

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.1650/DEL/2015
Assessment Year: 2010-11

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| Bucher Hydraulics Private Limited Plot No.6, Sector-5 IMT Manesar Gurgaon PAN AAEC5991H | Vs | Deputy Commissioner of Income Tax Circle-5 (1) New Delhi |
| (APPELLANT) | | (RESPONDENT) |

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| Appellant by | Sh. R. K. Kapoor, CA |
| Respondent by | Sh. Sanjay I. Bara, CIT DR |

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| Date of hearing: | 25/10/2018 |
| Date of Pronouncement: | 29/10/2018 |

ORDER

PER N. K. BILLAIYA, AM:

ITA No.1650/Del/2015 with this appeal the assessee has challenged the correctness of the order dated 28.03.2014 framed u/s 143 (3) r/w 144C of the Act. Vide application dated 16.08.2018, the assessee raised following additional ground :-

“The reference to the Transfer Pricing Officer u/s 92 CA of the Income Tax Act, 1961 by the Assessing Officer was illegal being contrary to (i) the binding Instruction No.3/2003, (ii) the provisions of Section 92 CA and the binding decision of the Special Bench in the case of Aztec Software and Technology Services Ltd. [107 ITD 141 (Bang) (SB) / 2007- TIOL-210-ITAT-BANG-SB]. Consequently, the impugned assessment is time barred and, therefore, bad in law.”

2. Before us the Ld. Counsel stated that in A. Y. 2007-08 and 2008-09 similar additional grounds were raised before the Tribunal and the Tribunal in ITA No. 4237/Del/2011 and 5690/Del/2012 for A. Y. 2007-08 and 2008-09 admitted the additional ground and decided the issue in favour of the assessee and against the revenue.

3. We have given the thoughtful consideration to the order of the authorities below qua the issue raised vide additional ground. We find force in the contention of the Ld. Counsel because an identical additional ground was considered by the Tribunal in A. Y. 2007-08 and 2008-09 (supra) the relevant findings of the Tribunal reads as under :-

“We have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that the quantum of international transaction in the instant case is below the monetary limit of Rs.5 crores. Therefore, we find merit in the arguments of the Ld. Counsel for the assessee that the Assessing Officer instead of referring the matter to the TPO for determining the ALP of the international transaction should have decided himself the issue of such ALP of the international transaction.

12. *We find identical issue had come up before the Tribunal in the case of Calance Software Private Limited (supra) to which one of us (AM) is a party. The relevant observations of the Tribunal read as under :-*

13. *We have heard both the parties and perused the material available on*

record. At the time of hearing the Ld. AR has taken a ground which is on legal point that as per the Instruction **No. 3/2003**

issued by the CBDT, the Assessing Officer should have decided the issue of international transaction himself instead of referring it to Transfer Pricing Officer as the quantum of International Transaction is below the monetary limit of Rs.5 crore. Prima facie, it appears that the contention of the Ld. AR is supported by the Instruction No.3/2003. Therefore, we have to verify whether that Instruction has a binding force or it is just an administrative Instruction within the Departments day to day activities. The Circular has been considered by the Andhra Pradesh High Court in case **of CIT Vs. Nayana P Dedhia 270ITR 572** wherein it is held that the authorities responsible for administration of the Act shall observe and follow any such orders, instructions and directions of the board. This is actually reiterated from the decision of the Hon'ble Apex Court in case of **UCO Bank Vs. CIT 237 ITR 889 = 2002 7IQL-697-SC-IT-LB.**

But at the same time the Hon'ble Supreme Court also held that the Circulars can be adverse to the IT Department but still are binding on the authorities of the Income Tax Departments but cannot be binding on the assessee if they are adverse to the assessee. These ratio laid down by the Apex Court has an impact on the argument of the Ld. AR regarding the Board's Instruction to be followed.

The Special Bench of this Tribunal also in case of *Aztec Software & Technology Sendees Ltd. vs. ACIT* held that CBDT directions are mandatory and binding on the Assessing Officer and CIT. Further the Jurisdictional High Court in case of *CIT vs. SPL's Siddhartha Ltd. (supra)* held that "Section 116 of the Act also defines the income-tax authorities as different and distinct authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in specified circumstances. If powers conferred, on a particular authority are arrogated by other authority without mandate of law, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the court would not expect its being done in some other manner." Therefore, the additional Ground of the assessee is allowed. At this juncture, the assessment has become time barred as the reference made to TPO itself is not sustainable and the Assessing Officer should have passed Assessment Order at the prescribed time provided under the statute. We are not deciding on the merit of the case as the additional ground is decided in favour of the assessee.

14. *In result, appeal of the assessee is allowed.”*

13. *Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in the case of Calance Software Pvt. Ltd. (Supra) and since the time limit for issue of the order by the Assessing Officer in case of the TPO reference u/s 153 (1) of the IT Act expired on 31.12.2009, therefore, we hold that impugned assessment order is bad in law and is barred by limitation. The additional ground raised by the assessee is accordingly allowed. Since the assessee succeeds on this additional ground the other grounds raised by the assessee become academic in nature and therefore are not being adjudicated. The appeal filed by the assessee is accordingly allowed.”*

4. Respectfully following the findings of the coordinate bench in the light of CBDT circular No.03/2003 dated 20.03.2003, the additional ground is allowed. The other issues raised by the assessee be come academic in nature and therefore, are not re-adjudicated.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 29.10.2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date:- 29.10.2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 25.10.2018 |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | |
| Date on which the fair order comes back to the Sr. PS/ PS | |
| Date on which the final order is uploaded on the website of ITAT | 29.10.2018 |
| Date on which the file goes to the Bench Clerk | |
| Date on which file goes to the Head Clerk. | |
| The date on which file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |

