

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1156/Bang/2019
Assessment Year: 2013-14

M/s. Impelsys India Pvt. Ltd. Suryodai Complex No.7, Old Airport Road Kodihalli Bangalore PAN NO :AACCM3490K	Vs.	ACIT Circle-3(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri C. Sandeep, A.R.
Respondent by	:	Shri Amrit Raj Singh, D.R.

Date of Hearing	:	21.10.2021
Date of Pronouncement	:	21.10.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 22.2.2019 passed by Ld. CIT(A)-3, Bengaluru and it relates to the assessment year 2013-14. All the grounds urged by the assessee relate to transfer pricing adjustment made by the A.O/TPO and confirmed by Ld. CIT(A).

2. The Ld. A.R. submitted that the assessee is engaged in the business of “e-publishing” & “e-learning”. However, in the transfer pricing study, the assessee categorized itself as software developer

and accordingly computed ALP of international transactions. The TPO also accordingly determined the ALP of international transactions categorizing the assessee as software developer.

3. The Ld. A.R. submitted that the assessee does not carry out any software development activity. He submitted that the assessee is carrying on e-publishing and e-learning activities only. In this regard, he invited our attention to list of employees along with their qualification placed at page nos.51 to 57 of the paper book. The Ld. A.R. submitted that the assessee has employed mostly Arts & Science graduates, since the work of e-publishing & e-learning involve in-depth research and study of various books and journals. He submitted that the assessee does not carry on any “coding activity”, which is the core activity of a software developer. None of the activities prescribed for a software cycle is carried on by the assessee. He submitted that the assessee has in categorizing itself as “software developers” while preparing the transfer pricing study of this year. The Ld A.R submitted that the categorization of the assessee’s activities as software development is not appropriate vis-a-vis the activities carried on by the assessee. Accordingly, the Ld. A.R. submitted that the entire issue requires fresh study and examination. Accordingly, he prayed that the entire TP matters may be restored to the file of TPO, so that a proper transfer pricing study relating to the activities of the assessee could be furnished by the assessee.

4. The Ld. D.R. submitted that the assessee itself has categorized itself as software developer in its transfer pricing study and not it is changing its stand.

5. We heard the parties and perused the record. If the activities of the assessee are not in the nature of “software development”,

then it is not correct to determine ALP of international transactions by comparing with software development companies. It is the firm submission of Ld AR that the assessee is not carrying on any software development activity and the mistake has happened in the assessee's side. In view of the submissions made by Ld. A.R., we are of the view that the claim of the Ld. A.R. that the assessee is not a software development company itself requires examination by AO/TPO. If the claim of the Ld. A.R. that the activity of the assessee consisted of e-publishing & e-learning only and not software development is found to be correct, then TP study already conducted and TP order already passed are not appropriate. In that case, in the interest of both sides and natural justice, we are of the view that the assessee should be provided with an opportunity to file fresh TP study and the TPO is required to pass a fresh order after considering the TP study of the assessee. On the contrary, if the AO/TPO arrives at the conclusion that the assessee is a software development company, then he may take appropriate decision in accordance with law.

6. In this view of the matter, we are of the opinion that the entire TP issue requires fresh examination at the end of AO/TPO. Accordingly, we set aside the order passed by Ld. CIT(A) on TP issue and restore all the matters to the file of the AO/TPO.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 21st Oct, 2021

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 21st Oct, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.