

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “K”, MUMBAI**

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.933/M/2021  
Assessment Year: 2016-17**

M/s. Emerson Electric (Company) India Pvt. Ltd., Delphi Building, B Wing, 6 <sup>th</sup> Floor, 604, Hiranandani Business Park, Hiranandani Gardens, Powai, Mumbai – 400 076 <b>PAN: AAACE1260B</b>	Vs.	Dy. Commissioner of Income Tax, Range-1(2)(1), (Jurisdictional Assessing Officer), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : ShriDhanesh Bafna, A.R.  
Ms. Chandni Shah, A.R.  
Ms. Riddhi Maru, A.R.

Revenue by : Shri Rajesh Mishra, D.R.  
Dr. Yogesh Kamat, D.R.

Date of Hearing : 11 . 05 . 2022

Date of Pronouncement : 18 . 05 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Emerson Electric (Company) India Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing present appeal, sought to set aside the impugned order dated 24.02.2021 26.03.2021 passed by Commissioner of Income Tax, (Dispute

Resolution Panel-1), Mumbai [hereinafter referred to as the CIT(DRP)] qua the assessment year 2016-17 on the grounds inter alia that :-

**“1. General ground**

*On the facts and in the circumstances of the case and in law, the Learned Assessing Officer (AO) based on the directions of the Dispute Resolution Panel (DRP), erred in confirming the action of the Learned Transfer Pricing Officer (TPO) in making Transfer Pricing (TP) adjustments of Rs. 20,07,54,216 to the total income of the Appellant.*

*The Appellant prays that the aforesaid TP adjustments be deleted.*

**2. Transfer Pricing order passed by the Learned TPO dated 01 November 2019 is barred by limitation**

*a) On the facts and in the circumstances of the case and in law, the order dated 01 November 2019 passed by the Learned Deputy Commissioner of Income Tax - Transfer Pricing 2(i)(i) under section 92CA of the Income-tax Act, 1961 ('Act') is beyond the time limit prescribed under section 92CA(3A) r.w.s 153 of the Act, thus making the TP order illegal, bad in law, null and void and liable to be quashed.*

*b) On the facts and in the circumstances of the case and in law, the TP order being illegal and void on account of being barred by limitation in terms of section 92CA(sA) r.w.s 153 of the Act, the action of the AO in passing the draft assessment order dated 05 December 2019 by invoking section 1440 of the Act is without jurisdiction and thus all proceedings consequent to the draft assessment order are also illegal and bad in law and liable to be quashed.*

*c) On the facts and in the circumstances of the case and in law, the TP order being illegal and void on account of being barred by limitation in terms of section 92CA(3A) r.w.s 153 of the Act, consequently, the final assessment order dated 30 March 2021 is also barred by limitation as prescribed under section 153 of the Act, thus making the final assessment order illegal, bad in law, null and void and liable to be quashed.*

*The Appellant prays that the TP order, draft assessment order and the final assessment order are bad in law, null and void and liable to be quashed.*

**3. Engineering and related services (Engineering) segment - INK 7,64,86,079**

*On the facts and in the circumstances of the case and in law, the Learned AO/DRP/TPO erred in making an adjustment for provision of engineering and related services by:*

- a) Disregarding the TP Study maintained by the Appellant in good faith and with due diligence; and*
- b) Disregarding the aggregation approach adopted by the Appellant by segregating the three divisions of the Appellant within the engineering and related services segment and thereafter applying the same benchmarking analysis to the segregated three divisions.*

*The Appellant therefore submits and prays that the aforesaid adjustment be deleted.*

#### **4. IT Support and related services (TTeS) segment - INR 11,87,72,414**

*On the facts and in the circumstances of the case and in law, the Learned AO/DRP/TPO erred in making an adjustment for provision of ITeS by:*

- a) Disregarding the TP Study maintained by the Appellant in good faith and with due diligence;*
- b) Rejecting the search process carried out by the Appellant in the TP Study;*
- c) Not following a structured search process and thus resorting to cherry picking of comparable companies;*
- d) Applying filters for selecting companies by disregarding the reasoning provided by the Appellant;*
- e) Including certain companies which are functionally not comparable;*
- f) Excluding certain companies which are functionally comparable;*
- g) Rejecting additional comparable companies, identified by the Appellant, which passed all the filters applied by the Learned TPO without giving any cogent reasons; and*
- h) Selecting companies which fails Learned TPO's own filters.*

*The Appellant therefore submits and prays that the aforesaid adjustment be deleted.*

#### **5. Facilitation support services (Marketing support services / MSS) segment - INR 54,95,723**

*On the facts and in the circumstances of the case and in law, the Learned AO/DRP/TPO erred in making an adjustment for provision of MSS by:*

- a) Disregarding the TP Study maintained by the Appellant in good faith and with due diligence;*

- b) Rejecting the search process carried out by the Appellant in the TP Study;*
- c) Not following a structured search process and thus resorting to cherry picking of comparable companies;*
- d) Including certain companies which were not functionally comparable; and*
- e) Excluding certain companies which were functionally comparable The Appellant therefore submits and prays that the aforesaid adjustment be deleted.*

*All of the above Grounds of Appeal are independent of and without prejudice to each other.*

*Furthermore, the Appellant craves leave to add to, alter, amend, delete, modify or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”*

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee is a wholly owned subsidiary of M/s. Emerson Electric (Mauritius) Ltd. which itself is a wholly owned subsidiary of M/s. Emerson USA. Emerson Electric Company (India) Pvt. Ltd. the assessee in this case is engaged in the activities through its divisions qua distribution of Emerson entities product; manufacturing activities; provision of engineering and related services; provision of IT support and related services (ITeS); and facilitation support services (marketing support services).

3. During the year under consideration the assessee entered into 19 international transactions with its Associated Enterprises (AE). The TPO after providing an opportunity of being heard to the assessee proposed adjustment on account of arms length price qua the international transactions entered by the assessee with its AE as under:

Sl No.	Description	Amount in INR
a)	<i>Adjustment on account of provision of IT related and support services</i>	<i>10,71,52,195</i>
b)	<i>Adjustment on account of provision of engineering and support services</i>	<i>7,38,83,753</i>
c)	<i>Adjustment on account of provision of facilitation support services</i>	<i>91,69,079</i>
d)	<i>Total Adjustment</i>	<i>19,02,05,027</i>

4. Assessee carried the matter before the Ld. DRP by way of filing objections who has partly allowed the same. Pursuant to the directions issued by the Ld. DRP, the AO framed the assessment by making addition to the tune of Rs.20,07,54,216/- on account of arms length price of international transactions. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Assessee has filed the present appeal raising grounds challenging the arms length price of the international transactions by way of transfer pricing grounds and no corporate tax issue is there in the present appeal.

7. At the very outset, the Ld. A.R. for the assessee challenged the impugned order passed by the AO/DRP on the legal ground that “the transfer pricing order passed in this case under section 92CA

of the Act is passed beyond the time limit prescribed under section 92CA(3A) read with section 153 of the Act rendering the TP order illegal, null and void ab-initio and liable to be quashed”. So we would first decide this legal issue which was also decided by the Ld. DRP and was decided against the assessee.

8. The Ld. A.R. for the assessee challenging the impugned order passed by the Ld. TPO contended that the order passed by the Ld. TPO is beyond the time limit prescribed under section 92CA(3A) read with section 153 of the Act and consequent assessment order passed by the AO is also not sustainable and brought on record the factual position necessary to decide the issue in controversy in a tabulated form which is as under:

Sr. No.	Particulars	Relevant Dates	
		Pfizer Healthcare India Private Limited (Madras High Court)	Appellant
A	Assessment Year	2016-17	2016-17
B	Period of limitation for making an order of assessment as per Section 153 of the Act	21 months from the end of the Assessment Year	21 months from the end of Assessment Year
C	Extension of period of limitation in case reference is made under section 92CA of the Act	12 months	12 months
D	Proceeding for assessment should be completed on / before this date	31.12.2019	31.12.2019
E	A date prior to the date on which period of limitation expires ( <i>stated in Sr. No. C</i> )	30.12.2019	30.12.2019
F	Sixty day period expires on ( <i>See Note i</i> )	01.11.2019	01.11.2019
G	Transfer Pricing Officer's order to be passed any time on / before this date	31.10.2019	31.10.2019
H	Date on which Transfer Pricing Officer's order is passed	01.11.2019	01.11.2019

<b><u>Note 1: Calculation of break-up of sixty days</u></b>	<b>December: 30 days</b> <i>(excluding 31.12.2019)</i> <b>November: 30 days</b>	<b>December: 30 days</b> <i>(excluding 31.12.2019)</i> <b>November: 30 days</b>
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9. The Ld. A.R. for the assessee while discussing the factual position qua the order passed by the Ld. TPO and statutory provisions applicable thereto contended inter alia that the order passed by the Ld. TPO dated 01.11.2019 is not sustainable being barred by limitation; that the last date to pass the transfer pricing order by the Ld. TPO was 31.10.2019; that the order passed by the Ld. TPO is barred by limitation as the period of 60 days is completed in accordance with the provisions of section 153 of the Act by excluding the last date and relied upon the decision rendered by the Hon'ble Madras High Court in case of M/s. Pfizer Healthcare India Pvt. Ltd. & ors. vs. DCIT in WANO.1120 of 2021 & ors. judgment dated 31.03.2022.

10. However, on the other hand, the Ld. D.R. for the Revenue to repel the argument addressed by the Ld. A.R. for the assessee contended that the Ld. TPO passed order in this case well within the time i.e. on 01.11.2019.

11. In order to determine if the order dated 01.11.2019 passed by the Ld. TPO is barred by limitation as contended by the Ld. AR for the assessee, we would advert to the provisions contained under section 92CA(3) read with section 153 of the Act.

12. Undisputedly, sub-section (3A) to section 92CA has been inserted w.e.f. 01.06.2007 providing time limit for the Transfer Pricing Officer to pass the order i.e. within a period of 60 days prior

to the date of completion of assessment as per section 153. So, under section 92CA (3A) read with section 153, Ld. TPO was required to pass the order within the period of 60 days prior to the date on which the period of limitation referred to in section 153 expires i.e. 21 months.

13. Undisputedly the assessment order was passed on 01.11.2019 whereas the Ld. TPO was required to pass the order within 60 days prior to the date of which period of limitation referred to in section 153 of the Act expires.

14. Now the question arises as to how the period of 60 days prior to the date of transfer pricing order i.e. 01.11.2019 is to be computed. Hon'ble Madras High Court in case of M/s. Pfizer Healthcare India Pvt. Ltd. (supra) while dealing with the issue held that for computing the period of 60 days, the last date as per section 153 should be excluded. Operative part of the judgment is extracted for ready perusal as under :-

*"30. Now, coming to the question of how the 60 day period is to be computed, the critical question would be whether the period of 60 days would be computed including the 31st of December or excluding it. Section 153 states that no order of assessment shall be made at any time after time expiry of 21 months from the end of the assessment year in which the income was first assessable. The submission of the revenue is to the effect that limitation expires only on 12 am of 01.01.2020. However, this would mean that an order of assessment can be passed at 12 am on 01.01.2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31.12.2019. The period of 21 months therefore, expires on 31.12.2019 that must stand excluded since Section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to Section 153 expires'. Excluding 31.12.2019, the period of 60 days would expire on 01.11.2019 and the transfer pricing orders thus ought to have been passed on 31.10.2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the*

***Transfer Pricing orders are to be passed as 31.10.2019. The impugned orders are thus, held to be barred by limitation."***

15. Identical issue has been decided by the co-ordinate Bench of the Tribunal in case of ECL Finance Ltd. vs. ACIT in ITA No.899/M/2018 order dated 22.09.2021 and in case of Louis Dreyfus Commodities India Pvt. Ltd. vs. DCIT in ITA No.2381/Del/2014 order dated 11.03.2021 in favour of the assessee by following M/s. Pfizer Healthcare India Pvt. Ltd. (supra) case rendered by Hon'ble Madras High Court.

16. In view of what has been discussed above and following the order passed by the Hon'ble Madras High Court in case of M/s. Pfizer Healthcare India Pvt. Ltd. (supra) and order passed by the co-ordinate Bench of the Tribunal in case of ECL Finance Ltd. (supra) and Louis Dreyfus Commodities India Pvt. Ltd. (supra) on the identical issue, we are of the considered view that as per limitation prescribed under section 153 of the Act that assessment order was required to be passed within a period of 21 months from the end of assessment year i.e. A.Y. 2016-17 and a further period of 12 months is to be added in case reference is made under section 92CA of the Act to the Ld. TPO, meaning thereby the period of 60 days expires to pass the transfer pricing order on 31.10.2019 whereas the transfer pricing order has been passed in this case on 01.11.2019 i.e. beyond the period of 60 days, hence barred by limitation.

17. Since the order passed by the Ld. TPO is held to be barred by limitation the same is illegal, null and void ab-initio, hence quashed. Consequently, the assessment order passed by the AO,

qua transfer pricing adjustment only, is also without jurisdiction and as such is no order in the eyes of law hence quashed. Keeping in view the findings returned by the Bench on legal issue we deem it not necessary to go into the grounds raised by the assessee on merit. Consequently, appeal filed by the assessee is allowed.

**Order pronounced in the open court on 18.05.2022.**

**Sd/-  
(BASKARAN BR)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 18.05.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.