

IN THE INCOME-TAX APPELLATE TRIBUNAL “H” BENCH,
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 3621/MUM/2024
(A.Y. 2016-17)

Thyssenkrupp Industrial Solutions AG C/o Mohinder Puri & Co., 1A-D, Vandhna Building, 11 Tolstoy Marg, New Delhi – 110 001	v/s. बनाम	Deputy Commissioner of Income Tax, Transfer Pricing Circle – 4(2)(2), Air India Building, Nariman Point, Mumbai-400021, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCP5301B		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Nishant Thakkar & Ms. J.Amalsadwala, ARs
Respondent by :	Shri Pravin Salunkhe, (Sr. DR)

Date of Hearing	13.08.2025
Date of Pronouncement	15.10.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is preferred by the assessee against the order passed by the Learned Commissioner of Income-tax, Appeal, CIT(A) 58, Mumbai [hereinafter referred to as “CIT(A)”] pertaining to the penalty order passed u/s. 271G of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 25.09.2019 for the Assessment Year [A.Y.] 2016-17.



2. The grounds of appeal are as under:-

1. That having regard to the facts of the case and in law, both the impugned order and the order of penalty passed under Section 271G of the Act by the Deputy Commissioner of Income-tax, Transfer Pricing, Circle 4(2)(2), Mumbai ('Ld. TPO') are bad and therefore, liable to be quashed;
- 2.1 That the Hon'ble CIT(A) grossly erred in observing that the Appellant had not furnished the requisite information and documents as sought by the Ld. TPO under Section 92D of the Act read with Rule 10D(1) and Rule 10D(3) of the Income-tax Rules, 1962 ('Rules') within the time limit prescribed under Section 92D(3) of the Act;
- 2.2 That the Hon'ble CIT(A) failed to appreciate that the time limit prescribed under Section 92D(3) of the Act applies only to information mentioned in Rule 10D and not information sought by the TPO during the course of the Transfer Pricing Proceedings;
- 2.3 That the impugned order and the penalty order under Section 271G of the Act are bad in law and liable to be quashed, in as much as both failed to mention the specific information/documents that the Appellant allegedly failed to furnish;
- 3.1. That the Hon'ble CIT(A) / Ld. TPO have grossly erred in disregarding the Transfer Pricing Study Report that was maintained by the Appellant in accordance with the provisions of Section 92D(1) of the Act read with Rule 10D of the Rules and furnished on record;
- 3.2. That the Hon'ble CIT(A) / LO. TPO have grossly erred in disregarding the reliance placed by the Appellant on the Transfer Pricing Study Reports of its Associated Enterprises, by holding that the Appellant ought to have conducted an independent determination of arm's length price and transfer pricing study
4. That the Hon'ble CIT(A) erred in sustaining the penalty under Section 271G of the Act, by holding that there was no reasonable cause for alleged failure to comply with Section 271G of the Act, in total disregard of the submissions put forth by the Appellant demonstrating that reasonable cause did exist in terms of Section 273B of the Act in respect of the alleged failure,
5. That the impugned order and the penalty order under Section 271G of the Act have been passed in a mechanical and hasty manner, without proper consideration of the facts of the case, submissions of the Appellant, without cogent reasoning and any regard to authoritative judicial pronouncements as well as contrary to principles of natural justice and



accordingly, the impugned order is bad in law and liable to be quashed; and

6. *That the impugned order sustaining penalty of INR 22,31,295/- under Section 271G of the Act is excessive, unjustified on facts and against the provisions of the Act and therefore, bad in law.*

3. Brief facts of the case are that the assessee, a German company having no physical presence or place of business in India, filed its tax return and Form 3CEB for the year declaring international transactions worth Rs. 11,15,64,739/-. During the year under consideration, it received certain income comprising of fees for technical services and Royalty in terms of Article 12 of the Double Taxation Avoidance Agreement (“DTAA”) between India and Germany and taxed at the rate of 10% on a gross basis. The return was selected for scrutiny, and the case was referred to the Transfer Pricing Officer (TPO). A notice u/s 92D(3) dated 18.12.2018 was issued calling for detailed information and documents under Section 92D (3) of the Act read with Rule 10D. The TPO thereafter passed Transfer Pricing order determining a transfer pricing adjustment of Rs. 49,86,862/-. Thereafter, penalty notice u/s 271G was issued and penalty imposing penalty of Rs. 22,31,295/- was passed by the AO/TPO. Aggrieved, the assessee filed an appeal before the CIT (A) which was dismissed by him upholding the impugned penalty order.



4. In its subsequent appeal before us, the ld.AR has made detailed oral and written submissions in support of the grounds of appeal contesting the penalty. It is contended that the assessee made substantial compliance with the statutory notice under section 92D of the Act. Notice 18.12.2018 was issued calling for detailed information and documents under Section 92D (3) of the Act read with Rule 10D which was received by it on 24.01.2019. Despite the fact that, only one day was left to comply with the 92D(3) Notice, the assessee complied promptly by filing key documents on 25.01.2019 including Form 3CEB, return, computation, business details, and information on Associated Enterprises as requested and sought time to file further details. Additional details called for along with the full Transfer Pricing Study Report (TPSR) were furnished on 18.02.2019 covering all transactions with Associated Enterprises mentioned in the notice. Details in clauses (j) and (r) of the 92D(3) notice were filed on 14.03.2019 which too, though not a part of Rule 10D(1), within the 60-day period contemplated u/s.92D(3) read with the proviso thereto. During the, the TPO requested for additional information in the form of sample invoices, agreements etc., which were submitted by it on 26.03.2019. The TPO thereafter passed the TP order dated 20.06.2019 determining transfer pricing adjustment of Rs. 49,86,862/-.



4.1 It is submitted that despite providing detailed explanations and making substantial compliance, the basis of penalty order is the alleged non-compliance of the 92D(3) notice dated 18.12.2018 issued under section 92D within the time frame of 60 days and the allegation that the assessee had only provided a summary rather than full Transfer Pricing documentation is not correct. It is pleaded that it has fully complied with the 92D(3) notice. The assessee's conduct sufficiently demonstrates that it was actively complying with the requisition contained in the 92D(3) notice.

4.2 It is further argued that as the assessee had substantially complied with the 92D(3) notice within the timeline prescribed and therefore in the facts narrated above the provisions of section 273B of the Act, penalty under section 271G was not called for. Reliance in this regard was placed on High Court decisions in support of the proposition that if substantial compliance is made to the 92D(3) notice, then no penalty under section 271G ought to be levied i.e. PCIT v/s. MMTCL Ltd. 95 taxmann.com 419 (Delhi), CIT vs. Leroy Somer & Controls-360 ITR 532(Delhi) and CIT vs. SSL TTK Ltd. - MANU/TN/5589/2021 (Madras)

4.3 It is further contended that the findings of the TPO and the Id. CIT(A) that in response to the 92D(3) notice the assessee had only



filed a summary of its Transfer Pricing Study, is factually incorrect. The assessee had in its reply dated 18 February 2019 submitted full Transfer Pricing Study Report (TPSR) and related documentation, well within the period prescribed under section 92D(3). By this letter, the assessee had explained and enumerated the transactions entered into by it with its Associated Enterprises (“AE’s”) ThyssenKrup Industrial Solutions (India) Pvt. Ltd. and Thyssen Krup Industries India Pvt. Limited The assessee also explained that the transactions reported in the 3CEB and the TPSR were based on the Flip Side method/Approach. Attention in this regard was drawn to the detailed TPSR which was part of letter dated 18 February 2019 at Pages 38 to 202 of the Paper book submitted. It appears that the TPO/CIT(A) have taken an exception to the method of benchmarking which effectively takes the Indian AE as the tested party and consequently adopts the benchmarking carried out by the Indian AE (Flip Side method/approach). In this regard, it is argued that penalty under section 271G is not leviable for if the TPO/CIT(A) disagree with the method of benchmarking carried out by the assessee. Penalty under section 271G is leviable only for non-furnishing of information and documentation prescribed in Rule 10D(1). On that count alone these allegations of the TPO/CIT(A) deserves to be rejected. Moreover, the TPO himself made the adjustment in the TP order



by adopting the benchmarking carried out by the assessee and not by undertaking any fresh or other benchmarking. The method adopted by it has been accepted in all the earlier and subsequent years.

4.5 It is also pleaded that the TPO passed the order after 3 months i.e., on 20 June 2019 inasmuch as he had ample time to complete the proceedings as the limitation was ending on 31 October 2019. At no point in time had the TPO expressed any grievance, neither during any hearing nor in the TP Order, that the alleged delay in complying with the 92D(3) notice had in any way impacted his ability to pass the Transfer Pricing Order. Besides, there is no allegation by the TPO that the alleged non-compliance by the assessee was mala fide or with the intention to delay the ongoing the transfer pricing proceedings or that the assessee intended to prevent the TPO from effectively passing the TP Order. It has complied with the 92D(3) notice and acted in good faith and diligently responded to all queries raised, negating any mala fide or deliberate default. Reliance in this regard was placed CIT vs. SSL TTK ltd. - MANU/TN/5589/2021 (Madras).

4.6 Moreover, section 271G penalty is discretionary, not automatic and mandatory. It is imposed only where there is substantive and unjustifiable non-compliance. The intention behind the section is not to



penalize every minor failure, but to ensure genuine, prompt, and complete compliance to facilitate proper and fair evaluation of transfer pricing arrangements, and to deter non-compliance or attempts to conceal facts. Courts have repeatedly held that penalties should not be levied merely for technical or procedural lapses, especially when bona fide compliance is demonstrated. Several courts have interpreted these rules and sections to mean that penalties under Section 271G should only be imposed when there is a substantive and unjustifiable default—not for mere technical lapses, especially when substantial compliance is demonstrated. Reliance in this regard was placed on the decisions in the cases of PCIT v/s. MMTCL Ltd. 95 taxmann.com 419 (Delhi), CIT vs. Leroy Somer & Controls-360 ITR 532(Delhi) and CIT vs. SSL TTK ltd. - MANU/TN/5589/2021 (Madras). These decisions confirm that the objective of section 271G is fulfilled, if the main documentation and transfer pricing study are produced, aligning with the spirit of Rule 10D(3) and section 92D(3). It is submitted that several Tribunal decisions (including Mumbai Tribunal) following the above High Court decisions have upheld this principle.

5. The ld.DR has placed reliance on the orders of the authorities below. He has however, not controverted the factual aspects of the case involving issue of notices and necessary compliance made by the



assessee as narrated by the Id.AR and reproduced in the preceding paras.

6. In order to decide the issue at hand, it is relevant to note the provisions of [section 271G](#) of the Act, which reads as follows: -

"271G. 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."

6.1 From a plain reading of the aforesaid provisions, it is evident that the penalty is leviable under [section 271G](#) of the Act, if the assessee fails to furnish any information or documents as required under [section 92D\(3\)](#), in respect of international transaction entered into by the assessee. Further, [Section 92D](#) reads as follows: -

"92D. (1) Every person who has entered into an international 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 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."

6.2. Therefore, under [section 92D\(3\)](#) of the Act, the AO or the CIT(A) may require any person, who has entered into an international



transaction, to furnish information or document in respect thereof and on failure of the said person to furnish the documentation within the specified time, penalty under section 271G can be imposed. The documentation or information should be one specified in rule 10D, which has been formulated in terms of section 92D(1) which consists of clauses (a) to (m). A bare perusal of sub-clauses (a) to (m) would indicate that some of the information and details pertain to the assessee and the associated enterprise, their ownership, structure, address, name, broad description of business etc. The assesseees are also required to maintain details like, nature and terms of international transaction, property or services provided and quantum and value of each transaction etc. However, some of the clauses are very broad and wide like clause (m) mentioned above. These are general clauses relating to data, details etc. of third parties etc. These details, data, information etc. can be voluminous. Sub-rule (3) to Rule 10D states that information specified in Rule shall be supported by authentic documents, which may include the documents mentioned in sub-clauses (a) to (g). These include official publication report, status and data bases of Government of countries of residents of associated enterprises or other countries, market research studies, price publications including stock exchange and commodity market quotations, agreement contracts with unrelated



enterprises etc. The word used in sub-section (3) to Rule 10D is "may". It is clear from the reading of section 10D that it will include almost anything and everything relating to international transactions, including data bases, reports, publications, data bases from Governments or bodies outside India.

6.3 When there is general and substantive compliance of the provisions of Rule 10D, it is sufficient compliance. The Legislature was conscious of this fact and, therefore, had specifically stipulated in [Section 92D\(3\)](#) that the AO or CIT(Appeals) may require a person to furnish any information or document in respect thereof and on failure of the said person to furnish the documentation within the specified time, penalty under [Section 271G](#) can be imposed. Thus, for imposing penalty the Revenue must first mention the document and information, which was required to be furnished but was not furnished by the assessee within the specified time. The documentation or information should be one specified in Rule 10D, which has been formulated in terms of [Section 92D\(1\)](#) of the Act.

6.4 It appears that a notice dated 18.12.2018 was issued calling for detailed information and documents under Section 92D (3) of the Income Tax Act, 1961 ("the Act") read with Rule 10D of the Income Tax



Rules, 1962. The 92D(3) notice dated 18.12.2018 was stated to have been received by the assessee on 24.01.2019. Despite the fact that, it complied promptly by filing key documents on 25.01.2019, including Form 3CEB, return, computation, business details, and information on AE as requested and sought time to file further details. Additional details called for along with the full Transfer Pricing Study Report (TPSR) were furnished on 18.02.2019, covering all transactions with Associated Enterprises mentioned in the notice. Details in clauses (j) and (r) of the 92D(3) notice were filed on 14.03.2019 which too within the 60-day period contemplated under S.92D(3) read with the proviso thereto. During the hearing on 15.03.2019, the TPO requested for additional information in the form of sample invoices, agreements etc., which were promptly submitted by the assessee on 26.03.2019.

7. In view of the above factual aspects and case laws of Hon'ble Delhi High Court in the case of **Leroy Somer & Controls (India) (P.) Ltd. (supra)**, we are of the view that the assessee has sufficiently complied with the requirement of Rule 10D(i) and it has furnished all the information as asked for by the AO and unless and until a specific defect is pointed out in the submissions of documents, penalty under [section 271G](#) of the Act cannot be justified.



7.1 We have given a thoughtful consideration to the orders of the authorities below also. We are of the view that there is no finding by the TPO/AO in the transfer pricing orders stating that the information/explanations provided by the assessee during the transfer pricing assessment proceedings were inaccurate or that there was any insufficient information/explanation preventing the TPO from determining the arm's length price. Further, there is no finding recorded by the TPO that the conduct of the assessee lacks bonafides or there any indifference on the part of the assessee in not producing the records called for by the TPO leading to inability on the hispart to determine the ALP.

7.2 On similar facts the **co-ordinate I.T.A. No. 2914 & 2915/Mum/2024 Bench** in the case of **Ankit Gems (P) Ltd. 106 taxmann.com 243** has held that "where TPO had accepted benchmarking done by assessee under TNMM and no variation / adjustment was made by him to ALP imposition of penalty u/s.271G would be unsustainable. The Hon'ble High Court of Madras in the case of **SSL-TTK Ltd in T.C.A. No.776 of 2014** had the occasion to consider the following substantial question of law:-



"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the order of the CIT(A) directing the Assessing Officer to delete the penalty levied under [Section 271G](#) of the Income Tax Act, 1961?"

13. And the Hon'ble High Court interalia held as under:-

"12. Be that as it may, it is not a case of total failure, but it may be a case of belated compliance. The learned Senior Standing Counsel appearing for the respondent submitted that no leniency is required to be extended to the assessee and in fact, on an individual assessee, the High Court of Kerala did not show any indulgence with regard to the penalty, which was imposed under [Section 271C](#) and [Section 273B](#) of the Act in the case of *CIT v. Thomas Muthoot* reported in (2015) 61 taxmann.com 76 (Kerala). The assessee pleaded that he was under the bonafide belief that under [Section 194A](#), they were not liable to deduct tax at source on the interest paid by a partner to the firm and thus, pleaded ignorance of the statutory liability to deduct tax. This plea was held to be not acceptable and not bonafide. We find, factually the case cannot be compared with that of the case on hand, where there are several distinguishing factual features, which would go to justify the decision taken by the Tribunal affirming the order passed by the CIT(A). Though we have held that the explanation offered by the assessee stating that they are a novice to transfer pricing transactions, which is not prima facie acceptable, but the conduct of the assessee in complying with 12 items out of 16 items as called for by the TPO can be considered to be reasonable and the act cannot be held to be an unreasonable act, but can be considered as a reasonable act of an organization acting with prudence under normal circumstances without negligence or inaction or want of bonafides. There is no finding recorded by the Assessing Officer that the conduct of the assessee lacks bonafide or there was supine indifference on the part of the assessee in not producing the records called for by the TPO, despite notice and despite fixing time frame and not furnishing all the details was on account of inaction leading to failure on the part of the assessee to invoke [Section 271G](#) of the Act. Therefore, we are of the view that on facts, the Tribunal rightly held in favour of the assessee by affirming the order passed by the CIT(A)."

8. Accordingly, it is evident that the levy of penalty under [section 271G](#) is discretionary and not mandatory. Whether penalty should be imposed is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances as has been held by the Hon'ble Supreme Court in the case of **Hindustan**



Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC). The discretionary power under the penalty provisions is not arbitrary and has to be guided by well-established principles depending upon the facts and circumstances of each case. In the given case, the assessee has made substantive compliance and that too within 60 days. In the overall facts and circumstances of the present case, we are of the view that this is a fit case where the TPO could have exercised the discretion not to impose penalty. Considering that there is no wilful and complete failure on the part of the assessee to respond to the notices and given that the TPO has completed the TP assessment after considering the details submitted subsequently by the assessee, we are of the view that the levy of penalty under **section 271G** of the Act on the assessee is not justified. Therefore we aside the appellate order and direct the AO to delete the penalty levied, allowing the grounds of appeal.

9. In the result, **the appeal of the assessee is allowed.**

Order pronounced in the open court on 15/10/2025.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)



Place: मुंबई/Mumbai

दिनांक /Date 15.10.2025

Lubhna Shaikh / Steno

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2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
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