

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**SA No.121/Del/2022
(in ITA No.928/Del./2022)
(ASSESSMENT YEAR : 2017-18)**

and

**ITA No.928/Del./2022
(ASSESSMENT YEAR : 2017-18)**

Adobe Systems India P. Ltd.,
Plot No.A-5, Sector 132,
Noida – 201 301 (Uttar Pradesh).

vs. DCIT, Circle 5(1)(1),
Noida.

(PAN : AACCA2982J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Nageshwar Rao, Advocate
Shri S. Chakarborty, Advocate
REVENUE BY : Shri Surender Pal, CIT DR

Date of Hearing : 30.05.2022
Date of Order : 16.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Assessing Officer dated 06.04.2022 passed under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income-tax Act, 1961 (for short 'the Act') pursuant to the directions of the Dispute Resolution Panel (DRP).

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

“1. Ground No.1- On the facts and in the circumstances of the case and in law, the final assessment order ('impugned order') dated April 6, 2022 passed by the Additional/ Joint/ Deputy/ Assistant Commissioner of Income Tax/ Income-tax Officer, National Faceless Assessment Centre, Delhi (' Learned AO') under section 143(3) read with section 144C(13) read with section 144B of the Income Tax Act,1961 (' Act') is barred by limitation since passed/issued beyond the maximum time limit prescribed under section 144C(13) of the Act and hence is liable to be quashed/annulled as time barred.

Henceforth all the grounds below are without prejudice to Ground no.1 above:

2. Ground No.2- Addition made by the learned AO of the amount under the head "any other allowable deduction" in Column No 33 of Schedule BP of the Income Tax Return ('ITR') amounting to INR 19,11,08,847:

2.1 On the facts and in the circumstances of the case and in law, while the learned AO has erred in completely ignoring the submission filed by the Appellant during the course of assessment proceedings, the learned DRP grossly erred in not comprehending the facts, submissions and explanations/supporting documents presented by the Appellant to explain the aforesaid claim made in the ITR .

A. Notional income on Government Grants amounting to INR 15,30,16,504:

2.2 On the facts and in the circumstances of the case and in law, the learned AO and DRP have erred in not appreciating that out of the disallowance of INR 19,11,08,847, an amount of INR 15,30,16,504 pertains to deduction claimed by the Appellant on account of notional adjustments made on account of government grants/custom duty exemption owing to compliance with IND-AS guidelines.

2.3 On the facts and in the circumstances of the case and in law, the learned DRP has erred in stating that depreciation on government grant of INR 15,30,16,504 has been credited to the Profit and Loss ('P&L') account of the subject AY.

2.4 On the facts and in the circumstances of the case and in law, the learned AO as well as the learned. DRP has erred in ignoring the fact that the Appellant has not included custom duty exemption/government grants into the actual cost of assets in terms of section 43(1) of the Act, therefore there existed no question of claiming tax depreciation on such amount.

B. Notional income on security deposits amounting to INR 47,67,516

2.5 On the facts and in the circumstances of the case and in law, the learned AO and DRP have erred in not appreciating that out of the disallowance of INR 19,11,08,847, an amount of INR 47,67,516 pertains to deduction claimed by the Appellant of notional interest income on security deposit placed with the owner/lessor, credited to Profit and Loss Account during the subject AY per the Ind-AS mandate, hence required to be excluded while computing taxable income as per the Act.

2.6 On the facts and in the circumstances of the case and in law, the learned DRP has erred in alleging that the Appellant has not stated anything specific regarding disallowance of deduction claimed on account of security deposit.

C. Actual payment on account of lease rent amounting to INR 2,86,37,817

2.7 On the facts and in the circumstances of the case and in law, learned AO and DRP have erred in not appreciating that out of the disallowance of INR 19,11,08,847, an amount of INR 2,86,37,817 pertains to actual payment on account of lease rent paid during the year which is an allowable business expense.

2.8 On the facts and in the circumstances of the case and in law, the learned DRP has erred in alleging that the Appellant has claimed depreciation in relation to lease rent.

D. Reversal of provision for Rent Equalisation amounting to INR 46,87,009

2.9 On the facts and in the circumstances of the case and in law, the learned AO and DRP have erred in not appreciating that out of the disallowance of INR 19, 11,08,847, an amount of INR 46,87,009 pertains to deduction for amount of provision for rent equalisation reversed during the subject year, which was offered to tax by the Appellant in the prior years when such provision was created and hence resulting in double addition.

2.10 On the facts and in the circumstances of the case and in law, the learned DRP has erred in alleging that no details were provided by the Appellant with respect to the earlier years in which the reserve for lease rent equalisation was created, without appreciating that the computation of income of earlier years wherein the lease equalisation reserve was created and added back to the taxable income was duly furnished.

3. Ground No.3- Addition on account of international transaction pertaining to interest on outstanding receivables amounting to INR 3,60,744 to the returned income of the Appellant

3.1 The learned AO/ TPO/ DRP have erred in making an addition of INR 360,744 to the total income of the Appellant due to adjustment in the arm's length price ('ALP') of the international transaction pertaining to interest on outstanding receivables ('impugned transaction').

3.2 The learned AO/ TPO/ DRP have erred in rejecting the economic analysis undertaken by the Appellant by conducting a fresh economic analysis for the impugned transaction.

3.3 By imputing interest on delayed receipts of receivables from the Associated Enterprise ('AE'), the learned AO/ TPO/ DRP have grossly erred in:

3.3.1 Identifying outstanding receivables as a separate international transaction by ignoring the fact that account receivables arising from an international transaction are closely linked to the main transaction and should be benchmarked, using a combined transaction approach and carrying out working capital adjustment;

3.3.2 By re-characterizing the nature of outstanding receivables as unsecured loan advanced to AEs;

3.3.3 Imputing interest on outstanding receivable to its AE ignoring the fact that the Appellant is a debt-free company;

3.3.4 Without prejudice to the Ground No.3 .3.1,3.3.2 and 3.3.3 above, the learned TPO/ AO/ DRP have failed to appreciate that the weighted average period of realization is below the period agreed under the inter-company agreement;

3.3.5 Without prejudice to the Ground No. 3.3.1,3.3.2 and 3.3.3 above, the learned AO/ TPO/ DRP have failed to appreciate that even if interest needs to be charged on the receivables, 90 days (as mentioned under Section 92CE of the Act) should be considered to establish arm's length interest.

3.3.6 Without prejudice to the Ground No. 3.3.1, 3.3.2 and 3.3.3 above, the Learned AO/ TPO/ DRP have failed to appreciate that even if interest needs to be charged on the receivables, the average receivable days of comparable companies selected by the Learned DRP/ TPO, should be considered to establish arm's length interest.

4. Ground No.4- That on the facts and in the circumstances of the case and in law, the learned AO has erred in initiating penalty proceedings under section 270A of the Act.

All the above grounds are without prejudice to each other.”

3. Brief facts of the case are that the assessee company is engaged in development of software in various stages like engineering, research, development, debugging, coding, quality control checks, testing application, designing & programming and is exporting its services to M/s Adobe Systems Inc, USA and to M/s. Adobe Systems Software, Ireland. Further, the assessee company has also provided Marketing & Support services for the products of MIS Adobe Systems Inc, USA, in India. During the year, the assessee entered into international transactions with Associate enterprises and made aggregate value of international transactions with them of Rs.1840,59,64,451/- as per Form 3CEB. The total transactions for "Arm's Length Price" have been declared at Rs.18,40,59,64,451/-. Assessing Officer referred the matter to the Transfer Pricing Officer (TPO). TPO passed an order u/s 92CA(3) on 14.01.2021 which was received by the AO on 18.02.2021. Pursuant to the draft assessment order passed by the AO, assessee filed objections before the DRP. DRP gave its directions dated 10.01.2022. The said order was subject to giving effect by the TPO and the TPO passed the order pursuant to the directions of the DRP on 18.02.2022. Pursuant to these orders, AO passed the order as under :-

Returned Income		234,88,32,480/-
Add : Adjustment u/s 92CA of the I.T. Act	3,60,744	
Disallowance of other deduction as per para 7	19,11,08,847	19,14,69,591
Assessed total income		254,03,02,071

4. Against the above order, assessee has filed the appeal before the ITAT.

5. Various grounds have been raised before us. In ground no.1, the assessee challenges the jurisdiction of assessment.

6. The submission of the assessee's counsel is that the assessment order passed u/s 143(3) r.w.s. 144C(13) read with section 144B of the Act is barred by limitation since the same was passed beyond the maximum time limit u/s 144C(13) of the Act, hence it is liable to be quashed as time barred. Ld. counsel of the assessee through the paper book submitted before us stated that the assessee has obtained information regarding passing of order by the DRP and its dispatch to the AO. The DRP decision in this case is dated 10.01.2022. Vide paper book page nos.230 & 231, ld. counsel submitted that assessee has obtained information that the said DRP order was dispatched to all the concerned persons including the AO on 24.01.2022. Thereafter, vide paper book page nos.232 to 235, ld. counsel of the assessee has submitted that track consignment report as per the Postal Department and according to the said track consignment, the deliver was confirmed on 27.01.2022. In this background, it is the

submission of the ld. counsel that AO has received the order on 27.01.2022 and as per mandate of section 144C(13), the AO was required to pass the final order within one month from the end of the month in which such action was received. Hence, as per ld. counsel of the assessee, since the AO has received the DRP's directions on 27.01.2022, it was incumbent upon him to pass the assessment order by 28.02.2022. Since the assessment order has been passed on 06.04.2022 the same is time barred.

7. Per contra, ld. DR for the Revenue submitted that pursuant to the directions of the DRP, TPO was to give some effect and TPO has given effect on 18.02.2022, hence it cannot be said that there is an issue of assessment order being time barred.

8. Upon careful consideration, we find ourselves in agreement with the submission of the ld. counsel for the assessee. Section 144C(13)

“144C

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

9. The DRP's direction has to be given effect by the AO. The scheme of Act does not postulate involvement of TPO in the giving effect of the direction of the DRP, hence any verification or giving effect of the DRP's direction by the TPO is not under the scheme of Act which prescribes the

time limit. A perusal of the provision of section 144C would clarify the same. Section 144C in its entirety reads as under :-

“144C. (1) 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 which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of 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.

(3) 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).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

- (c) evidence furnished by the assessee;
- (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
- (e) records relating to the draft order;
- (f) evidence collected by, or caused to be collected by, it; and
- (g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

- (a) make such further enquiry, as it thinks fit; or
- (b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment without providing any further opportunity

of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in sub-section (12) of section 144BA.

[(14B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

(14C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14B), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, [2024].

(14D) Every notification issued under sub-section (14B) and sub-section

(14C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose;

(b) "eligible assessee" means,—

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

[(ii) any non-resident not being a company, or any foreign company.]”

10. From the reading of above, it is amply clear from section 144C(7) that DRP before issue of any direction referred to in sub-section(5) may make such further enquiry or calls any further enquiry and get the result reported to it. Hence there is no provision in the Act that DRP's direction as contained in section 144C(5) may be subject to any further verification by any Income-tax authority other than giving effect by the AO. Hence the plea that since the TPO gave effect to the DRP's direction subsequent to the DRP's direction cannot in any manner be considered to expand the time limit as prescribed in the Act. Even from this date of TPO's giving effect, the final assessment order is time barred in any case. As already noted by us, ld. DR's plea that TPO's giving effect to the DRP's direction on 18.02.2022 can be considered as sufficient compliance to the time barring provision contained in section 144C(13) is not legally sustainable.

11. Undoubtedly, in this case, the assessment order has been passed beyond the time limit prescribed u/s 144C(13) being more than one month after the date of receipt of the directions of the DRP by the AO, as per the information provided in the paper book submitted by the assessee's counsel. The factual veracity of these dates has not been disputed by the Revenue. In this view of the matter, we agree with the contention that the order passed by the AO is *void ab initio* and liable to

be quashed as the final assessment order is time barred. We hold and direct accordingly.

12. In coming to the above conclusion, we draw support from the following case laws to the same effect submitted by the Id. counsel of the assessee :-

- (i) **ITAT, Delhi Bench in Dentsply India (P.) Ltd. vs. ITO (2019) 106 taxmann.com 420 (Delhi-Trib.) order dated 24.05.2019;**
- (ii) **ITAT, Cochin Bench in M/s. Envestnet Asset Management (India) Pvt. Ltd. in IT (TP) A.No.244/Coch/2014 for AY 2009-10 order dated 12.12.2014;**

13. Since the appeal was heard only on the jurisdictional ground and the other grounds on merits were never argued, these grounds raised by the assessee are not adjudicated being academic in nature.

14. In the result, the appeal of the assessee is allowed.

15. In Stay Application No.121/Del/2022, the assessee seeks stay of outstanding disputed demand in ITA No.928/Del/2022. Since we have already decided the appeal in favour of the assessee, the above stay application becomes infructuous and the same is dismissed as infructuous.

Order pronounced in the open court on this 16th day of June, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 16th day of June, 2022
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.DRP
- 5.CIT(ITAT), New Delhi.

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