

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 710/Ahd/2019  
Assessment Year 2009-10**

Cadila Healthcare Ltd., Zydus Tower, Opp. Iscon Temple, Satellite Cross Road, Ahmedabad-15 PAN: AAACC6253G (Appellant)	Vs	DCIT, Circle-1(1)(2), Ahmedabad (Respondent)
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**Assessee by: Shri Mukesh Patel, A.R. &  
Shri Jigar Patel, A.R.  
Revenue by: Shri Atul Pandey, Sr. D.R.**

Date of hearing : 21-06-2022  
Date of pronouncement : 09-09-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Deputy Commissioner of Income Tax, Circle-1(1)(2) Ahmedabad vide order dated 15/03/2019 passed for the assessment year 2009-10.

2. The assessee has taken the following Grounds of Appeal:-

*“1. That the Assessment Order passed by the learned Assessing Officer on 15/03/2019 is prima facie bad in law, as the same is barred by limitation. Keeping in view the clear and unambiguous provisions of Sec. 153 of the IT. Act, the Assessment Order, passed in pursuance to the Order of the Hon'ble ITAT u/s. 254 of the IT. Act, was required to be passed by 31/12/2018, being the expiry of nine months from the end of FY 2017-18 during which the Appellate Order of the ITAT was received.*

*2. That without prejudice to the legal challenge above and on the merits of the case, the Appellant wishes to contend as under:*

*(a) On the facts and in the circumstances of the case and in law, the Learned AO / TPO has erred in and learned DRP has further erred in not granting the benefit of five percent under the second proviso to Section 92C(2) of the Income-tax Act, 1961('the Act') and confirmed an upward TP adjustment amounting to INR 16,79,093 on account of liaison services provided by Zydus Japan to the Appellant.*

*(b) That the learned Assessing Officer erred in law and on facts in making an addition of Rs.18,18,96,302/- u/s. 40(a)(i), on the ground that no TDS was made by the Appellant u/s. 195 of the IT. Act.*

*(c) Without prejudice and in the alternative, the learned Assessing Officer erred in not allowing further deduction under Chapter VIA (out of total deduction determined earlier at Rs.152,38,78,465/-) from the income added by way of the aforesaid disallowance u/s. 40(a)(i), which formed part of the Business Income and which was restricted to the extent of the Gross Total Income of the appellant under the Order dated 18/08/2018, giving effect to the Hon'ble ITAT's Appellate Order u/s. 254.*

*(d) That the learned Assessing Officer erred in law and on facts in allowing credit for taxes paid of Rs. 19,97,53,105/-, as against the correct amount of Rs.20,21,14,033/-, though the same was correctly*

*allowed earlier, vide Order u/s. 154 dated 31/01/2018 after due verification by his predecessor.*

*(e) That the learned Assessing Officer erred in law and on facts in charging excess interest u/s 234C of Rs.1,08,603/-.*

*(f) That the learned Assessing Officer erred in law and on facts in recovering interest u/s244AofRs.1,79,390/-.*

*(g) That the learned Assessing Officer erred in law and on facts in mechanically initiating penalty proceedings u/s 271(1)(c) of the IT. Act in respect of each of the additions made by him in the assessment order u/s 143(3) r.w.s.144C(13) r.w.s. 254.*

*The appellant prays that leave may be granted to add, amend or alter any of the grounds at any time before the final hearing of the appeal.”*

3. The brief facts in relation to the case are that the assessee filed return of income on 25-09-2009 declaring “Nil” income after claiming deduction under Chapter-VI amounting to Rs. 46,42,60,703/-. Subsequently the assessment was completed u/s 143(3) r.w.s. 144C(13) of the Act on 23-01-2014 wherein the following disallowances were made in the total income of the assessee:

Sr. No.	Addition/Disallowance	Amount (In Rs.)
1	Upward adjustment by TPO	9,54,43,732/-
2	Disallowance u/s. 14A	12,17,51,000/-
3	Disallowance u/s. 40(a)(i)	18,18,96,302/-
4	Depreciation on rented property	1,66,628/-

4. Aggrieved by the disallowances, the assessee preferred appeal before ITAT and ITAT vide Order dated 03-03-2017 remitted the matter to the file of DRP for fresh adjudication, after giving due opportunity of hearing to the assessee. The afore-said order passed by ITAT was served on the Ld. Principal CIT on 06-06-2017. Subsequently, the DRP passed directions u/s 144C of the Act on 14-02-2019, which were received the DCIT, Circle-1(1)(2) Ahmedabad on 25-02-2019 and the assessment order was passed by Ld. DCIT on 15-03-2019.

5. At the outset, the Ld. Counsel for the assessee has challenged the validity of order u/s 143(3) r.w.s. 144C(13) of the Act dated 15-03-2019 as being time barred. The Ld. Counsel for the assessee has contended that as per the provisions of section 153(3) of the Act, an order of fresh assessment in pursuance of an order under section 254 of the Act by ITAT setting aside or cancelling an assessment, has to be passed before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Commissioner. In the instant case, the order under section 254 was received by the Principal Commissioner on 06-06-2017, accordingly, the assessment order was to be passed on or before 31<sup>st</sup> December 2018 being nine months from end of financial year 31<sup>st</sup> March 2018. Since, the assessment order was passed on 15-03-2019, the same is time barred and hence void ab-initio.

6. In response, the Ld. DR submitted that section 153(3) of the Act does not contain/ govern DRP specifically. Further, he submitted that the ITAT

vide Order dated 03-03-2017 remitted the matter to the file of DRP for fresh adjudication. Therefore, first an order was required to be passed by DRP pursuant to directions of ITAT u/s 144C of the Act. The Ld. DR submitted that section 144C specifically contains the words “*notwithstanding anything to the contrary contained in section 153*” which implies that the time limitation provided in section 153(3) of the Act does not override section 144C of the Act. Therefore, the Ld. DR argued that the order dated 15-03-2019 by the Ld. Assessing Officer is not time barred for the reason that Firstly, section 153 of the Act does not make any mention of DRP specifically and Secondly, 144C specifically overrides the provisions of section 153 of the Act by incorporating contains the words “*notwithstanding anything to the contrary contained in section 153*”.

7. We have heard the rival contentions and perused the material on record. In order to better understand the issue, it would be beneficial to produce the relevant Statutory provisions for reference:

**Reference to dispute resolution panel.**

***144C.....***

*(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.*

....

*(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.*

**Time limit for completion of assessment, reassessment and recomputation.**

**153.**

*(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment[or fresh order under section 92CA, as the case may be,] in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment,[or an order under section 92CA, as the case may be], may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as*

**the case may be**, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

*Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.*

7.1 From the perusal of the statutory provisions, it may be seen that section 144C of the Act is with respect to initial assessment to be passed by the assessing officer. A perusal of the scheme of section 144C of the Act and more specifically subclauses (12) and (13) to section 144C of the Act speaks of timelines within which the assessing officer is required to pass the assessment pursuant to directions of DRP in the case of original assessment. The language of section 144C of the Act suggests that the timeline for completion of original assessment pursuant to directions of DRP shall not be governed by provision section 153 of the Act. However, in case of setting aside of original assessment to DRP for fresh adjudication by the ITAT under section 254 of the Act, the same is, in our view, would be required to be passed within 9 months from the end of the financial in which such order is communicated to the Principal Commissioner of Income Tax. To interpret otherwise would allow the DRP/assessing officer unrestricted time to pass

the orders in pursuance of directions of ITAT, which would clearly be contrary to the intent of the Statute.

7.2 In the recent case of **CIT v Roca Bathroom Products (P.) Ltd.[2022] 140 taxmann.com 304 (Madras)**, the High Court held that sections 144C and 153 are mutually inclusive and not mutually exclusive as both contain provisions relating to section 92CA and are interdependent and overlapping and hence, period of limitation prescribed under section 153(2A) or 153(3) is applicable and when matters are remanded back **irrespective of whether it is to Assessing Officer or TPO or DRP, duty is on Assessing Officer to pass orders.** The High Court held that even in case of remand, TPO/DRP have to follow time limits as provided under Act and entire proceedings including hearing and directions have to be issued by DRP within 9 months as contemplated under section 144C(12) and thereafter, Assessing Officer is to pass orders within stipulated time. While passing the order, the High Court observed as under:

*21. As held above, the assessment has to be concluded within 21 months when there is no reference and when there is a reference, it has to be concluded within 33 months. In the additional 12 months, the draft order is to be passed, the objections have to be filed, the DRP has to issue the directions and the final order is to be passed. The provisions under section 144C and section 153 are not mutually exclusive as both contain provisions relating to Section 92CA and are inter-dependant and overlapping. On remand, prior to amendment as per Section 153 (2A), the Assessing officer is given*

*12 months to pass a fresh assessment order. Therefore, it is incumbent on him to do so, irrespective of the fact that DRP has completed the hearing and issued the directions or not. As rightly held by the learned judge, we are of the view that the DRP ought to have concluded the proceedings within 9 months from the date of receipt of the Tribunal's order, when it had issued a notice on 19-2-2014 and conducted the hearing as early as on 10-3-2014 and on several dates. The DRP at Chennai, in fact ought to have passed orders before 19-11-2014, even if the date of receipt of the notice is taken as 19-2-2014. In that event, the assessing officer ought to have passed the order before 31-12-2014 or at the latest before 31-3-2015 considering that the order was received during the Financial year 2013-14. The transfer of the files to Bengaluru, after the lapse of the time, will not indefinitely extend the time and can have no impact on the time lines. It is an inter-department arrangement and it cannot defeat the rights of the assessee.*

*22. Insofar as the non-obstante clause in Section 144C(13) is concerned, we concur with the view of the Learned Judge. **The exclusion of applicability of Section 153 or Section 153 B is for a limited purpose to ensure that de hors larger time is available, an order based on the directions of the DRP has to be passed within 30 days from the end of the month of receipt of such directions.** The section and the sub-section have to be read as a whole with connected provisions to decipher the meaning and intentions.*

**23. Further, similar non-obstante clause is also used in section 144C(4) with a same limited purpose to imply, even though there might be a larger time limit under Section 153, once the order of TPO is accepted or not objected to, causing a deeming fiction of acceptance, the final order is to be passed immediately. The object is to conclude the proceedings as expeditiously as possible and the authority need not wait for the last date to pass the orders. The limitation prescribed under the statute is for the assessing officer and therefore, it is his duty to pass order in time irrespective of whether the directions are received from DRP or not. As held by us above, the DRP will have no authority to issue directions after nine months and a further period of one month as per section 144C (13) and three months under section 153 (2A) is available, within which period no orders have been passed in the present cases. The reference made by the learned senior counsels on the judgments in Nokia India (P.) Ltd. (supra) and Vedanta Ltd. (Supra) is well founded. The timeline given under the Act is to be strictly followed.**

7.3 In light of the above decision and our discussion the foregoing paragraphs, in our considered view, the assessing officer was required to pass order within 9 months from the end of the financial year in which the order was received by the Principal Commissioner of Income Tax i.e. 31<sup>st</sup> December 2018. Hence, the present order dated 15-03-2019 passed by Ld. DCIT is barred by limitation and hence liable to be set aside. Hence, the appeal of the assessee is allowed on the ground of jurisdiction. Since, we

have allowed the assessee's appeal on jurisdiction itself, we are not adjudicating on the assessee's grounds of appeal on merits.

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

Order pronounced in the open court on 09-09-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 09/09/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद