

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 8970/DEL/2019 [A.Y 2016-17]

Kukama Ventures Limited
30, Kosta Antoniadi, Elini Court
Office 202, Strovolos, 2040 Nicosia
Cyprus, C/o Deloitte Haskins & Sells LLP
7th Floor, Building 10, Tower - B
DLF Cyber City, Phase - 2, Gurgaon

Vs. The A.C.I.T.
Intt. Taxation-2(1)(2)
New Delhi

PAN: AADCK 6184 F
(Applicant)

(Respondent)

Assessee By : Shri Harsh Kothari, Adv
Department By : Ms. Anupama Anand, CIT-DR

Date of Hearing : 07.03.2022
Date of Pronouncement : 07.03.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 29.09.2019 framed u/s 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] pertaining to Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

"1. The appellant objects to the order under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 [Act] dated 29 September 2019 (received on 29 September 2019) passed by the Assistant Commissioner of Income-tax (International Taxation), Circle - 2(1)(2), New Delhi [ACIT] on the basis of directions of Dispute Resolution Panel [DRP] for the aforesaid assessment year on the following among other grounds:

1. Validity of the assessment order

1.1 The learned ACIT erred in passing assessment order under section 143(3) read with section 144C of the Act even though no variation in the income returned by the appellant is made in the assessment order. Thus, the assessment order passed by the learned ACIT is bad in law, *non est*, invalid, *void ab initio* and should be quashed.

1.2 Without prejudice to the above, the learned ACIT erred in passing draft assessment order without appreciating that the appellant is not an eligible assessee under the provisions of section 144C(15)(b), since the Transfer Pricing Officer has not issued any order under section 92CA(3) of the Act and therefore, the conjoined conditions laid down in section 144C(15)(b) are not fulfilled.

2. Taxability as per India-Cyprus tax treaty
 - 2.1 The learned DRP/ACIT erred in holding that the appellant is not the beneficial owner of the interest income, and therefore not eligible for the beneficial rate of tax of 10% as per Article 11(2) of the India-Cyprus tax treaty.
 - 2.2 The learned ACIT erred in holding that the appellant has obligation to transfer the interest income earned by it to its parent company.
 - 2.3 The learned ACIT erred in denying beneficial tax rate of 10% under Article 11 of the India-Cyprus tax treaty without appreciating that on the same facts, in the assessment order for assessment year 2015-16 the interest income earned by appellant was taxed at 10% as per the India-Cyprus tax treaty.
3. The learned ACIT erred in not granting interest under section 244A of the Act till the issuance of refund.
4. Each one of the above grounds of appeal is without prejudice to the other.
5. The appellant reserves the right to amend, alter or add to the grounds of appeal."

3. The first challenge is in respect of validity of the assessment order.
4. The representatives of both the sides were heard at length, the case records carefully perused.
5. Provisions of section 144C(1) of the Act read as under:

"144C. (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 [84a Words " in the income or loss returned" omitted by the Finance Act, 2020, w.e.f. 01.04.2020] which is prejudicial to the interest of such assessee."

6. In light of the aforementioned provision, computation of total income and tax liability in the draft assessment order is as under:

Particulars	Amount [Rs.]
Total taxable assessed income	6,70,37,624/-
Rounded off u/s 288A of the Act	6,70,37,624/-

7. A perusal of the ITR acknowledgement exhibited at page 2 of the paper book shows that total income returned by the assessee is Rs. 6,70,37,624/-. If the computation of tax liability in the draft assessment order is seen with the total income returned by the assessee, it clearly shows that the Assessing Officer did not intend to make any variation in the income of the assessee. Therefore, the assessment order should have been framed as per the provisions of section 153 r.w.s 143(3) of the Act, meaning thereby that the assessment order dated 29.09.2019 is barred by limitation.

8. In light of the facts discussed hereinabove, we have no hesitation to hold that the assessment order is barred by limitation. Since we have held that the assessment order is barred by limitation, we do not find it necessary to dwell into the merits of the case.

9. In the result, the appeal of the assessee in ITA No. 8970/DEL/2019 is allowed.

The order is pronounced in the open court on 07.03.2022.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 07th March, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	