

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'C' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.338/PUN/2021 and 236/PUN/2022

निर्धारण वर्ष / Assessment Years : 2016-17 & 2017-18

Cummins India Limited, Tower A, 5 th Floor, Cummins India Office Campus, Balewadi, Pune 411 045 Maharashtra PAN : AAACC7258B	Vs.	The Additional/Joint /Deputy/Assistant Commissioner of Income-tax, National Faceless Assessment Centre, Delhi
Appellant		Respondent

Assessee by
Revenue by

Shri Ketan Ved
Shri Shivraj Morey

Date of hearing

28-09-2022

Date of pronouncement

28-09-2022

आदेश / ORDER

PER R.S. SYAL, VP :

These two appeals by the assessee relating to the assessment years 2016-17 & 2017-18 arise out of the final orders passed by the Assessing Officer (AO) u/s.143(3) read with section 144C(13) of the Income-tax Act, 1961 (hereinafter also called 'the Act') on 29-06-2021 & 21-02-2022 respectively. Since some of the issues raised in these appeals are common, we are, ergo, proceedings to dispose them off by this consolidated order for the sake of convenience.

2. Before proceeding with the instant appeals, it is pertinent to mention that the appeal of the assessee for the A.Y. 2015-16 was a part of batch of three appeals, including the two under consideration. All the three appeals were listed for hearing on 26-09-2022. The lead appeal for the A.Y. 2015-16 was heard at length on that date. For paucity of time, the instant appeals could not be taken up on that day and hence were adjourned for today. Some of the issues raised in the current batch of appeals are similar to those in the appeal for the A.Y. 2015-16. Both the sides relied on their respective arguments made for the preceding year relevant to the issues in the appeals under consideration.

A.Y. 2016-17 :

3. The first issue raised by the assessee is against the validity of the final assessment order due to non-service of the Dispute Resolution Panel's (DRP) directions. Referring to Rule 11 of Income-tax (Dispute Resolution Panel) Rules, 2009, which provides for the communication of the direction also to the eligible assessee, the ld. AR contended that the directions given by the DRP u/s.144C(5) was not served on the assessee. The final assessment order passed in such circumstances was thus claimed to be vitiated. Per contra, the ld. DR submitted that the direction

was properly served on the assessee, which was clear from the DIN.

4. After considering the rival submissions and going through the relevant material on record, it is seen that section 144C(5) of the Act states that: '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.*' On going through the prescription of sub-section (5) of section 144C, it is manifest that the direction is for the guidance of the AO for enabling him to complete the assessment. Such a direction is issued, in terms of sub-section (6), by the DRP after considering, amongst others, the draft order; objections filed by the assessee; evidence furnished by the assessee; report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority; and records relating to the draft order. This shows that the direction is issued by the DRP after giving full opportunity of hearing to the assessee, which is further ostensible from sub-section (11), unequivocally providing to that extent, by stating that no direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the

assessee on such directions which are prejudicial to the interest of the assessee. Sub-section (13) of 144C provides that: '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'. On an overview of the above sub-sections of section 144C, it is vivid that - the opportunity of hearing to the assessee is required to be given by the DRP before deciding on the objections raised before it; the direction is given for the guidance of the AO; and after the receipt of the direction, the AO has to straight away pass the final assessment order without providing any further opportunity of hearing to the assessee. This deciphers that the communication of the direction to the AO is essential as the latter has to pass the final assessment order in conformity with such direction and that too, without giving any opportunity of hearing to the assessee. Insofar as the assessee is concerned, the requirement is to give opportunity of hearing before issuing the direction and there is no further statutory requirement of

communicating such direction to him. The AO is required to pass the final order in conformity with the direction. There is no specific legal recourse available to the assessee against the adverse direction of the DRP except for filing an appeal against the final assessment order giving effect to such direction. The service of the direction by the DRP on the assessee, in terms of Rule 11 of Income-tax (Dispute Resolution Panel) Rules, 2009, is only a procedural requirement put in place by delegated legislation, without any corresponding provision in the enactment. In that view of the matter, it cannot be said that non-service of the direction of the DRP to the assessee would vitiate the final assessment order itself.

5. Notwithstanding the above position, the Id. AR candidly admitted before the Tribunal that, on the assessee writing to the DRP about non-communication of the direction, the DRP responded by mentioning that direction dated 11-03-2021 was promptly e-mailed to the assessee on that very date itself. No adverse contrary evidence has been brought to our notice on behalf of the assessee. Under such circumstances, we are satisfied that this ground is devoid of merit and hence deserves the fate of dismissal. We order accordingly.

6. Ground nos. 2 to 5 of the appeal are against the transfer pricing addition of Rs.12.35crore in the international transaction of 'Payment of Royalty for use of technology'. The facts of this issue are that the assessee paid Royalty to its foreign-based Associated Enterprise (AE), which was clubbed with other international transactions under the "Manufacturing Segment" for determining the Arm's Length Price (ALP) on an aggregate basis. The Transfer Pricing Officer (TPO) did not accept the assessee's aggregation approach. He segregated the international transaction of payment of Royalty. It was further noted by him from the Agreement that the rates at which the Royalty was paid on domestic sales to non-AEs were much less than the rates on exports made to AEs. He, therefore, bifurcated the transaction of Royalty payment into two parts, viz., on domestic-sales and on exports; and made the transfer pricing adjustment in respect of Royalty paid by the assessee on export sales to its AEs. The DRP did not give any reprieve to the assessee, which led to the passing of the final assessment order by making transfer pricing adjustment of 12.35 crore.

7. At the outset, both the sides fairly admitted that the facts and circumstances for the year under consideration are similar to those

for the A.Y. 2015-16. Rather, they adopted their respective arguments made for the A.Y. 2015-16 without making any separate submission for the year under consideration.

8. We have passed a separate order today for the A.Y. 2015-16 in which the TPO's approach of segregating the payment of Royalty transaction from the other international transactions under the combined 'Manufacturing segment' has been countenanced and the matter concerning the determination of the ALP of the Royalty payment in respect of export sales has been sent back to the DRP for disposing of the assessee's objections raised before it, which were inadvertently omitted to be disposed of. Following the view taken by the Tribunal for the A.Y. 2015-16, we approve the segregation of payment of Royalty from other international transactions under the 'Manufacturing segment' and send the matter to the DRP for disposing of the assessee's objections on the further segregation of Royalty payment on exports and domestic sales and the consequential transfer pricing adjustment in respect of export sales to the AEs.

9. Ground no.6 of the assessee's appeal is against the confirmation of disallowance u/s.14A of the Act. Both the sides fairly agreed that the facts and circumstances of this ground are

similar to those for the A.Y. 2015-16. No separate submissions were advanced. Following the view taken in the order for the A.Y. 2015-16, we remit the matter to the file of the AO for deciding this issue afresh in the light of the directions given by the Tribunal in its order for the A.Y. 2012-13.

10. Ground no.7 against the non-granting of deduction of Education Cess and Secondary higher education cess is again similar to that of the A.Y. 2015-16, which has been dismissed by the Tribunal. Following the precedent, we decide this issue against the assessee.

11. Ground no.8 is against non-granting of deduction u/s.80G amounting to Rs.6.00 crore. The facts anent to this issue are that the assessee claimed deduction u/s.80G for a sum of Rs.6.00 crore in the computation of income. The AO did not dispute the deduction and adopted the total income offered by the assessee (after deduction u/s.80G) for making certain disallowances and computed the total income accordingly. This was done in the draft as well as the final assessment orders. However, in the Computation sheet, the AO omitted to grant the deduction of Rs.6.00 crore, as is apparent from column no.12 showing the figure of 'zero' against the total deduction against Chapter VI-A.

Under such circumstances, we direct the AO to verify the assessee's contention and allow deduction of Rs.6.00 crore, if not earlier allowed, after due opportunity of hearing to the assessee.

12. Ground no.9 is against short deduction of TDS credit amounting to Rs.3,51,818/-. The AO is directed to verify the assessee's contention and allow the necessary credit, if not earlier allowed.

13. Last ground about the initiation of penalty proceedings u/s.271(1)(c) is premature and hence dismissed.

14. In the result, the appeal is partly allowed.

A.Y. 2017-18 :

15. The first ground is against not following the due procedure in terms of section 144B of the Act. The ld. AR fairly admitted that statutory amendment has been carried out by the Finance Act, 2022 with retrospective effect and the assessee's ground has, therefore, become infructuous. This ground is thus dismissed.

16. Ground nos. 2 to 5 are against the transfer pricing adjustment of Rs.11,95,85,010/- in the international transaction of payment of Royalty. Both the sides are in agreement that the facts and circumstances of this ground are similar to those of the preceding two years. We follow the order rendered for the A.Y.

2015-16 and order accordingly, as briefly mentioned above for the A.Y. 2016.

17. Ground no.6 is against not considering the returned income during the scrutiny assessment u/s.143(3). The AO observed in the draft order that the assessee e-filed its return on 30-11-2017 showing income of Rs.498.57 crore, which was processed u/s.143(1) of the Act by the CPC, Bengaluru at total income of Rs.562.17 crore. The draft order was notified by taking the starting point of the computation of total income as Rs.561.17 crore, as processed u/s.143(1), and thereafter the additions were made. The assessee contended before the DRP that the income was enhanced u/s.143(1) by Rs.63.60 lakh without giving opportunity to the assessee during the assessment proceedings. It was further contended that the assessee has filed rectification application before the concerned AO. The DRP upheld the adoption of income at Rs.562.17 crore as processed u/s.143(1) as base point for computing total income. It, however, directed that: “in case the CPC passes any rectification order revising the total income computed u/s.143(1) of the Act in future, the AO is directed to adopt the figure as per such rectification order”. The ld. AR contended that the application u/s.154 has still not been

disposed of. Under such circumstances, we direct the disposal of the application made by the assessee u/s.154 of the Act and then make suitable changes to the figure of income u/s.143(1) as the base figure for determining income u/s.143(3), if warranted.

18. Ground no.7 is against short granting of credit of TDS amounting to Rs.29,52,565/-. The AO is directed to verify the assessee's contention and decide the issue accordingly.

19. Ground no.8 is against levy of interest u/s.234C amounting to Rs.31,76,153/-. The only prayer of the assessee is that the computation part of interest u/s.234C be checked. We order accordingly and direct the AO to examine if the interest has been computed correctly in terms of section 234C.

20. The last ground about the initiation of penalty proceedings u/s.271(1)(c) is premature and hence, not allowed.

21. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 28th September, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 28th September, 2022
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The CIT(A)-13, Pune
4. The PCIT-5, Pune
5. DR, ITAT, 'C' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
 आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	28-09-2022	Sr.PS
2.	Draft placed before author	28-09-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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