

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.1458/PUN/2015**

**निर्धारण वर्ष / Assessment Year : 2009-10**

The Dy. Commissioner of Income Tax,  
Circle 4, Pune

.... अपीलार्थी/Appellant

Vs.

Persistent Systems Pvt. Ltd.,  
Bhageerath, 402,  
Senapati Bapat Marg,  
Pune – 411016

.... प्रत्यर्थी / Respondent

PAN: AABCP1209Q

**प्रत्याक्षेप सं./CO No.17/PUN/2018**

**निर्धारण वर्ष / Assessment Year : 2009-10**

**(out of ITA No.1458/PUN/2015)**

Persistent Systems Pvt. Ltd.,  
Bhageerath, 402,  
Senapati Bapat Marg,  
Pune – 411016

... प्रत्याक्षेपक/ Cross objector

PAN: AABCP1209Q

Vs.

The Dy. Commissioner of Income Tax,  
Circle 4, Pune

.... प्रत्यर्थी / Respondent

Assessee by : S/Shri Dinesh Supekar & Rushabh Porwal  
Respondent by : Shri Sanjeev Ghei

सुनवाई की तारीख /  
**Date of Hearing : 01.11.2018**

घोषणा की तारीख /  
**Date of Pronouncement: 25.01.2019**

**आदेश / ORDER****PER SUSHMA CHOWLA, JM:**

The appeal filed by Revenue is against order of CIT(A)-13, Pune, dated 20.08.2015 relating to assessment year 2009-10 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act'). The assessee filed Cross Objections against the appeal of Revenue.

2. The appeal filed by Revenue and Cross Objections filed by the assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The Cross Objections filed by assessee are after delay of 148 days. The assessee has moved petition for condonation of delay and has explained the reason for the aforesaid delay. In the facts and circumstances, the delay in filing Cross Objections late, is condoned.

4. The issue raised in Cross Objections affects the jurisdiction of Assessing Officer in passing assessment order and hence, the same needs to be adjudicated first.

5. The ground of objection No.1 reads as under:-

1. *On the facts and in the circumstances of the case and in law, the Learned Deputy Commissioner of Income Tax, Circle 4, Pune ('Assessing Officer') erred in passing the assessment order under section 143(3) of the Act, even though it was made beyond the time limit specified under section 153(1) of the Act.*

*It is prayed that the said assessment order being time barred ought to be held as bad in law, liable to be quashed.*

6. The learned Authorized Representative for the assessee also pointed out that the issue on merits is covered in favour of assessee by the orders of Tribunal in earlier years. However, he fairly submitted that in case the jurisdictional issue raised in Cross Objections is decided, then there is no need to go into merits of the issue raised by Revenue in the Departmental appeal.

7. Brief facts relating to the issue are that the assessee had furnished return of income on 26.09.2009, which was revised on 26.03.2011. The case of assessee was selected for scrutiny. The Assessing Officer made reference under section 92CA(1) of the Act to the Transfer Pricing Officer (TPO), who passed an order dated 08.10.2012 proposing no adjustment to the value of international transactions declared by assessee. The Assessing Officer thereafter, passed draft assessment order on 28.03.2013. The assessee filed letter dated 19.04.2013 that it was not filing any objections with Dispute Resolution Panel (DRP) and hence the final assessment order could be passed.

8. The plea of assessee before us is that since no adjustment was made by the TPO, then final assessment order had to be passed by 31.03.2013 and the assessment order passed on 17.06.2013 was time barred. The said proposition made by learned Authorized Representative for the assessee was confronted to the learned Departmental Representative for the Revenue, who sought time to get the report from the Assessing Officer. In reply, the Assessing Officer has vide letter dated 24.10.2018 reported that since the TPO had not made any variation to the income or loss returned, which was prejudicial to the interest of assessee, the time barring date to pass the assessment order was by 31.03.2013. The said letter was forwarded to JCIT, who in his communication dated 24.10.2018 has pointed out the said facts but

has also said that final order passed by the Assessing Officer was verbatim of draft assessment order and since the draft assessment order was passed well in time and served upon the assessee on 28.03.2013, therefore, it was not prejudicial to the interest of assessee. He also pointed out that the assessee has not raised this ground of appeal before the CIT(A). The learned Authorized Representative for the assessee took us through the provisions of section 144C of the Act and section 153 of the Act.

9. The learned Departmental Representative for the Revenue placed reliance on the communication filed in this regard.

10. We have heard the rival contentions and perused the record. The jurisdictional issue raised in the present appeal is whether the final assessment order passed on 17.06.2013 in the case of assessee is time barred or has been passed within time available to the Assessing Officer. The Assessing Officer has passed final order under section 143(3) of the Act. However, the Assessing Officer had made reference to the TPO under section 92CA(1) of the Act and the TPO vide order dated 08.10.2012 under section 92CA(3) of the Act did not propose any upward adjustment to the international transactions undertaken by the assessee.

11. Section 153 of the Act prescribes the time limit for completion of assessment, re-assessment and re-computation under the Act. The sub-section (1) to section 153 of the Act provides that no order of assessment shall be made under section 143(3) or 144 of the Act at any time after the expiry of two years from the assessment year in which the income was first assessable. The said provisions at the relevant time were applicable and in case assessment had to be made under section 143(3)/144 of the Act, then the time

limit prescribed was two years from the end of assessment order i.e. by 31.03.2012. This is the case when no transfer pricing adjustment was made in the hands of assessee. Sub-section (4) to section 153 of the Act further lays down that where reference was made under section 92CA(1) of the Act during the course of proceedings for assessment / re-assessment, then the period available for completion of assessment or re-assessment, as the case may be, shall be extended by 12 months. In other words, in case reference is made under section 92CA(1) of the Act, then the Assessing Officer is empowered to pass order under section 143(3) r.w.s. 92CA(3) of the Act within period of three years i.e. upto 31.03.2013 for the captioned assessment year.

12. Now, let us look at the provisions of section 144C of the Act, which lays down the procedure when reference is made to the TPO. Under section 144C(1) of the Act, it is provided that the Assessing Officer shall, in the first instance, forward draft of the proposed order of assessment to the eligible assessee, where he wants to make any variation in the income or loss returned, which is prejudicial to the interest of assessee. Sub-section (2) thereafter, provides that on receipt of draft order, the eligible assessee shall within thirty days file his acceptance of variation to the Assessing Officer or file his objections, if any, to the DRP / Assessing Officer. Sub-section (3) lays down that the Assessing Officer shall complete assessment on the basis of draft order if the assessee intimates his acceptance of variation or no objections are received within period specified. Sub-section (4) further provides that the Assessing Officer shall notwithstanding anything contained in section 153 of the Act, pass assessment order under sub-section (3) within one month from the end of the month in which acceptance is received or the period of filing objection under sub-section (2) expires. Thereafter, the said section also lays

down the procedure of proceedings before the DRP and the time limit for passing the order which are not relevant for deciding the issue before us.

13. Section 144C(15)(b) of the Act defines 'eligible assessee' to be a person in whose case variation referred to in sub-section (1) arises as a consequence of order of TPO under section 92CA(3) of the Act and any foreign company. In other words, provisions of section 144C of the Act are attracted where in the case of any reference, any variation is proposed by the TPO under section 92CA(3) of the Act or in the case of any foreign company. It may be pointed out herein itself that the assessee is not eligible assessee; admittedly, it is not a foreign company and also no addition has been proposed by the TPO. Hence, provisions of section 144C of the Act are not attracted. In other words, the Assessing Officer does not get time to pass order within one month from the date when the assessee files his acceptance.

14. In the facts of case, where no addition was proposed by the TPO under section 92CA(3) of the Act and since there was reference made to the TPO, assessment order had to be passed within extended period of 12 months i.e. ending by 31.03.2013. However, the assessment order has been passed on 17.06.2013, hence the same is time barred. We find no merit in the objections raised by the learned Departmental Representative for the Revenue that since draft assessment order was passed on 28.03.2013, there is nothing prejudicial to the interest of assessee. It is not draft assessment order but the final assessment order, which completes the proceedings against the assessee and there is no merit in the objections so raised. It may also be pointed out that the Assessing Officer in all fairness has in the letter dated 24.10.2018 accepted that the time barring date to pass assessment order was 31.03.2013. Since the Assessing Officer has failed to do so, we hold that final assessment order

passed on 17.06.2013 is both null and void in law. Consequently, the assessment made in the case of assessee is directed to be set aside. Since we have decided the preliminary issue raised in favour of assessee, all the other grounds of appeal raised by the Revenue would become academic and the appeal of Revenue is thus, dismissed. The jurisdictional issue raised vide ground of objection No.1 is thus, allowed.

15. In the result, the appeal of Revenue is dismissed and Cross Objections of assessee are allowed.

Order pronounced on this 25<sup>th</sup> day of January, 2019.

Sd/-  
(ANIL CHATURVEDI)  
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(SUSHMA CHOWLA)  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 25<sup>th</sup> January, 2019.  
GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-13, Pune;
4. The CIT(IT/TP), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune