

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2": NEW DELHI
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.3721/Del/2014
(Assessment Year: 2009-10)

Worlds Window Impex (India) Pvt. Ltd,
75, Khirki Village, Malviya Nagar,
New Delhi

PAN:AAVCG3418Q
(Appellant)

Vs.

ACIT,
Central Circle-6

(Respondent)

Assessee by :	Sh.Amit Goel, CA
Revenue by:	Sh. Saurabh Goel, CA
Date of Hearing	Shri Manu Chaurasia, Sr. DR
Date of pronouncement	15/02/2016
	22/04/2016

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A), New Delhi dated 15.04.2014 Delhi for the Assessment Year 2009-10 confirming the penalty u/s 271G of the Act of Rs.28500100/- levied by Id AO vide order dated 25th March 2013.
2. The assessee has raised the following grounds of appeal:-
 1. *That the order passed by learned CIT(Appeal) confirming penalty of Rs.28500100/- imposed by the assessing officer under Section 271G of the Income Tax Act, 1961 is bad in law.*
 2. *That the learned CIT(Appeals) erred on facts and in law in upholding penalty imposed by the assessing officer under Section 271G of the Income Tax Act, 1961.*
 3. *On the facts and circumstances of the case and in law, the penalty of Rs.28500100/- levied by the assessing officer u/s 271G is erroneous and the CIT(A) should have cancelled the same.*
 4. *On the facts and circumstances of the case and in law, the penalty imposed by the assessing officer u/s 271G of Income Tax Act, 1961 and confirmed by CIT(A) is without jurisdiction and bad-in-law and, therefore, the penalty imposed is liable to be cancelled.*
3. The brief facts of the case is that the assessee is a private limited company filed its return of income on 30th September 2009 declaring total income of Rs.5,09,20,284/-. The case of the assessee was referred to the Id Transfer

Pricing Officer in respect of international transactions for determination of Arms's length pricing. Ld. TPO passed an order u/s 92CA (3) of the Income Tax Act on 30.01.2013 wherein no adverse inference were drawn with respect to international transactions of the assessee accepting that international transactions of the assessee with its AE are at arms' length. However, ld. TPO noted that assessee has not filed TP study report (documents prescribed under Rule 10D of the Income Tax Rules, 1962) in time and there were repeated non compliances in that regard. Therefore, ld AO initiated penalty proceedings u/s 271G of the Act. In response to the penalty notice the assessee submitted that it has substantially complied with notice dated 25.10.2011 of the ld. TPO within prescribed time limit of 30 days and remaining details were submitted within extended period of 60 days. Therefore, it was contended that assessee has submitted complete details before finalization of assessment order and hence no penalty shall be levied. However, ld AO rejected the contention of the assessee and held that TP study report was not furnished in time even after repeated requests and substantial compliance not made within prescribed time with the TP proceedings does not give immunity to the assessee from penalty u/s 271G of the Act. Hence, Ld AO levied penalty @2% of Rs.1425005155/- of international transactions amounting to Rs.2,85,00,102/-. The assessee carried the matter before the ld CIT(A), who in turn confirmed the penalty. While confirming the penalty ld CIT(A) held that collective information as prescribed under Rule 10D is called TP report and assessee has not complied with the provisions of section 92D read with Rule 10D in prescribed time. It was further mentioned that permission for extension of time was also sought only after receipt of show cause notice for penalty. He observed that no doubt in the present case the transactions are at Arm's length but the purpose of penalty is to ensure timely compliance of the substantive provisions of the law in which assessee has failed.

4. Aggrieved by the order of the ld CIT(A) assessee has preferred appeal before us.
5. Ld AR of the appellant submitted that
 - i. That there is no specification of TP study report prescribed under Rule 10D and penalty has been levied by the ld AO and confirmed by ld

- CIT(A) for non timely furnishing of the same. Therefore it was submitted that there is no violation of any of the provisions of section 92D or Rule 10D.
- ii. That in the order u/s 92CA (3) the ld. TPO has emphatically mentioned that transfer pricing documentation containing functional and economic analysis prescribed under Rule 10D of the Income Tax Rules was submitted and placed on the record. Therefore these observation of the ld. TPO clearly shows that assessee has complied so far as submission of details is concerned with the utmost satisfaction of ld. TPO. Further no adjustment in the determination of ALP also supports the view of the assessee.
 - iii. that in AY 2005-06 on similar facts and circumstances and having similar transactions no penalty u/s 271G was initiated or levied.
 - iv. As the complete details were provided by the assessee merely non furnishing of the TP Study report is a technical breach and for this penalty may not be levied. This fact has also been mentioned by ld CIT(A) that it is a technical penalty.
 - v. That the words used in section 271G is “may and not shall” and therefore there is no justification in the levy of penalty as it is not an automatic consequences.
 - vi. In any way there is a reasonable cause for the not filing TP study report submitting that it is not a specified document under Rule 10D. he submitted that there is a reasonable cause in submission of assessee that the TP study report is not a specified document under Rule 10D.
 - vii. He further relied on Circular No.12 dated 23th August 2001 of CBDT as well as plethora of judgments
6. ld DR relied on the orders of the lower authorities vehemently argued that the assessee has not submitted the details within specified time limit, the penalty has been rightly levied by the AO and confirmed by ld CIT(A).
 7. We have carefully considered the rival contentions. According to the provisions of section 92B every person who has entered into international transaction is required to keep and maintain information and documents with respect to those transactions as prescribed under rule 10D of the

Income tax Rules 1962. During the course of any proceedings ld AO may require assessee to furnish information or documents prescribed u/s 92D within a period of 30 days from the date of receipt of the notice. On an application made by the assessee such period can be further extended by 30 days. If any person fails to furnish such information or documents to the AO/TPO then AO may direct that such person shall pay by way of penalty @2% of the value of international transactions as per provisions of Section 271G of the act. As per section 273B of the act it is further provided that no such penalty shall be levied if assessee proves that such failure was because of reasonable cause. In the light of these provisions the default committed by the assessee if any is required to be examined. The ld. TPO has passed an order u/s 92CA(3) of the Act dated 30.01.2013 wherein it has been specifically mentioned that transfer pricing documentation containing functional and economic analysis prescribed under Rule 10D of the Income Tax Rules was submitted by the assessee. However, in para No.6 of the same order it is mentioned that it has been pointed already to the assessee on 03.10.2012 that tax payer did not file the TP study report (documentation prescribed under Rule 10D) in time. Provisions of Rule 10D(1) prescribes information from Sl. No.(a) to (m) required to be kept and maintained by the assessee with respect to its international transactions. Ld. TPO issued letter dated 25.10.2011 asking various information most of which are referred in Rule 10D(1). In response to this assessee submitted some information vide letter 25.11.2011 and some information explanation vide letter 30.12.2011. balance information were also provided by letter dated 16th January 2012. During the course of assessment proceedings assessee also submitted a TP study report prepared by its Chartered Accountant M/s. Awdesh Bansal and Co. copy of which is also placed in the Paper Book at Sl. No.50 to 99. In view of this it is apparent that assessee submitted some details within the period of 30 days and some details within period of 60 days . Undisputedly all the details relevant to TP assessment were provided before completion of order u/s 92CA(3) by the ld. TPO. In the order of the ld. TPO we did not find that for which documentation the ld. TPO is proposing penalty u/s 271G of the Act. It is also pertinent to note that after examination of all details the international

entered into by the assessee are found to be at Arm's length by ld. TPO. But the penalty is being levied on the assessee on account of non-furnishing of "TP Study Report" in time. On reading of Rule 10D we do not find any such nomenclature of information contained in that Rule. However, it is also a matter of common knowledge that combined information mentioned in Rule 10D is generally called "TP Study Report" which is prepared by assessee containing all the details. However assessee feigns ignorance about the same which cannot be brushed aside lightly so far as the issue of penalty is concerned. It is also undisputed that assessee has requested for seeking further time of 30 days for submission of details vide letter dated 20.12.2011. The notice u/s 92CA was sent to the assessee on 25th October 2011 and assessee has submitted all the details by 30th December 2011. Assessee has also sought extension of time by further 30 days vide letter dated 20.12.2011. It is not case of ld AO that assessee has not submitted the required information before that date. Merely because the assessee has not sought extension of time earlier the penalty u/s 271G cannot be imposed upon the assessee. Before us the ld AR relied on the decision of Hon'ble Delhi High Court in case CIT Vs. Jonson Mathey India Pvt. Ltd. 54 Taxmann.com 406, wherein an identical facts and circumstances the penalty u/s 271G has been deleted. The Hon'ble High Court has noted that the TPO did not interfere and make adjustment to the international transaction therefore it can be inferred that as per documentation filed no addition was required. Hon'ble High Court held as under:-

8. Further, the ld AR has also relied on the order of Hon'ble Delhi High Court in case of CIT Vs. Bumi Hiway Pvt. Ltd. 51 Taxmann.com 572 wherein the Hon'ble Delhi High in para No.6 has held as under:-

"6. What is clearly discernable 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 Section 271G 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 furnished and whether any extension of time was granted by the Transfer Pricing Officer and if the required documents were then actually filed. The penalty order is bereft and devoid of the said details and, therefore, shows lack of application of mind. Transfer Pricing Officer had indicated that the Assessing Officer might initiate proceedings under Section 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 that penalty shall be imposed by the Assessing Officer, as has been observed in the first part at the penalty order.”

9. Similarly in the case of the Assessee there is no specific finding about by which date Assessee was required to furnish the information and whether such documents are furnished or not and whether any extension of time was granted by TPO or not. Identically this information is also not in the order of Id. TPO or AO. Similarly Hon’ble Delhi High court in case of CIT Vs. Leroy Somer and Controls India pvt. Ltd. 37 Taxmann.com 407 has held that where there is general and substantive compliance of the provisions of Rule 10D it is sufficient. Identically in the case of the Assessee there is a substantial compliance. Honorable high court has further held that

“Thus, indicating the documentation/information may be floating, transient and changeable. Constant assimilation may be required. Besides, data/information can also vary. The Tribunal has rightly concluded that with such a broad rule, which requires documentation and information voluminous and virtually unlimited, section 271G has to be interpreted reasonably and in a rational manner. Information or documentation, which is assessee specific or specific to the associated enterprises, should be readily available, whereas other documentation or information relates to data bases or transactions entered into by third parties may require collation/collection from time to time. There cannot be any end or limit to the documentation or information relating to data bases or third parties. When there is general and substantive compliance with the provisions of rules 10D, it is sufficient. The Legislature was conscious of this fact and, therefore, had specifically stipulated in section 92D(3) that the Assessing Officer or the Commissioner (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.”

10. in view of above facts and respectfully following the decision cited above of Hon’ble Delhi High Court we are of the view that Assessee has made substantial compliance before the order of the Ld. TPO and failure of the revenue to point out specifically which information was not provided by Assessee in time and most importantly based on the documentation provided by the Assessee no adjustment is proposed by the TPO and

further the penalty is levied for non-furnishing 'TP Study Report' which is not a specified document under Rule 10D in time though available before passing of the order we cancel the penalty levied u/s 271G of Rs.258,00,100/- levied by Assessing Officer and confirmed by the Id CIT(A).

11. In the result appeal filed by the Assessee is allowed.

Order pronounced in the open court on 22/04/2016.

-Sd/-

**(RAJPAL YADAV)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated:22/04/2016
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi