

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.946/Hyd/2017		
Assessment Year: 2012-13		
Aptar Pharma India Private Limited (Successor of Aptar Beauty & Home India Private Limited), Navi Mumbai – 400701. PAN : AAACV8607M.	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
ITA No.100/Hyd/2019		
Assessment Year: 2012-13		
Aptar Beauty and Home India Private Limited (Successor of Aptar Pharma India Private Limited), Navi Mumbai – 400701. PAN : AAACE5382N.	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri P. Chidambaram, Advocate	
Revenue by:	Shri Rajendra Kumar, CIT-DR.	
Date of hearing:	15/03/2022	
Date of pronouncement:	17/03/2022	

ORDER

Per S. S. Godara, J.M.

These two assessee's appeals for A.Ys. 2012-13 arise against the Principal Commissioner of Income Tax - 1, Hyderabad's order in F.No.Pr.CIT-1/HYD/263/2016-17 dt. 31.03.2017 and the Commissioner of Income Tax (Appeals) - 1, Hyderabad's order in case No.0060/2017-18/DCIT, Circle-1(1)/CIT(A)-4/Hyd/2018-19 dt.26.11.2018 involving proceedings u/s 263 and 143(3) r.w.s. 263 of the Income Tax Act, (in short "the Act"); respectively.

Heard both sides. Case files perused.

2. We notice during the course of hearing that the assessee's appeal ITA No.946/Hyd/2017 hardly carries any merit as the learned PCIT has exercised his section 263 revision jurisdiction on the ground that the Assessing Officer had framed his corresponding regular assessment dt.23.03.2015 without awaiting / considering. The Transfer Pricing Officer "TPO's" order in section 92CA reference so as to determine arms length price of this taxpayer's international transactions with its overseas associated enterprises "AEs". This clinching fact has gone unrebutted from the assessee side. We thus conclude in these facts and circumstances that the PCIT has assumed section 263 revision jurisdiction on account of the Assessing Officer's

clinching failure rendering the impugned assessment as an erroneous one causing prejudice to interest of the revenue. The assessee's instant former appeal ITA No.946/Hyd/2017 stands rejected.

We now deal with assessee's consequential assessment appeal ITA No.100/Hyd/2019.

3. Suffice to say, it transpires during the course of hearing that the Assessing Officer has framed this assessment herein dt.23.06.2017 without any draft assessment forming a mandatory condition u/s 144C(1) of the Act. Learned CIT-DR fails to dispute that there is no such draft assessment framed as per the assessment order itself forming part of the case file. We thus quote *Zuari Cement Ltd. Vs. ACIT W.P.No.5557/2012 dt.21.02.2013 (A.P)* (upheld in Revenue's special leave petition "SLP" filed in hon'ble apex court), *Vijay Television (P) Ltd. Vs. DRP (2014) 369 ITR 113 (Mad)* and *JCB India Limited Vs. DCIT (2017) 398 ITR 189 (Delhi)* that such an assessment involving transfer pricing proceedings without a draft assessment is a nullity. We accordingly quash the assessment herein dt.26.03.2017. All other pleadings on merits stand rendered infructuous. The assessee succeeds in its latter appeal ITA No.100/Hyd/2019. Ordered accordingly.

4. The assessee's former appeal ITA No.946/Hyd/2017 is dismissed and its latter appeal ITA No.100/Hyd/2019 is allowed in above terms. A copy of this common order be placed in respective case files.

Order pronounced in the Open Court on 17th March, 2022.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 17th March, 2022.

TYNM/sps

Copy to:

S.No	Addresses :
1	Aptar Pharma India Private Limited (Successor of Aptar Beauty & Home India Private Limited), R-854, TTC Industrial Estate, Rabale, Navi Mumbai - 400701.
2	Aptar Beauty and Home India Private Limited (Successor of Aptar Pharma India Private Limited), R-854, TTC Industrial Estate, Rabale, Navi Mumbai - 400701.
3	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
4	The Income Tax Officer, Ward - 11(4), Hyderabad
5	The Commissioner of Income Tax (Appeals)- 1, Hyderabad.
6	The PCIT - 1, Hyderabad
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order