

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' D ' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री अब्राहमपी.जॉर्ज, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.Nos.970 & 971/Mds./2017

निर्धारण वर्ष /Assessment years : 2013-14 & 2013-14

M/s.Aalaya Jewel Industry Private Limited, Vs. Assistant Commissioner of Income Tax,
80/1,1st Floor, Govindasamy Corporate Circle-2,
Layout, Balaji Avenue, Coimbatore.
Coimbatore 641 001.

[PAN AABCC 2461 K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Miss S.Deepa, C.A
प्रत्यर्थी की ओर से /Respondent by : Mrs.Ruby George, CIT, D.R

सुनवाई की तारीख/Date of Hearing : 15-03-2018
घोषणा की तारीख /Date of Pronouncement : 05-04-2018

आदेश / O R D E R

PER ABRAHAM P GEORGE, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are against an order dated 22.03.2017 passed by Assistant Commissioner of Income Tax, Corporate Circle-2, Coimbatore for the impugned assessment year.

2. Ld. Counsel for the assessee at the outset submitted that she was withdrawing appeal No.970/CHNY/2017. Accordingly, Appeal of assessee in ITA No.970/CHNY/2017 is dismissed as withdrawn. This leaves us with appeal No.971/CHNY/2017.

3. There are eight grounds taken by the assessee, of which ground No.1 assails the validity of assessment done on assessee for the impugned assessment year. As per the assessee, the order was passed beyond the time prescribed u/s.144C(2) read along with section 144C(4) of the Income Tax Act, 1961 (in short 'the Act').

4. Facts apropos are that assessee engaged in the business of precision machining of components for various industries, had filed its return for the impugned assessment year admitting income of ₹9,61,980/- under normal provisions and ₹40,97,548/- under MAT provisions. Since the assessee had international transactions to the tune of ₹50.72 crores, a reference was made by the Id. Assessing Officer to the TPO u/s.92CA of the Act. The TPO vide its order dated 10.10.2016 recommended a Transfer Pricing (TP) adjustment of ₹2,57,04,337/-. A Draft assessment order based on TPO recommendations was proposed by the Id. Assessing Officer on 29.12.2016. Assessee thereupon filed an application before the Dispute

Resolution Panel, (DRP) on 31.01.2017. Though in such application, assessee recorded the date of receipt of draft assessment order as 31.12.2016, the DRP noted from records that the draft assessment order was served on the assessee on 29.12.2016. Since assessee had filed its objections before the DRP on 31.01.2017, Id.DRP noted that there was a delay of three (3) days in filing it. According to the Id.DRP, there was no power under the Act for condoning such delay. As per Id. DRP, though the Ld.CIT(A) was having power of condonation u/s.249(3) of the Act and the Tribunal u/s. 253(5) of the Act, there was no similar power with DRP u/s.144C of the Act. Ld.DRP was also noted that condonation of delay, if granted, would result in curtailing the time available to the DRP for dealing with the objections of the assessee. The Id.DRP thus held that assessee had failed to file its application setting out its objections to the draft assessment order within the time period of 30 days stipulated under the Act and declined to consider such application. In other words, Id.DRP rejected the application filed by the assessee. Thereafter, on 22.03.2017, the Id. Assessing Officer passed an assessment order making an addition of ₹257,04,337/- to the income returned by the assessee, based on the recommendations made by the TPO.

5. Now, before us Id.A.R submitted that the assessment order passed by the AO on 22.03.2017 was much after the time period

mentioned in sub-section (4) of section 144C of the Act. According to her, once the DRP had refused to consider the objections filed by the assessee, Id. Assessing Officer was obliged to pass the assessment order within one month from the end of month in which the outer time limit for filing objections u/s.144C(2) of the Act expired. As per Id.A.R, the assessment order ought to have been passed by 28.02.2017. Thus, as per Id.A.R, the order dated 22.03.2017 passed by the AO was beyond the time period allowed under the Act and had to be quashed. Ld.AR also pointed out that copy of objections, which was not accepted by DRP, was filed by the assessee before the AO on 30.01.2017. However, according to her, this had no ramification on the time limits, since the objections stood rejected by the Id.DRP without taking into file. Reliance was placed on the judgement of jurisdictional High Court in the case of Vijay Television P. Ltd., Vs. Dispute Resolution Panel And Others reported in (2014) 369 ITR 113 (Mad.).

6. Per contra Id.D.R submitted that the order passed by the Id. Assessing Officer was well within time. According to her, once objections were filed by the assessee and these were considered by the DRP, the time limit for passing the assessment order started to run from the date of the order of the DRP. According to her, by virtue of sub-section (13) of section 144C of the Act, AO had a time of one

month from the end of the month in which the directions were issued by the DRP, for passing his order. As per Id.D.R, the DRP had disposed off the objections filed by the assessee on 17.03.2017 and hence, the assessment order passed on 22.03.2017 was well within time.

7. We have heard the rival submissions and perused the material on record. Section 144C is reproduced hereunder:-

"Sec.144C. REFERENCE TO DISPUTE RESOLUTION PANEL

(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,-

(a) file his acceptance of the variations to the Assessing Officer ; or

(b) file his objections, if any, to such variation with,-

(i) the Dispute Resolution Panel ; and

(ii) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if-

(a) the assessee intimates to the Assessing Officer the acceptance of the variation ; or

(b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,-

(a) the acceptance is received ; or

(b) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely :-

(a) draft order ;

(b) objections filed by the assessee ;

(c) evidence furnished by the assessee ;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority ;

(e) records relating to the draft order ;

(f) evidence collected by, or caused to be collected by, it ; and

(g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),-

(a) make such further enquiry, as it thinks fit ; or

(b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the Revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete,

notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Commissioner as provided in sub-section (12) of section 144BA.

(15) For the purposes of this section,-

(a) "Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose ;

(b) "eligible assessee" means,-

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA ; and

(ii) any foreign company."

Vide sub-section (2) of above Section and eligible assessee has an option to file, either his acceptance of the variation proposed in the draft assessment order to the Id. Assessing Officer, or if he objects to file objections. If he chooses to file objections, it has to be filed before the DRP, and the Id. Assessing Officer. There are two sub-clauses for

sub-section(2) of Sec.144C of the Act, viz. clause-(a) & clause-(b). These sub-clauses are joined by the term " **o r** ". This is a disjunctive expression. Thus, the assessee has to choose one of two options, either to file acceptance or to file his objection. If the assessee chooses for the second option given in sub-clause (b), then he has to comply with the two limbs (i) & (ii) of such sub-clause. These two limbs are joined by the term '**a n d**'. This is a conjunctive term. Hence, if the assessee chooses to file his objection, such objections have to be filed both before the DRP and the AO. Filing of such objections with any one of these two authorities will not suffice. In any event, i.e. whether the assessee chooses option as per clause (a) or option as per clause (b), it has to be done within 30 days of the receipt of the draft assessment order.

8. In the light of the above position of law let us make an analysis of facts in the case before us. It is not disputed that the draft assessment order was served on the assessee on 29.12.2016 and the assessee filed objections before the DRP as on 31.01.2017. Or in other words, it was filed after the thirty day time period allowed under sub-section (2) of Section 144C of the Act. As rightly pointed out by the Id.DRP, there is no power u/s.144C for the DRP to condone any delay. Powers of the DRP are exhaustively set out in Sec.144C of the Act and it has no power to condone any delay in filing of objections.

Hence, DRP rightly held that application of objections could not be accepted. In our opinion, delayed filing of objections gives rise to the same consequence as non-filing of the objections. This is because objection filed after 30 days, which is beyond statutory limit, is as good as no objection. Copy of the objections was filed by the assessee before the Id. Assessing Officer only on 30.03.2017, and even this was beyond the limit of 30 days. Thus, assessee did not satisfy any of the conditions mentioned in sub-section (2) of section 144C. Non-filing of objections within the time period allowed under 30 days will automatically attract application of sub-section (4) of Section 144C of the Act. Sub-section (4) clearly say that an assessment order has to be passed within one month from the end of the month when the period of filing of objections under sub-section (2) expires. Contention of the Id.D.R is that the order of the DRP rejecting the application filed by the assessee was a direction of the DRP and hence time limit set out in sub-section (13) of Section 144C was available to the Assessing Officer for passing the assessment order. We are afraid, we cannot accept this reasoning. An order passed by the DRP rejecting an application of objections, due to belated filing, in our opinion, cannot be equated with a direction coming within the meaning of sub-sections (5) of section 144C of the Act. There is no guidance whatsoever to the Id.AO, from such an order. Hence, the argument of the Id.DR that

time limit given in sub-section (13) of Section 144C of the Act would apply cannot be accepted. In the case before us, the time limit for filing objections expired on 28.01.2017. Hence, the assessment order should have been passed on or before 28.02.2017. The assessment order was passed only 22.03.2017. Thus, assessment done was beyond the statutory limit allowed under the Act. The assessment stands set aside.

9. Appeal of the assessee in ITA No.971/CHNY/2017 stands allowed.

10. In the result, the appeals of the assessee in ITA No.970/CHNY/2017 is dismissed and in ITA No.971/CHNY/2017 is allowed

Order pronounced on 05th April, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/Judicial Member

Sd/-

(अब्राहमपी.जॉर्ज)

(ABRAHAM P GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 05th April, 2018

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF