

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B": HYDERABAD**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No. 31/HYD/2022 Assessment Year: 2017-2018		
Sresta Natural Bioproducts Ltd., Hyderabad. PAN - AAHCS 9571J (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle - 3(2), Hyderabad. (Respondent)
Assessee by:	Shri P. Murali Mohan Rao	
Revenue by:	Shri YVST Sai	
Date of hearing:	10/03/2022	
Date of pronouncement:	11/03/2022	

**ORDER**

**PER BENCH:**

This appeal filed by the assessee is directed against the assessment order passed by the DCIT, National Faceless Assessment Centre, (NFAC), Delhi dated 19/01/2022 involving proceedings u/s 143(3) rws 144C(13) r.w.s. 144B of the Income Tax Act, 1961 ; in short "the Act".

2. In this appeal, the assessee has raised as many as 14 grounds of appeal. In ground No. 2, the assessee has contended that the ld. DRP erred in not admitting the

objections filed and thereby dismissing the appeal of the assessee without providing reasonable opportunity of being heard.

3. Briefly the facts of the case are that the assessee had filed e-return for AY 2017-18 on 29/11/2017 by showing current year loss of Rs. 23,16,03,096/-. Subsequently, the case was selected for scrutiny and accordingly statutory notices were issued to the assessee.

3.1 During the course of assessment proceedings, the AO observed that during the year under consideration, the assessee company had entered into international transactions. The AO, therefore, referred to the matter to the TPO for determination of Arm's Length Price (ALP) u/s 92CA of the Act with regard to the international transaction entered into by the taxpayer with its AEs for the FY relevant to AY 2017-18 after obtaining prior approval from Pr. CIT-3, Hyderabad.

3.2 The TPO after considering the objections of the assessee, passed order u/s 92CA(3) of the Act on 29/01/2021 determining the total adjustment u/s 92CA of the Act at Rs. 17,67,62,423/-, the details of which are as under:

1) Income as per return filed	(-) Rs. 23,16,03,096
Add: Total adjustment u/s 92CA	Rs. 17,67,62,423

Disallowance of prior period exp.	Rs. 2,72,42,660
Addition on account of difference	
In custom duty paid	Rs. 38,38,800
Assessed income	(-)Rs. 2,37,59,210

3.3 Accordingly, the AO passed the draft assessment order dated 31/03/2021 incorporating the TPO's order.

4. Aggrieved, the assessee filed objections before the DRP and the DRP dismissed the appeal of the assessee by holding that the objections filed before them are not maintainable by observing as under:

*"As per section 144C(2) of the Income Tax Act, the eligible assessee, on receipt of the draft order. shall. within thirty days from the date of receipt the draft order:*

- (a) file his acceptance of the variations to the Assessing Officer; or*
- (b) file his objections, if any, to such variation with, -*
  - (i) the Dispute Resolution Panel; and*
  - (ii) the Assessing Officer.*

*And as per sub section (3) of 144C, the Assessing Officer shall complete the assessment on the basis of the draft order, if-*

- (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or*
- (b) no objections are received within the period specified in sub-section (2)*

*3. As per Rule 4 of Income Tax (Dispute Resolution Panel) Rules, 2009,*

*(1) The objections if any, of the eligible assessee to the draft order may be filed in person or through his agent within the specified period in Form No. 35A.*

*(2) The objections shall be in English and presented to the Secretariat of the panel.*

*(3) The objections shall be filed in paper book form in quadruplicate duly accompanied by ..... ."*

*In view of the above provisions, it is clear that the assessee need to file the paper book in person or through his agent before the DRP as well as before the AO also within 30 days from the date of receipt of Draft Assessment Order.*

*4. Due to the pandemic lockdown and adverse circumstances due to covid -19. the CBDT has under section 119 of the Income Tax Act provided relaxation in respect of compliance by the taxpayers by way of the press release on 01-05-2021. As per the press release, the taxpayers who need to file the objections to DRP, under 144C of the Act for which the last date of filing under that Section is 1st April, 2021, or thereafter, may file within the time provided under that Section or by 31" May, 2021. whichever is later.*

*5. The Assessee, in this case had time up to 31.05.2021 to file the objections before this office. In this present case, the objection was received in this office through speed post on 15th June 2021. The Assessee filed another set of hard copy of the objection on 28<sup>th</sup> June 2021. 80th the objections filed are beyond the due date. we also note that the assessee has filed objections before AD on 04.06.2021. We note that the objections filed by the Assessee is not within the statutory time limit before the DRP as well before AO.*

*6. The assessee vide its letter dated 20/11/2021 has stated that it had filed the objections and paper book*

*before DRP through e-mail on 28<sup>th</sup> April 2021. The Assessee's contention is not accepted for as on verification of email inbox date this office secretariat has not received any objection through email on 28<sup>th</sup> April 2021 or later for that matter. Moreover, from the above provisions, it is clear that the assessee needs to file the paper book in person or through agent before the DRP as well as before the AO in physical format.*

*7. It is also stated that the hard copy was couriered to this office on 28<sup>th</sup> April 2021 and the courier services made numerous attempts to deliver the papers, however. the same could not be delivered during the lockdown of DRP office due to pandemic situations and it got delivered on 15<sup>th</sup> June 2021. The assessee has also requested for condonation of delay.*

*8. With regard to assessee's contention that the office was closed due to lockdown is not accepted. as the office had not been closed at all during the lockdown period. The office has been working regularly. though with 50% of staff strength due to lockdown norms. As per our record, no such courier has been received before 31/5/2021. Moreover, there is no provision to condone the delay by the Panel.*

*9. Having considered the submissions, we note that the assessee failed to file the objections before the DRP as well as before the AO within the time limit allowed under the statute. In the Circumstances. we are of the view that the objection filed before us is not maintainable and is accordingly dismissed."*

5. Aggrieved by the order of DRP, the assessee is in appeal before the ITAT.

6. Before us, the ld. AR of the assessee submitted that the assessee vide its letter dated 20/11/2021 has stated

that it had filed the objections and paper book before the DRP through email on 28<sup>th</sup> April, 2021. Also the hard copy was couriered to DRP office on 28<sup>th</sup> April, 2021 and due to the lock down on account of Global Pandemic Covid-19, the courier got delivered to DRP office on 15<sup>th</sup> June, 2021. He submitted that due to global pandemic, the assessee's office was also closed and therefore, following the Government guidelines, there was no proper representation before the DRP within the stipulated time. He, therefore, requested that the matter may be remitted back to the file of the DRP for re-adjudication by considering the objections raised before the DRP. In support of his arguments, he relied on the decision of the coordinate bench of this Tribunal in the case of M/s Cigniti Technologies Ltd., in ITA No. 355/Hyd/2021, order dated 21/12/2021, a copy of which is filed on record.

7. The Id. DR, on the other hand, relied on the orders of revenue authorities.

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find force in the arguments of the Id. AR of the assessee that due to covid-19 pandemic lockdown, the assessee failed to represent its case before the DRP and failed to file its objections within the stipulated time. We, therefore, rely on the judgment of

the Hon'ble Supreme Court recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 'In Re Cognizance for extension of limitation' making it clear that in such cases where the limitation period (including that prescribed for institution as well as termination) shall stand excluded from 14th of March, 2021 till further orders. Accordingly, to meet the ends of justice, we remit the issue back to the file of the DRP with a direction to decide the appeal afresh after taking into consideration the objections filed by the assessee before them and in accordance with law after providing opportunity of being heard to the assessee in the matter. The assessee is directed to substantiate its claim before the DRP by way of documentary evidence without seeking any adjournments. Thus, the grounds raised by the assessee are treated as allowed for statistical purposes.

9. In the result, appeal of the assessee is allowed for statistical purposes in above terms.

Pronounced in the open court on 11<sup>th</sup> March, 2022.

**Sd/-**  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 11<sup>th</sup> March, 2022.

*kv*

Copy to :

1	<i>M/s Sresta Natural Bioproducts Ltd., C/o P. Murali &amp; Co., CAs, 6-3-655/2/3, 1<sup>st</sup> Floor, Somajiguda, Hyderabad – 82</i>
2	<i>DCIT, Circle – 3(2), Hyderabad.</i>
3	<i>DRP – 1, Bengaluru.</i>
4	<i>PR. CIT – 1, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>