

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.2099/Bang/2018  
(Assessment Year : 2012-13)

M/s. Telsima Communications Pvt. Ltd., 1 <sup>st</sup> Floor, Salarpuria Touchstone, Marathhalli, ORR, Sarjapur, Bangalore-560 103 PAN: AABCT 9826D (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle 7(1)(1), Bangalore. (Respondent)
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Assessee By:	Smt. Vaidehi, C.A
Revenue By:	Shri M. Rajasekhar, Addl.CIT (D.R)

Date of Hearing :	18.07.2019
Date of Pronouncement :	09.08.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of learned Commissioner of Income Tax (Appeals)-7, Bangalore passed under Section 271G and 250 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal :

1. The learned Assessing Officer ("learned AO") and the learned Transfer Pricing Officer ("learned TPO") erred in passing order section 271G of the Income-tax Act, 1961 ("the Act") and the Honourable Commissioner of Income Tax (Appeals) ["Hon'ble CIT(A)"] grossly erred in upholding the same.
2. The learned AO/learned TPO/Hon'ble CIT(A) erred in levying penalty under Section 271G of the Act without considering the submissions of the Appellant that Appellant has maintained the transfer pricing documentation ("TP Report") and duly provided all the required documents as requested by the TPO on time to time basis during transfer pricing assessment proceedings.
3. The learned AO/learned TPO/Hon'ble CIT(A) erred in arbitrarily rejecting the TP Report maintained by the Appellant by stating that Appellant has not maintained functional and economic analysis in the TP Report for transaction (i.e. provision of pre and post-sale services) falling under hardware segment, prepared in good faith and in accordance with Section 92D of the Act read with Rule 10D of the Rules.
4. The learned AO/learned TPO/Hon'ble CIT(A) erred in not acknowledging the fact that the notice u/s 271G issued by the TPO has been received by the Appellant only on 29.01.2016 i.e. after the date of passing the transfer pricing order and hence there was no opportunity for the Appellant to make rebuttal against notice by that time.
5. The learned AO/learned TPO/Hon'ble CIT(A) erred in rejecting the contentions, arguments, and evidentiary data put forward by the Appellant vide submission letter dated 29.02.2016 after the receipt of notice u/s 271G in connection with the penalty proceedings.
6. The learned AO/learned TPO/Hon'ble CIT(A) erred in not acknowledging the details of segmental and their respective operating margin provided in the TP report as well as the submission filed during the penalty proceedings regarding the same.

The appellant craves leave to add, alter, rescind and modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided.

3. The Brief facts of the case are that the assessee company is engaged in manufacturing of telecommunication products and provide services and solutions and has Hardware and Software Business Segment. In the assessment proceedings, reference was made to the Transfer Pricing Officer (TPO) by the ACIT, Circle 12(4), Bangalore and whereas TP Study was conducted by the TPO and passed the order under Section 92CA of the Act on 27.01.2016. Further, the TPO has issued Notice Dt.30.11.2015 to submit the International

Transactions entered by the assessee with its Associated Enterprises (AE). After due correspondence with the assessee, the TPO has issued show cause notice initiating penalty proceedings for non-furnishing of information on hardware and software segments. The assessee filed submissions in the penalty proceedings by letter dt.29.02.2016 explaining that the penalty under Section 271G of the Act apply if the conditions prescribed under Section 92D(iii) are not complied whereas the assessee has maintained all required documents under Rule 10D of the I.T. Rules and whereas the Assessing Officer was not satisfied with the assessee's submissions and observed that the assessee has not maintained proper information on transactions and leveled penalty 2% on International Transactions which worked out to Rs.7,03,669 and passed the order under Section 271G of the Act Dt.28.07.2016. Aggrieved by the order, the assessee filed an appeal with the CIT(Appeals). Whereas the CIT(Appeals) has confirmed the action of the Assessing Officer and dismissed the assessee's appeal. Aggrieved by the CIT (Appeals) order, the assessee has filed an appeal with Tribunal.

4. At the time of hearing, the ld. AR submitted that the assessee has maintained details under the provisions of the Act in Transfer Pricing Study and filed explanations in the penalty proceedings whereas the Assessing Officer has levied a penalty as some details required to be maintained under Rule 10D which the assessee has complied and prayed for allowing the assessee's appeal. Contra, the learned Departmental Representative supported the orders of the CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The sole contention of the learned Authorised Representative that the CIT(Appeals) erred in confirming the penalty and has not considered the submissions of the assessee on merits. When a query was raised by the Bench, the learned Authorised Representative referred to the ground of appeal No.1.4 raised by the assessee before the CIT(Appeals), was not adjudicated and emphasized that the CIT (Appeals) has also not given any proper findings on the issue of maintenance of segmental information though the assessee has filed details. We find strength in the submissions of ld. AR as there is no observation / finding of the CIT (Appeals) on the submissions. We are of the opinion that the CIT (Appeals) shall pass speaking order and accordingly we restore the disputed issue to the file of CIT(Appeals) to adjudicate afresh after providing adequate opportunity of hearing and the assessee shall co-operate in submitting the details for early disposal of the appeal and the grounds of appeal of the assessee are allowed for statistical purposes.

5. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 9th Aug., 2019.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 09.08.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore