

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

IT(TP)A No.1315/Bang/2017 : Asst.Year 2011-2012

M/s.Opto Circuits India Limited No.38, Electronic City Road Bangalore – 560 100. PAN : AAACO2165P.	v.	The Deputy Commissioner of Income-tax, Circle 5(1)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Shiva Prasad Reddy, ITP
Respondent by : Sri.Sumer Singh Meena, CIT-DR

Date of Hearing : 28.09.2022	Date of Pronouncement : 28.09.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against final assessment order dated 06.01.2016 passed u/s 143(3) r.w.s. 144C of the I.T.Act. The relevant assessment year is 2011-2012.

2. There is a delay of 171 days in filing this appeal before the Tribunal. The assessee has filed a petition for condonation of delay along with an affidavit of Managing Director of the assessee, stating therein the reasons for belated filing of this appeal. On perusal of the reasons stated, we find that the assessee by mistake had filed AN appeal before the CIT(A) (as against the final assessment order) and on realizing the mistake, immediately the assessee filed appeal before the Tribunal. We find there is a reasonable cause for belated filing

of this appeal on the facts and circumstances of the case. Therefore, we condone the delay in filing this appeal and proceeded to dispose of the matter on merits.

3. The brief facts of the case are as follows:

The assessee is a company engaged in the manufacture of Opto Sensor, Photo Sensor and other medical equipments. For the assessment year 2011-2012, the return of income was filed on 30.09.2011 admitting total income of Rs.11,36,41,180. The assessment was selected for scrutiny by issue of notice u/s 143(2) of the I.T.Act. During the course of assessment proceedings, it was noticed that the assessee had international transactions with its Associate Enterprises (AEs) exceeding Rs.15 crore. Hence, the matter was referred to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) of the said transactions. The TPO passed order u/s 92CA of the I.T.Act on 30.01.2015 proposing TP adjustment of Rs.14,12,85,237. Pursuant to the TPO's order, draft assessment order was passed on 23.03.2015 incorporating the above TP adjustment and making certain other corporate tax disallowances / additions.

4. Aggrieved by the draft assessment order, the assessee filed objections before the Dispute Resolution Panel (DRP). Before the DRP, there was no appearance on behalf of the assessee. Therefore, the DRP dismissed the objections of the assessee *in limine* without rendering any directions on merits. Pursuant to the DRP's directions, the impugned final

assessment order was passed on 06.01.2016 assessing the total income at Rs.32,08,32,559.

5. Aggrieved by the final assessment order, the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising of 158 pages enclosing therein the case laws relied on, relevant extracts of the sections, the Rules, the audit financials, the written submissions filed before the Income Tax Authorities, copy of the objections and the orders passed, etc. The assessee has raised legal grounds, namely, it is not an eligible assessee as per the definition of section 144C(15)(b) of the I.T.Act. Therefore, it is contended that the draft assessment order and the DRP's directions are invalid. The assessee has also raised grounds on merits.

6. The learned Departmental Representative relied on the order of the TPO and the final assessment order.

7. We have heard rival submissions and perused the material on record. We find the DRP has not adjudicated the issue on merits and has rejected the objections raised by the assessee *in limine* on account of non-appearance on the part of the assessee's representative. We strongly deprecate the practice of the assessee in not representing its case before the DRP. The assessee has also raised legal grounds stating that it is not a foreign company, and therefore, not an eligible assessee as per the definition u/s 144C(15)(b) of the I.T.Act We are of the view, since the DRP has not disposed of the

assessee's objections on merits, in the interest of justice and equity one more opportunity should be granted to the assessee for a proper representation of its case. Accordingly, all the issues raised in this appeal are restored to the files of the DRP. The assessee shall cooperate with the DRP and shall not seek unnecessary adjournment. The DRP shall afford a reasonable opportunity of hearing to the assessee and shall dispose of the matter in accordance with law. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 28th day of September, 2022.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 28th September, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-2, Bangalore.
4. The Pr.CIT-3, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore