rs. 40,46,41,376 for mere delay of about a month or so in the submission of information and documents assuming entire case of Revenue is established, is to be held to be imposed on mere technical grounds. Having regard to the settled law, no penalty for technical or venial default is imposable.

13.0 Further reliance is placed on latest Delhi High Court judgment in the case of CIT v Bumi High Way (I)(P) Ltd. (2014) DTR 110 321 (Del) holding as under:

''Held : what is clearly discernible 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 s. 27lG 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 furnish and whether any extension of time was granted by the TPO and if the required documents were then actuality filed. The penalty order is bereft and devoid of the said details and, therefore shows lack of application

of mind. TPO had indicated that the AO might initiate proceedings under s. 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 in the order of TPO that penalty shall be imposed by the AO, as has been observed in the first part at the penalty order. It appears that the TPO had asked for specific details and documents vide letter dated l2th June, 2008 and these details were fully complied with on 25th June, 2008 and 23rd July, 2008. Compliance of the letter dated 12th June, 2008 was made within period of 30 days on 25th June, 2008 and then subsequently on 23rd Juty,2008. The date 23rd July, 2008 is within 60 days of issue of notice/letter dated 12th June, 2008. It is not clear which documents were filed on 25th June, 2008 and which documents or details were subsequently filed on 23rd July, 2008. There is no discussion on the said aspect in the order passed by the AO, imposing penalty. In these circumstances, there is no merit in the present appeal.''

14.0 The asseess's case falls squarely in the above judgments. In view of above facts and circumstances of this case penalty has been rightly deleted the penalty.

15.0 Apropos assessee's CO it is pleaded that penalty proceedings are time barred.

16.0 We have heard the rival contentions and perused the material available on the record. It clearly emerges that during TP proceedings no intimation was given to the assessee alleging any delayed filing of TP report. There is no allegation of any specific non-compliance. The assessee on receipt of show cause notice reverted back to TPO asking for details of alleged non-compliance. In reply, the TPO instead detailing the nature of

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allegation again made a vague assertions that assessee's case was liable for penalty u/s 271G of the Act. From the record, we are unable to comprehend as to what exact nature of non-compliance is made by the assessee. It is trite law that in penalty proceedings, the assessee needs to be made aware of the exact nature of charge which is leveled against him. This is so because the assessee is suppose to give a reply on the specific allegation and not on the assumptive allegation. In our considered view the reliance in the case of Cargil India (P) Ltd. vs. DCIT (ITAT, Delhi Bench) , supra and CIT vs. Bumi High Way (P) Ltd. (Del.) supra covers this controversy. The Hon'ble Delhi High Court ordained that in order to impose any penalty, it is obligatory on the part of the Officer to indicate specific allegation. In the absence whereof, the penalty proceedings are not sustainable. Thus in our considered view and the fact of the assessee's case are in parity with these judgments (supra). Hence, respectfully following them , we uphold the order of the ld. CIT(A) deleting the penalty.

17.0 Adverting to assessee's C.O. we find force in the arguments of the ld. DR , Mrs. Rolee Agarwal, that the assessee has not taken this ground either in memo of appeal before the ld. CIT(A) or by way of filing of an application for additional ground. We could see only a passing reference in assessee's reply. The ld. CIT(A) has also not decided this issue since the

ground raised by the assessee in its C.O. does not arise out of the order of the ld. CIT(A) which is not sustainable. Thus the appeal of the Revenue and the C.O. of the assessee both are dismissed.

18.0 In the result, appeal of the Revenue as well as C.O. of the assessee are dismissed.

The order is pronounced in the open Court on 16 -01-2015

Sd/-	Sd/-
(T.R. MEENA)	(R.P. TOLANI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Jaipur
Dated: 16th JAN 2015

*Mishra
Copy forwarded to:-
1. The ACIT, Circle- 2, Alwar
2. M/s. Zillette India Ltd., Bhiwadi
3. The ld. CIT
4. The ld. CIT(A), Jaipur

By Order

5..The ld. DR
6.The Guard File (IT No. 598/JP/2012)

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