

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 5214/DEL/2018
Assessment Year 2014-15

Garg Acrylics Ltd., A-50/1, Wazirpur Industrial Area, New Delhi.	v.	Addl. CIT, Special Range-4, New Delhi.
TAN/PAN: AAACG3332N		
(Appellant)		(Respondent)

I.T.A. No. 5915/DEL/2018
Assessment Year 2014-15

Addl. CIT, Special Range-4, New Delhi.	v.	Garg Acrylics Ltd., A-50/1, Wazirpur Industrial Area, New Delhi.
TAN/PAN: AAACG3332N		
(Appellant)		(Respondent)

Appellant by:	Shri Ashwani Kumar, CA		
Respondent by:	Shri Mithun Shete, Sr.D.R.		
Date of hearing:	15	03	2022
Date of pronouncement:	26	05	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned Cross Appeals have been filed by the Assessee and Revenue respectively seeking to challenge the first appellate order of the CIT(A) concerning Assessment Year 2014-15 arising from the assessment order dated

07.03.2018 passed under Section 143(3) of the Act r.w. Section 144C r.w. Section 144B of the Act.

2. The grounds of appeal raised by the assessee reads as under:

“1. The Ld. CIT(A) has erred in dismissing the ground no. 1 because of

(a) The Ld.CIT(A) has erred in disposing ground No. 1 of the appeal of the assessee holding the same as general in nature whereby, the same was as under mentioned in form 35:-

That the impugned assessment order passed is bad in law and nature and it is liable to be quashed as:-

i) The said order has been passed being barred by law of limitation.

ii) The order has been passed after making additions without following the principle of natural justice.

(b) The Ld. CIT(A) has ignored the fact that the assessee company has SDT of Rs. 4,94,91,268/- as such the same were not required for referring to the TPO per provisions of section 92BA

c) The Ld. CIT(A) has also ignored the fact that the TPO in the order passed u/s 92BA(3) of the I.T. Act, 1961 has held the details of domestic transactions of Rs. 4,94,91,268/- that was also below Rs. 5 crores as such those were not to be referred to the TPO.

d) That per provisions of section 153 of the Act, the -time limit provided for making assessment was acquired on 31.12.2016 whereas the order has been passed by the AO on 31.12.2017.

e) That the Ld. CIT(A) has also ignored the instruction No. 8/2015 and 3/2016 which are binding on AO for making reference to the TPO being not followed by the Ld.AO while making reference to the TPO:

f) That the Ld. CIT(A) has also erred in ignoring the submission of the assessee that section 116 of the Income Act defines the income tax authorities as different and distinct authorities and such different and distinct authorities have to exercise their powers in accordance with law as powers given to them in specified circumstances, which were not followed by the Id AO.

2. That the Ld.CIT(A) has erred in confirming the disallowances of Rs.91,840/- made u/s 14A of the Act, ignoring the principles laid down by Hon'ble Supreme Court in case of PCIT vs. Sintex Industries [2018] 93 taxmann.com 24 (SC).

3. That the Id CIT(A) has erred in confirming the purchases as bogus, to the tune of Rs.2,04,02,797/- calculated at Average G.P. Rate @ 16.26% of Rs. 12,54,78,457/-, inspite of the following facts 85 submission made before her.

(a) That payments to the suppliers have been made through RTGS, banking channels;

(b) That the assessee has paid Entry Tax of these purchases, while entering goods in Punjab;

(c) That the goods so purchased are duly entered in Stock Inward Register;

(d) That all such purchases were duly supported by way bills, Bilty Etc.

(e) That all purchases, when sold are duly entered in Sale Register;

(f) That assessee company is an excisable unit 8s excise duty has also been paid on Sales thereof;

(g) That Quantitative Details of Opening Stock, Purchases, Sales, Work In Progress 8s Closing Stock, if OK, how the purchases can be bogus;

(h) That the Ld. AO have not pointed out any discrepancy in the books of accounts;

(i) *That the assessee was not provided opportunity to cross examine Sh. R.P. Bhatia, whose statements have been used for making additions in the hands of assessee;*

(j) *That the principle of natural justice has not been followed, while passing the assessment order and making the additions in the hands of assessee.”*

3. The grounds of appeal raised by the Revenue also reproduced herein for ready reference:

“1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.33,66,733/- made by the Assessing Officer on account of Vehicle Maintenance Expenses, Depreciation on Vehicle and Travelling Expenses, ignoring the findings of the AO that some of the expenses were incurred in cash and were not properly vouched and that the assessee failed to substantiate that the whole of the expenses were actually incurred for the purpose of business under the heads of expenses as claimed.*

2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.18,91,191/- made by AO in respect of delayed payment of Employee’s contribution to the Provident Fund, ESI and other welfare funds, not appreciating that the Employee’s contribution to PF & ESI is governed by the provision of section 2(24) read with section 36(1)(va) and not by section 43 B of the Income Tax Act, 1961 (“the act”)*

3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.14,400/- made by AO on account of disallowance of expenditure incurred on Club Fees of Directors, failing to appreciate the claim of the assessee was founded only an unsubstantiated explanation and neither during assessment proceedings nor during appellate proceedings, the assessee furnished any details or documents establishing the nexus of the expenditure with its business.*

4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.5,16,25,000/- made by AO u/s 68 of the I.T.*

Act, 1961 by treating as unexplained credits the amounts claimed to have been received by the assessee as Share Application money and Share Premium Money during the year.

5. *The appellate crave leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.”*

4. When the matter was called for hearing, the ld. counsel for the assessee at the outset pointed out that the impugned assessment order passed by the Assessing Officer is barred by limitation and thus bad in law. It was submitted that a reference to the TPO was made by the AO in the instant case despite the fact that Section 92BA was not applicable in the instant case. A reference was made to Section 92BA of the Act and it was submitted that Section 92, 92C, 92D and 92E would apply to ‘Specified Domestic Transactions’ (SDT) only where the aggregate of such SDT entered into by the assessee in the previous year exceeds a sum of Rs.5 crore at the relevant time. The order was however passed under Section 92CA(3) of the Act by the Transfer Pricing Officer (TPO) in pursuance of reference made for Computation of ‘Arms Length Price’ (ALP) towards SDT defined under Section 92BA of the Act. In elaboration, reference was made to the order dated 14.09.2017 passed by the Transfer Pricing Officer under Section 92CA(3) of the Act whereby the details of domestic transactions undertaken by the assessee with its Associate Enterprises (AE) was admittedly worked out at Rs.4,94,91,268/-. It was thus contended that the very reference to the TPO for passing the order under Section 12CA(3) was without sanction of law as the aggregate value of specified domestic transactions were less than threshold monetary limit of Rs.5 crore at the relevant time as specified under Section 92BA of the Act. It was next contended that extension of time limit of assessment by another 12 months as per provisions of Section 153 of the Act was thus not available to the Assessing Officer based on such non-est order of TPO in the instant case. As a sequel, the time limit available for passing the assessment stood expired on 30.12.2016 whereas the Assessing Officer has passed the impugned

assessment order on 31.12.2017 taking into account the extension of time limit under Section 153 of the Act for which reference was wrongly made to the Transfer Pricing Officer to elicitly gain time for assessment despite objections. It was thus contended that the impugned assessment order suffers from the incurable defect of bar of limitation and thus wholly unsustainable in law.

4. The Ld. DR for the Revenue on the other hand resisted the challenge to bar of limitation for passing assessment order and relied upon the order of the lower authorities.

5. We have carefully considered the rival submissions. The assessee has put up challenge to the sanctity of impugned assessment order resulting from unauthorized reference to TPO under Section 92CA(3) of the Act.

5.1 'Specified Domestic Transactions' (SDT) has been defined under Section 92BA of the Act. It is stated therein that aggregate of such transaction entered into by the assessee must exceed a sum of Rs.5 crore at the relevant time in order to fall within the SDT defined under Section 92BA of the Act. The Assessing Officer, in the instant case, made a reference to the Transfer Pricing Officer for computation of Arms Length Price with reference to the impugned domestic transactions entered into by the assessee as defined under Section 92BA of the Act. An order from the Transfer Pricing Officer dated 14.09.2017 was obtained under Section 92A(3) of the Act in pursuance of such reference.

5.2 It is the case of the assessee that reference made to the TPO in the instant case without fulfilling the conditions of threshold of Rs.5 crore monetary limit is without the sanction of law in view of the Section 92BA of the Act. This being so, the assessee is not entitled for extension of time limit provided under Section 153(4) of the Act by extended period of another one year which is applicable only where the reference to the TPO has been validly made within the frame work of law.

6. We find palpable merit in the plea expounded on behalf of the assessee. It has been demonstrated in the instant case that the threshold monetary limit of Rs.5 crore was not available to the Assessing Officer to characterize the transactions with AE as SDT to enable him to make a reference to the TPO. The order of the TPO under Section 92CA(3) is thus a *nonest* and a nullity in the eyes of law. Consequently, the extension of time under erstwhile provisions of Section 153 for passing the assessment order based on such nonest order from TPO is not available to the Assessing Officer in the instant case. The Assessing Officer thus could not legitimise the assessment order passed beyond the ordinary time limit of 31.12.2016 available under Section 153 of the Act. The impugned assessment order passed is barred by limitation and hence bad in law and thus requires to be quashed. The other grounds of challenges emanating from such assessment order *ipso facto* become infructuous.

7. In the result, the appeal of the assessee is allowed whereas the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 26/05/2022.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

DATED: 26/05/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER