

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “आई-2”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH ‘I-2’, NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री आर.कापांडा, लष्ठा सदस्य का समक्ष

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &  
SHRI R.K.PANDA, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA Nos.3379/Del/2016**

**निर्धारण वर्ष / Assessment Year: 2010-11**

GE Money Financial Services Pvt.Ltd.,  
(Earlier known as GE Countrywide  
Consumer Financial Services Ltd.),  
401, 402, 4<sup>th</sup> Floor, Aggarwal Millennium Tower,  
E-1,2,3, Netaji Subhash Palace, Pitampura,  
New Delhi-110034.

PAN-AAACC0642F

.....अपीलार्थी / Appellant

vs

The DCIT,  
Circle-12(1), 4<sup>th</sup> Floor,  
C.R.Building, New Delhi

..... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.3510/Del/2016**

**निर्धारण वर्ष / Assessment Year: 2010-11**

The DCIT,  
Circle-12(1), 4<sup>th</sup> Floor,  
C.R.Building, New Delhi

.....अपीलार्थी / Appellant

vs

GE Money Financial Services Pvt.Ltd.,  
401, 402, 4<sup>th</sup> Floor, Aggarwal Millennium Tower,  
E-1,2,3, Netaji Subhash Palace, Pitampura,  
New Delhi-110034.

PAN-AAACC0642F

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर स/ Appellant by : Sh.Aarush Nagpal, Adv.

प्रत्यर्थी की ओर स/ Respondent by : Ms. Nidhi Sharma, Sr.DR

सुनवाई की तारीख / Date of Hearing: 07.11.2019	घोषणा की तारीख / Date of Pronouncement: 18.11.2019
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

Both appeals filed by the assessee and the Revenue are against order of CIT(A)-44, New Delhi, dated 19.01.2016 relating to assessment year 2010-11 passed under section 143(3) of the Income-tax Act, 1961 (in short "Act").

2. Both appeals filed by the assessee and the Revenue were heard together and are being disposed off by this consolidated order for the sake of convenience.

3. The assessee has filed additional ground of appeal and has pointed out that the said additional ground of appeal is purely legal in nature and the same do not require any adjudication on merits. Hence, the same may be admitted for adjudication. The additional ground of appeal raised by the assessee reads as under:-

1. *"That on the facts and circumstances of the case and in law, the Assessment Order dated 27.02.2014 having been passed by the Assessing Officer ('AO') after two years from the end of the relevant assessment year, i.e. Assessment Year 2010-11, is barred by limitation prescribed under section 153 of the Act and, therefore, a nullity and void ab initio."*

4. The additional ground of appeal raised by the assessee is against the time period within which the assessment order had to be passed and does not require any adjudication on facts; hence, the same is admitted for adjudication.

5. Briefly in the facts of the case the assessee had filed return of income on 30.09.2010. Thereafter, revised return of income was filed on 30.03.2012. The case of the assessee was selected for scrutiny and notice u/s 143(2) of the Act was issued on 09.04.2012. In response thereto, the Ld.AR for the assessee attended the assessment proceedings and the assessment order was passed on 27.02.2014, under which the addition was made on account of transfer pricing issues. Though, the assessee had raised several grounds of appeal against the transfer pricing adjustment made, but has also raised the preliminary issues to the effect that the assessment order passed on 27.02.2014 is barred by limitation u/s 153 of the Act. Hence, the said order is both nullity and *void ab initio*.

6. The Ld.AR for the assessee in this regard pointed out that where the addition has been made in the hands of the assessee on account of transfer pricing issues, wherein no reference was made to the Transfer Pricing Officer (in short "TPO"), but the addition was made by the Assessing Officer himself, then as per section 153 of the Act, such order has to be passed within two years from the end of the assessment year i.e. 31.03.2013. It was further pointed out by the Ld.AR that the assessment order in the present case has been passed on 27.02.2014, which is time barred. Such a

proposition has been raised on the ground that no reference was made to the TPO or any order of the TPO was passed in the case of the assessee and hence, the provision of 3<sup>rd</sup> proviso to section 153 of the Act were not attracted.

7. The Ld. DR for the Revenue on verification, admitted that neither reference was made to the TPO nor any order was passed by the TPO in the present case.

8. We have heard rival contentions and perused the record. The issue which is raised by way of additional ground of appeal is against the assessment order passed in the case by the Assessing Officer, wherein though additions were made under the transfer pricing provisions but without any reference to the TPO; then the question which arises is whether the present assessment order is barred by limitation. The year under appeal is Assessment Year 2010-11 and as per section 153 of the Act, the assessment in the case had to be completed by 31.03.2013. However, in case the Assessing Officer makes reference to the TPO, who in turn makes upward adjustment on account of the arms length price of the international transaction, if any, then as per the 3<sup>rd</sup> Proviso to section 153 of the Act, the Assessing Officer gets further time of one year to pass the assessment order, after receipt of the reference order from the TPO. Such is the proposition as per the 3<sup>rd</sup> Proviso to section 153 of the Act, prior to its amendment. In the present set of facts, the Assessing Officer *suo motto* made the aforesaid transfer pricing adjustment and had neither made any

reference to the TPO nor received any order from the TPO, then it was incumbent upon the Assessing Officer to pass an assessment order within the period of two years from the end of the Assessment Year i.e. by 31.03.2013. It is not disputed that neither reference was made to the TPO nor any report was received from the TPO. Accordingly, we hold that the assessment order passed by the Assessing Officer on 27.02.2014 is barred by limitation prescribed u/s 153 of the Act. Hence, the order passed by the Assessing Officer is both nullity and *void ab initio*. We thus, allow additional ground of appeal raised by the assessee. Since the assessment order has been held to be nullity, we do not go into the merits of the addition made and also the appeal of the Revenue do not survive as the assessment order is held to be nullity and *void ab initio*. Thus, the additional ground of appeal raised by the assessee is allowed and cross appeal filed by the Revenue is dismissed.

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

Order pronounced in the open court on 18<sup>th</sup> day of November, 2019.

**Sd/-**

**(R.K.PANDA)**

**लक्षा सदस्य/ACCOUNTANT MEMBER**

**Sd/-**

**(SUSHMA CHOWLA)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**दिल्ली / दिनांक** Dated : 18<sup>th</sup> November, 2019.

*\* Amit Kumar \**

आदश की प्रतिलिपि अग्रषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली  
Assistant Registrar, ITAT, Delhi