



ITA No.6167/Mum/2018
Tech Mahindra Limited
Assessment Year :2013-14

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6167/Mum/2018
(निर्धारण वर्ष / Assessment Year:2013-14)

Tech Mahindra Limited Sharda Centre Taxation Department 5 th Floor, Off. Karve Road Pune-411 004.	बनाम/ Vs.	ACIT–Circle-2(3)(1) Aaykar Bhavan Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM-3484-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri J.D. Mistri -Ld.Sr. Counsel
Revenue by	:	Shri R. Manjunatha Swamy-Ld.CIT DR and Shri Vinod Chaudhary (Ld. AO for assessee)

सुनवाई की तारीख/ Date of Hearing	:	07/10/2020
घोषणा की तारीख / Date of Pronouncement	:	07/10/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2013-14 contest the validity of exercise of revisional jurisdiction u/s 263 by learned Pr. Commissioner of Income-Tax-2, Mumbai vide order u/s 263 dated 29/08/2018. The directions given in concluding para-10 of the said order read as under: -



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In view of the aforesaid facts and the provisions of the law mentioned in the preceding paras, the assessment order dt 28.02.2017 passed by the assessing officer u/s. 143(3) r.w.s.144C is to be held erroneous in so far as it is prejudicial to the revenue. Accordingly, the Assessment order is revised and the assessing officer is directed to disallow the claim of expenses of Rs.55,51,637/- being payment of penalties to foreign authorities as discussed in para 6 and an amount of Rs.10 crores on account of the class action settlement consideration as discussed in para-7 and to re-examine the claims of DTAA credit u/s. 90 and various claims on derivative transactions and to determine the total income accordingly. The assessment order will be modified by the AO to these extents.

It is evident that Ld. Pr.CIT has, *inter-alia*, directed Ld. AO to disallow the expenses on account of penalties to foreign authorities as well class action settlement consideration paid by the assessee. The Ld. AO was further directed to re-examine the claims of DTAA credit u/s 90 and various claims on derivative transactions.

2. The Ld. Senior Counsel appearing for Assessee (AR), Shri J.D. Mistri, at the outset, submitted that the appeal would become infructuous since no consequential order has been passed by Ld. AO pursuant to the aforesaid directions given u/s 263 and the time limit to do so as provided in Sec.153(3) as well as Sec. 153(5) has already been expired.

3. Keeping in view the submissions so made, Ld. Assessing Officer (AO) was directed to appear before the bench along with the factual report. The Ld. AO remained present during the hearing with a report which read as under: -

OFFICE OF THE ASST.COMMISSIONER OF INCOME-TAX
CIRCLE-2(3)(1)

Room No.552, Aaykar Bhavan M.K. Road, Mumbai-400020

No. ACIT-2(3)(I)/Judicial/Tech Mahindra/2013-14/2020-21~Date: 06/10/2020

To,
CIT(DR),
1TAT, E-Bench,
Pratyakshkar Bhavan,
Mumbai-

(Through proper channel)

Sir,

Sub.: ITAT appeal in the case of M/s, Tech Mahindra PAN: AAACM3484F
(ITA No.: 6167/M/17) A.Y.2013-14- reg.

Ref.: NO. CIT(DR)/ITAT-E Bench/2020-21 dated 25.09.2020



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Kindly refer to the above.

2. In this case the assessee e-filed its ROI for A.Y. 2013-14 declaring total income of Rs. 878, 76,28,756/- under normal provisions and Rs.2024,15,13,303/- u/s. 115JB of the Income-tax Act, 1961. Subsequently, the case was selected for scrutiny under CASS. The assessment u/s. 143(3) r.w.s 144C(3) of the Act was completed on 28.02.2017 determining total income at Rs. 1467,73, 75,617/- under normal provision and Rs,2515,28,19,785/- u/s. 115JB of the Act.

3. Subsequently the case was reviewed by the Pr.CIT -2, Mumbai and passed order u/s 263 of the I.T. Act, 1961. Pr.CIT-2 has made the following comments in para 10 of the order-:

" In view of the aforesaid facts and the provisions of the law mentioned in the preceding paras, the assessment order dt 28.02.2017 passed by the assessing officer u/s. 143(3) r.w.s.144C is to be held erroneous in so far as it is prejudicial to the revenue. Accordingly, the Assessment order is revised and the assessing officer is directed to disallow the claim of expenses of Rs.55,51,637/- being payment of penalties to foreign authorities as discussed in para 6 and an amount of Rs.10 crores on account of the class action settlement consideration as discussed in para-7 and to re-examine the claims of DTAA credit u/s. 90 and various claims on derivative transactions and to determine the total income accordingly. The assessment order will be modified by the AO to these extents."

4. From the above para it is clear that the Pr.CIT-2, Mumbai order u/s. 263 has specifically directed the AO to re-compute the total income on above mentioned issues. The assessment order u/s. 143(3) r.w.s 144C(3) of the Act was neither set aside nor directed for fresh assessment, so it is a direction to give effect of section 263 order. Accordingly the order giving effect is being passed, Hence the section 151(3) does not apply to this order.

Yours faithfully
Sd/-
(Vinod Choudhary)
ACIT-2(3)(1), Mumbai

It also transpired that the consequential order has not been passed till date and the same is still in the process of being passed.

4. Upon careful consideration of facts and circumstances, we find that the revisional jurisdiction was exercised vide order dated 29/08/2018. The provisions of Section 153 provide time limit for completion of assessment, reassessment and re-computation. As per sub section (3), an order of fresh assessment pursuant to Section 263, setting aside or cancelling an assessment, may be made at any time before the expiry of 9 months from the end of financial year in which order u/s 263 has been passed by revisional authority. This period, in assessee's case is 31/12/2019. The proviso to the said sub-section extending the time limit to 12 months is not applicable since revisional order has been passed



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prior to 01/04/2019. Proceeding further, as per sub-section (5), where effect to an order u/s 263 was to be given by Assessing officer, wholly or partly, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of 3 months from the end of the month in which the order u/s 263 has been passed by revisional authority. As per proviso to this sub-section (5), where it is not possible for Ld. AO to give effect to such order within the aforesaid period for reasons beyond his control, the prescribed authority may allow an additional period of 6 months to give effect to that order. Allowing this extended period to assessee's case, the time limit to pass the consequential order would be 31/05/2019.

5. Thus, viewing from any angle, the time limit to pass consequential order has already been expired and the same has become time-barred. In fact, no such order has been passed till date. Consequently, the plea of Ld. Sr. Counsel has to be accepted and therefore, the appeal would stand dismissed as being infructuous.

6. On the facts and circumstances, the appeal stands dismissed.

Order pronounced in the open court on 07th October, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 07/10/2020
Sr.PS, Jaisy Varghese



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**