

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE**

**BEFORE SHRI R.S. SYAL, VP AND
SHRI S.S. VISWANETHRA RAVI, JM**

आयकर अपील सं. / ITA No. 2620/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

The Deputy Commissioner of Income Tax,
Circle-1(1), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Applied Micro Circuits India Pvt. Ltd.
601, 6th Floor, Cerebrum IT Park,
Kalyani Nagar, Pune-411 006.
PAN : AAHCA3503C

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Kulthe &
Shri Siddhesh Chaugule

Revenue by : Shri Mahadevan A M Krishnan

सुनवाई की तारीख / Date of Hearing : 29.04.2021

घोषणा की तारीख / Date of Pronouncement : 29.04.2021

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the Revenue is directed against the order dated 18.08.2017 passed by the Id. CIT(Appeals)-13, Pune in relation to the assessment year 2010-11, deleting penalty of Rs.74,87,580/- imposed by the Assessing Officer (AO) u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. Briefly stated, the facts of the case are that the assessee company is engaged in the business of designing and development of chip, integrated circuits and storage components and providing allied services for its holding company AMCC, USA. The assessee filed return declaring total income at Rs. Nil and book profit of Rs.2,25,12,625/- u/s.115JB of the Act. The assessee claimed deduction u/s.10A of the Act at Rs.2.05 crore on the income of its STPI unit. Because of certain international transactions entered into by the assessee, the AO made a reference to the Transfer Pricing Officer (TPO) for determining the arm's length price of the international transactions. The TPO passed order u/s.92CA(3) of the Act proposing transfer pricing adjustment of Rs.2,74,67,960/-. In the first appeal, the transfer pricing adjustment was reduced to Rs.2,20,29,573/-. The Assessing Officer invoked Explanation 7 to section 271(1)(c) of the Act and imposed penalty of Rs.74,87,850/- on the amount of transfer pricing addition sustained in the first appeal. The Id. CIT (Appeals) deleted the penalty, against which the Revenue has come up in appeal before the Tribunal.

3. We have heard the rival contentions through Virtual court and gone through the relevant material on record. It is seen that the transfer pricing addition sustained by the Id. CIT(Appeal) at Rs.2.20 crore, which forms the bedrock of the penalty, came up for consideration before the Tribunal. Vide order (ITA No.1250/PUN/2015) dated 24.11.2017, the Tribunal has deleted the said addition. A copy of the order has been placed at page 5 onwards of the paper book. The AO, while giving effect to the order passed by the Tribunal, has determined total income of the assessee at Rs.36,117/-. Since the very foundation of imposition of penalty, being the transfer pricing addition of Rs.2.20 crore, does not survive any more, we do not find any

reason to disturb the view taken by the Id. CIT(Appeals) in deleting penalty u/s.271(1)(c) of the Act. The same is hereby upheld.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced on 29th day of April, 2021

Sd/-
S.S. VISWANETHRA RAVI
JUDICIAL MEMBER

Sd/-
R.S. SYAL
VICE-PRESIDENT

पुणे / Pune; दिनांक / Dated : 29th April, 2021

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	29.04.2021	Sr.PS/PS
2	Draft placed before author	29.04.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		