

## **No penalty if assessee failed to submit TP documents due to pendency of its application of shifting its head office**

**Summary – The Delhi ITAT in a recent case of NTT Data Global Delivery Services Ltd., (the Assessee) held that No penalty was leviable under section 271G when assessee failed to submit documentation under section 92D due to pendency of its application of shifting of its head office and he had also communicated same before Assessing Officer**

### **Facts**

- Assessee-company was engaged in the business of providing IT and ITES services primarily to its group companies.
- TPO had accepted the arm's length price of international transactions undertaken by the assessee with its AE and no adjustment under section 92CA was proposed. However, the TPO had recommended for initiation of levy of penalty under section 271G on the ground that assessee had failed to furnish the documents required by him within the stipulated time given in the notice issued by him for filing of documentation.
- When the notice from the TPO was received, the assessee filed the letter before the TPO that an application was pending before the CCIT for transfer of file from Delhi to Bangalore and therefore, it was requested that matter should be kept in abeyance until the files were transferred.
- The assessing Officer held that since there was delay of 33 days for making compliance and giving an application for transfer of place before CCIT could not be a reasonable cause and matter could not have been kept in abeyance by the TPO, because until and unless order was passed on under section 127, case could not be transferred and TPO/Assessing Officer had to proceed with the matter and mere filing of application before CCIT did not tantamount to an order under section 127, and hence, penalty had to be levied in accordance with law.
- Commissioner (Appeals) too had confirmed the said penalty on the ground that required document was not filed on or before 30 days from the date of receipt notice issued on 12-7-2011 and the required documents were filed before the TPO only on 14-9-2011 and, hence, there was a clear cut delay of 33 days.

### **Held**

- From a perusal of the entire material specifically various letters written to the Assessing Officer/TPO and also the applications for transfer of jurisdiction from New Delhi to Bangalore, it is found that despite such a genuine request made by the assessee before the departmental authorities for transfer of jurisdiction and regular follow up, no action was taken nor any intimation was given to the assessee that such a transfer is not possible for it will take some time. Once the entire office of newly amalgamated company was based at Bangalore along with the Finance Controller, Manager

Taxation and other officials looking after the matter then, making such compliance would have been very difficult and cumbersome. Instead of responding to assessee's application on transfer of jurisdiction, the assessee has been saddled with such a huge penalty of more than Rs. 12.71 crores especially when all its international transactions have been found at arm's length price. When the assessee had requested the TPO to keep the matter in abeyance for the reason that it had been following the transfer of its file, then Assessing Officer should have considered the same and pursued the matter with higher authorities to expedite the transfer or should have given the opportunity to the assessee with further time and ask the assessee to file all the relevant documents when transfer application got delayed. Ultimately, assessee did file all the documents necessary for determination of arm's length price of its international transaction with its AE. Thus, under these facts and circumstances, assessee was not in default and was under genuine and *bona fide* belief for not filing the documentation within 30 days as required in the notice issued under section 92D(3). In the wake of such reasonable cause, no penalty can be levied under section 271G in terms of section 273B; and therefore, impugned penalty is directed to be deleted.