

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'T' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),  
and Pavan Kumar Gadale (Judicial Member)]**

ITA No. 6751/Mum/2019  
Assessment year: 2014-15

**Deputy Commissioner of Income Tax (IT)-3(3)(2)  
Mumbai**

.....Appellant

**Vs.**

**M/s Pramerica ASPF II Cyprus**  
*M/s Mcube Capital Advisors Pvt. Ltd.*  
*Plot NO. 471, Udyog Vihar, Phase-V, Gurgaon,*  
*Haryana 122016 [PAN: AAACP5087H]*

.....Respondent

**Appearances by**

**Milind Chavan** *for the appellant*  
**Fenil Bhatt** *for the respondent*

Date of concluding the hearing : April 08, 2022  
Date of pronouncement : April 21, 2022

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the Assessing Officer has challenged the correctness of the order dated 27<sup>th</sup> August 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143 (3)/144C(3) of the Income Tax Act, 1961 for the assessment year 2014-15.

2. The grievances raised by the appellant Assessing Officer are as follows:

*1. Whether, on the facts and circumstances of the case and in law the CIT(A) was justified in quashing the assessment order passed by the AO u/s. 143(3) r.w.s. 92CA(3) r.w.s. 144 C(3), when the order passed by the AO enhancing the tax liability of the assessee by two times was clearly prejudicial to the interest the assessee?*

*2. Whether, on the facts and circumstances of the case and in law the CIT(A) was justified in quashing the assessment order passed by the AO without appreciating the fact that*

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***(a) application of tax rate of 20% on the interest income earned by the assessee from India as per the I. T. Act in place of tax rate of 10% on this interest income offered by the assessee, tantamounts to an order / variation which is prejudicial to the interests of the assessee''***

***(b) even as per section 143(3) of the IT Act, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee and determine the sum payable by him on the basis of such assessment. Thus even the net result of an assessment u/s. 143(3) is to determine the exact tax liability of the assessee which may arise either by addition to its income or by varying the tax rates on the returned income.***

***3. Whether on the facts and circumstances of the case and in law the CIT(A) committed grave error in law by not appreciating the fact that the variation in income means higher tax liability for the assessee, in the present case the A.O. has increased the tax rate on the interest income of Rs. 32.27 cr. From 10% to 20%, thus increasing the tax liability of the assessee, which in effect means the same as varying the income of the assessee.***

***4. Whether, on the facts and circumstances of the case the CIT(A) committed grave error in law by not deciding the issue of 'beneficial ownership of interest' by the assessee on merits and by simply stating that there is no requirement to adjudicate other issues urged by the assessee.***

***5. Whether, on the facts and circumstances of the case, the CIT(A) committed grave error in law by quashing the assessment order ignoring the fact that the draft assessment order was in substance and effect in conformity with or purpose of the Act being prejudicial to the according to the intent and assessee and such mistake or defect was curable u/s 292B of the IT Act.***

***6. The Appellant prays that the order of the Ld. CIT(A) on the above ground(s) be set aside and that of the Assessing Officer be restored.***

3. The short question that we are really required to adjudicate in this appeal is whether or not learned CIT(A) was justified in holding that the provisions of section 144C did not apply to the fact of this case as there was no variation in the income returned and the income assessed and accordingly the impugned assessment order was time barred.

4. Learned representatives fairly agree that this issue is covered in favour of the assessee by a series of order of the coordinate benches including in the cases of *IPF India Property Cyprus Ltd. vs. DCIT in ITA No. 6077/Mum/2018*, *Cupiono Ltd. vs. DCIT in ITA No. 7299/Mum/2019*, *Mausmi SA Investments LLC vs. ACIT in ITA No. 7026/Mum/2018*, *Mosbacher India LLC. vs. ACIT (2016) 67 taxmann.com 328 (Chny.)*, *DCIT vs. Magna International Inc in ITA No. 2098/Pun/2016*, *Regen Renewable Energy Generation Global Limited vs. DCIT in ITA No. 153/Mum/Chny/2018*, even though learned Departmental Representative vehemently relied upon the stand of the Assessing Officer as embedded in the grounds of appeal set out herein above. We however see no reason to take any other view of the matter then the view consistently taken by the coordinate benches including in the case of *IPF India Property Cyprus Ltd. vs. DCIT (Supra)* wherein speaking on the issue coordinate bench has *inter alia* observed as follows:-

2. *In the first and grounds of appeal, which we will take up together, the assessee appellant has raised the following grievance:*

*The learned AO has erred in passing a draft assessment order under section 143(3) read with section 144C(1) of the Act, even when no variation has been proposed therein to the income or loss returned by the appellant.*

*The learned AO has erred in passing the final assessment order under section 143(3) of the Act, after the due date provided under section 153 of the Act, thus making the final assessment order illegal, bad in law and non-est.*

3. *The short question that we are thus required to adjudicate in this appeal is whether or not the Assessing Officer was justified in passing a draft assessment order on the facts of this case, and, whether, the fact that the assessee chose to issue the draft assessment order, even though he was not required to pass the draft assessment order, would result in affecting the normal time limit within which the normal assessment order under section 143(3) is to be issued.*

4. *We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*

5. *So far as the first issue is concerned, we find that, in the present case, there are no variations in the returned income and the assessee income. The controversy is thus confined to the question as to what will be the rate on which income returned by the assessee is to be taxed. While the assessee has claimed taxation @ 10% under article 11(2) of the India Cyprus DTAA, the Assessing Officer has declined the said treaty protection on the ground that the assessee was not beneficial owner of the said interest, and, accordingly, brought the income is to tax@ 40% thereof. There is, quite clearly, no variation in the quantum of income. The question whether it was a case in which the Assessing Officer could have issued the draft assessment order, on the facts of this case, needs to be examined in the light of provisions of Section 144C(1) which provides that, "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 in the income or loss returned which is prejudicial to the interest of such assessee [Emphasis, by underlining, supplied by us]. The assessee before us is a non-resident company incorporated, and fiscally domiciled, in Cyprus. Accordingly, in terms of Section 144C(15)(b)(ii), the assessee is an eligible assessee but then there is no change in the figure of income returned by the assessee vis-a-vis the income assessed by the Assessing Officer. Clearly, there is no variation in the income returned by the assessee. There is, therefore, no question of a draft assessment order being issued in this case. It is also important to note that the Finance Bill proposes to make the issuance of draft assessment orders in the case of eligible assessee mandatory even when there is no variation in the income or loss returned by the assessee but then this amendment seeks to amend the law with effect from 1<sup>st</sup> April 2020. Explaining this amendment, Memorandum Explaining Amendments in the Finance Bill 2020 states as follows:*

*Amendment in Dispute Resolution Panel (DRP).*

*Section 144C of the Act provides that in case of certain eligible assessees, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act, the Assessing Officer (AO) is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income-tax. DRP has nine months to pass directions which are binding on the AO.*

*It is proposed that the provisions of section 144C of the Act may be suitably amended to:-*

*(A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of section 144C;*

*(B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.*

*This amendment will take effect from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.*

*6. Once this amendment is being introduced with effect from 1<sup>st</sup> April 2020, it is beyond any doubt of controversy that so far as the period prior to 1<sup>st</sup> April 2020 is concerned, the cases in which no variations in the returned income or loss were proposed, the draft assessment orders were not required to be issued. We, therefore, uphold the plea of the assessee on this point.*

*7. Coming to the second point, we find that there is no dispute that if no draft assessment order was to be issued in this case, the assessment would have been time barred on 31<sup>st</sup> December 2017 but the present assessment order is passed on 17<sup>th</sup> August 2018. Once we hold that no draft assessment order could have been issued in this case, as the provisions of Section 144C(1) could not have been invoked in this case, the time limit of completion of assessment was available only upto 31<sup>st</sup> December 2017. The mere issuance of draft assessment order, when it was legally not required to be issued, cannot end up enhancing the time limit for completing the assessment under section 143(3). We, therefore, uphold the plea of the assessee on this point as well. The impugned assessment order is indeed, in our considered view, time barred. We, accordingly, hold so.*

*8. As the impugned assessment order itself is held to be time barred, all other grievances raised in appeal, which deal with the merits of stand taken by the Assessing Officer in the assessment order, are rendered academic and infructuous. No adjudication, therefore, is required on these grievances at this stage.*

5. Respectfully following the views of the coordinate benches we uphold the conclusion arrived at by the learned CIT(A) and decline to interfere in the matter. As a matter of fact, learned CIT(A) has merely followed the decisions of the coordinate bench in this regard and his decision therefore must be approved by us. We approve and uphold the conclusion arrived at by the learned CIT(A).

6. In the result, the appeal is dismissed. Pronounced in the open court today on the 21<sup>st</sup> day of April 2022.

Sd/-  
**Pavan Kumar Gadale**  
(Judicial Member)

Sd/-  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 21<sup>st</sup> day of April, 2022**

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*

