

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH : PANAJI
BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.188/PAN/2018
Assessment Year: 2011-12

ACIT,
Circle-2(1),
Panaji,
Goa.

Vs. M/s Andrew Telecommunications
India Pvt. Ltd.,
Plot No.N2, Andrew Phase IV,
Verna Industrial Estate,
Verna, Goa.

PAN: AABCA8820A

(Appellant)

(Respondent)

Assessee by	:	Shri Ketan Ved, CA
Revenue by	:	Shri Ranjan Kumar, CIT, DR
Date of Hearing	:	15.06.2022
Date of Pronouncement	:	17.08.2022

ORDER

PER C.M. GARG, JM:

This appeal has been filed by the Revenue against the order of the CIT(A), Panaji—1, dated 08.02.2018 for Assessment Year 2011-12.

2. The grounds of appeal taken by the Revenue read as under:-

“1. Whether the CIT(A) has rightly allowed the all grounds of appeal of the assessee without appreciating the fact draft assessment order is relevant for addition on account of TP adjustment.

2. *Whether the CIT(A) has rightly allowed the grounds of appeal with respect to additions made by the AO other than TP adjustment, without going to merit of the case.*

3. *For these and other grounds that may be adduced at the time of the hearing the order of the CIT(A) may be set aside and the order of the Assessing Order restored.”*

3. The Id. Counsel for the assessee submitted that the sole issue agitated by the Revenue is covered in favour of the assessee by the order of the Hon'ble jurisdictional High Court of Bombay dated 16th July, 2018 in Tax Appeal No.144 of 2017 by which the order of the Tribunal in assessee's own case, i.e., ITA No.271/PNJ/2015 and CO No.62/PNJ/2015 for AY 2006-07 have been affirmed and upheld. The Id. Counsel further explained that for AY 2006-07, the Id.CIT(A) granted relief to the assessee against which the Revenue filed appeal in ITA No.271/PNJ/2015 and the assessee also filed CO No.62/PNJ/2015 and the Tribunal, allowing the ground of the assessee held that the assessment order passed without draft assessment order u/s 143C of the Act is liable to be annulled being passed in contravention to the provisions of section 144C of the Act. Therefore, the Tribunal observed that the assessment order is liable to be declared as null and void and unenforceable as the same was passed without having jurisdiction. The Id. Counsel further submitted that the Revenue carried the matter before the Hon'ble High Court of Bombay and the Tax Appeal No.144 of 2017 filed by the Revenue was dismissed by the Hon'ble jurisdictional High Court of Bombay Bench at Goa, vide order dated 16.07.2018 (supra). Therefore,

the issue involved in this appeal is also covered in favour of the assessee by the order of the Hon'ble jurisdictional High Court in assessee's own case on identical issue.

4. Replying to the above, the Id.CIT-DR strongly supported the assessment order. However, he did not controvert that an identical issue has been decided by the jurisdictional High Court of Bombay, vide order dated 16th July, 2018 (supra) in assessee's own case against the Revenue.

5. In view of the above, first of all, we note that the Hon'ble jurisdictional High Court of Bombay in assessee's own case, by order dated 16th July, 2018, approving the view taken by the Tribunal, vide order dated 21.01.2016, concluded that the impugned assessment order for want of issuance of draft assessment order u/s 144C of the Act has to be held as without jurisdiction and there is no fault in the Tribunal order. We find it appropriate to reproduce the relevant paragraphs of the Hon'ble High Court order (supra) which read as follows:-

“16. We have gone through the order of the Tribunal dated 1 October 2012 by which the proceedings were remanded. The Tribunal noted that during the course of the proceedings, a new Transfer Pricing Officer took charge of the Assessee's case and he passed an order without issuing any show cause and without hearing the Assessee. The Tribunal upheld the grievance of the Assessee that a notice ought to have been issued when the new Transfer Pricing Officer took charge by observing thus :-

“11. In view of the aforesaid decision of the Hon'ble Supreme Court and the other case laws, we are of the view that the new TPO should have given a show cause

notice and also the copy of the material gathered by him which he wanted to use against the assessee prior to making adjustment. There is clear cut violation of principles of natural justice. We, accordingly, set aside the assessment order and restore the matter back to the file of the assessing officer in the interest of justice and fair play to both the parties as in our opinion no prejudice shall be caused to either of the parties if matter is restored to the file of the assessing officer. The assessing officer is directed to pass a fresh order in accordance with law after providing adequate and sufficient opportunity of being heard on the various objections and then decide the matter afresh in accordance with the law.

Thus, the Tribunal set aside the assessment order and restored the matter back to the file of the Assessing Officer. Ms. Razaq raised a contention that the order of the Panel was not set aside. In paragraph 10 of the order the tribunal had adverted to this issue. After reaching the conclusion that the assessment has to be set aside, the Tribunal considered to which authority it should be sent to. In that context, the Tribunal noted that even the Dispute Resolution Panel had not dealt with all objections including the objections regarding the denial of natural justice. Therefore, the Tribunal found it necessary that the matter should be de novo considered by the Assessing Officer. It is in this context the matter was relegated to the stage of Section 144C(1). Further proceedings were therefore not under Section 144C(13) as the entire exercise was set aside to be started afresh. Therefore the contention that the order passed thereafter was under Section 144C(13), cannot be accepted.

17. In the case of International Air Transport Association, the Division Bench of this Court has held that the order passed by the Assessing Officer without their being any draft assessment order is illegal and without jurisdiction. The same view has been reiterated in the case of Zuari Cement Ltd., Vs ACIT7 by the Division Bench of Andhra Pradesh High Court which also held that the failure to pass a draft assessment order under Section 144C(1) of the Act would result in rendering the final assessment as one without jurisdiction. This position of law is settled.”

6. In the present case, the Id.CIT(A) has granted relief to the assessee by holding that in absence of draft assessment order, the Tribunal order is vitiated and the Revenue is challenging the first appellate order only on this count. Therefore, we hold that the issue is covered in favour of the assessee. Therefore, respectfully following the order of the Hon'ble jurisdictional High Court of Bombay dated 16th July, 2018 in assessee's own case, we hold that there is no ambiguity, perversity or any other valid reasons to interfere with the findings arrived at by the Id.CIT(A). Therefore, we confirm the same.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced under Rule 34(4) of the IT(AT) Rules, 1963 on 17.08.2022 .

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 17th August, 2022.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi