

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 727/MUM/2022
Assessment Year: 2017-18**

M/s Piramal Enterprises Ltd.,
Piramal Tower, Agastya
Corporate Park, LBS Marg,
Kamani Junction, Kurla
(West),
Mumbai-400070.

PAN No. AAACN 4538 P

Appellant

Vs. Dy. CIT, Mumbai-8(1)(2), or
National Faceless Assessment
Centre, Delhi,
Room No. 624, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Ronak Doshi
Revenue by : Mr. Rakesh Ranjan, CIT-DR &
Mr. Samuel Pitta, DR

Date of Hearing : 17/11/2022
Date of pronouncement : 28/12/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee has been preferred against final assessment order dated 26.02.2022 passed by the Additional/Joint/Deputy/Assistant Commission/Income-tax Officer, National Faceless Assessment Centre, Delhi (in short 'the



Ld. Assessing Officer' or 'AO') for assessment year 2017-18, raising following grounds:

GROUND NO. I: THE IMPUGNED ORDER PASSED IN CONTRAVENTION TO THE DIRECTIONS OF HON'BLE BOMBA HIGH COURT IS VOID:

1. On the facts and in circumstances of the case and in law, the impugned assessment order passed in contravention to the directions of Hon'ble Bombay High Court is void.

2. The Ld. AO, inter alia, failed to appreciate and ought to have held that

- Where Hon'ble Bombay High Court has struck down the draft assessment order itself passed w/s 143(3) r.w.s. 144C(1), the question of passing the impugned assessment order u/s 143(3) r.w.s. 144C(13), as the order pursuant to the directions of Hon'ble Dispute Resolution Panel, does not arise;

- Hon'ble High Court allowed the Revenue to carry forward the process in accordance with the provisions of section 144B; and

- Order passed u/s 143(3) r.w.s. 144C(13) without passing order in accordance with clause (XXV) and (xxvi) of Section 144B(1), which mandates the AO to pass a revised draft assessment order to an eligible assessee w/s 144C, is invalid and has no legs to stand.



3. The Appellant prays that the impugned order, passed in contravention with the directions of Hon'ble High Court, and also the provisions of the Act, be quashed.

**WITHOUT PREJUDICE TO GROUND NO. I ABOVE,
GROUND NO. I: ASSESSMENT ORDER PASSED UNDER
SECTION 14303) RMS 144C (13) READ WITH SECTION
144B IS TIME BARRED:**

1. On the facts and in circumstances of the case and in law, the impugned order passed by Ld. AO is beyond the time limit prescribed under the Act.

2. The Appellant prays that the impugned order be held as time-barred and accordingly, be quashed.

**WITHOUT PREJUDICE TO GROUND NO. I AND GROUND
NO. II ABOVE,**

**GROUND NO. III: DISALLOWANCE UNDER SECTION 14A
OF THE ACT r.w.r. 8D of THE INCOME TAX RULES,
1962 ("THE RULES") AMOUNTING TO RS.
84.29,35.3671-**

1. On the facts and in circumstances of the case and in law, the Ld. AO erred in making disallowance under section 14A of the Act r.w.r. 8D amounting to Rs. 84,99,35,367/-

2. The Ld. AO, inter alia, failed to appreciate and ought to have held that:

- Rule 8D of the Income-tax Rules, 1962 is not automatic;



- Principle of consistency ought to be followed while making the assessment; The assessing officer is duty bound to assess correct income irrespective of the income returned by the assessee;

Disallowance shall be computed only in respect of investments yielding exempt income during the year;

For computing disallowance w/s 14A, only the historic cost of investments can be taken into consideration and not the notional values recorded in the books of accounts as per applicable accounting standards; and

Disallowance u/s 14A cannot exceed the amount of exempt income earned during the year.

3. The Appellant prays that the disallowance made w/s 14A of the Act r.w.r 8D be deleted or be appropriately reduced.

WITHOUT PREJUDICE TO GROUND NO. I AND GROUND NO. II ABOVE, GROUND NO. IV: ADDITION TO ARM'S LENGTH PRICE IN RELATION TO INTERNATIONAL TRANSACTIONS AMOUNTING TO RS. 23,62,21,702/-:

1. On the facts and in circumstances of the case and in law, the Ld. AO erred in holding the corporate and performance guarantee provided by the Appellant as an "international transaction and that commission at the rate of 1.68% ought to have been charged on the outstanding guarantee in respect of loans taken by its Associate Enterprises and thereby making an adjustment of Rs 23,62,21,702/- in that regard.



2. The Appellant prays that it be held that corporate guarantee is not an 'international transaction' and the suo-moto adjustment made by the Appellant in this regard be deleted.

3. The Appellant further prays that the disallowance of Rs. 23,62,21,702/- made in respect of transfer pricing adjustment on commission on the guarantees provided be deleted or be appropriately reduced.

WITHOUT PREJUDICE TO GROUND NO. I AND GROUND NO. II ABOVE,

GROUND NO. V: ERRED IN GRANTING SHORT CREDIT OF TAX DEDUCTED AT SOURCE ("TDS") AMOUNTING TO RS. 49,61.73,663/-

1. On the facts and in circumstances of the case and in law, the Ld. AO has erred in granting short credit of TDS to the extent of Rs. 49,61,73,663/-.

2. The Appellant prays that Ld. AO be directed to grant appropriate credit of TDS as claimed by the appellant in its return of income.

WITHOUT PREJUDICE TO GROUND I, II, III AND VI AS MENTIONED ABOVE:

GROUND NO. VI: DEDUCTION UNDER SECTION 10AA OF THE ACT:



1. *On the facts and in circumstance of the case and in law, the Ld. AO erred by not granting deductions under section 10AA of the Act.*

2. *The Ld.AO inter alia failed to appreciate and ought to have held that upon additions being made to returned income as per impugned order, the total income of the appellant turns out to be positive and therefore, the appellant is eligible to get deductions under section 10AA of the Act.*

3. *The Appellant prays that the Ld. AO be directed to grant deductions under section 10AA of the Act.*

WITHOUT PREJUDICE TO GROUND NO. I, II, III AND VI AS MENTIONED ABOVE:

GROUND NO. VII: DEDUCTION UNDER SECTION 80G OF THE ACT:

1. *On the facts and in circumstance of the case and in law, the Ld. AO erred by not granting deductions under section 80G of the Act.*

2. *The Ld.AO inter alia failed to appreciate and ought to have held that upon additions being made to returned income as per impugned order, the total income of the appellant turns out to be positive and therefore, the appellant is eligible to get deductions under section 80G of the Act.*

3. *The Appellant prays that the Ld. AO be directed to grant deductions under section 80G of the Act.*



WITHOUT PREJUDICE TO GROUND I, II, III AND VI AS MENTIONED ABOVE:

GROUND NO. VIII: DEDUCTION UNDER SECTION 80GGB OF THE ACT:

- 1. On the facts and in circumstance of the case and in law, the Ld. AO erred by not granting deductions under section 80GGB of the Act.*
- 2. The Ld.AO inter alia failed to appreciate and ought to have held that upon additions being made to returned income as per impugned order, the total income of the appellant turns out to be positive and therefore, the appellant is eligible to get deductions under section 80GGB of the Act.*
- 3. The Appellant prays that the Ld. AO be directed to grant deductions under section 80GGB of the Act.*

WITHOUT PREJUDICE TO GROUND NO. I, II, III AND VI AS MENTIONED ABOVE:

GROUND NO. IX: DEDUCTION UNDER SECTION 80JJAA OF THE ACT:

- 1. On the facts and in circumstance of the case and in law, the Ld. AO erred by not granting deductions under section 80JJAA of the Act.*
- 2. The Ld.AO inter alia failed to appreciate and ought to have held that upon additions being made to returned income as per impugned order, the total income of the appellant turns*



out to be positive and therefore, the appellant is eligible to get deduction under section 80JJA of the Act.

3. The Appellant prays that the Ld. AO be directed to grant deductions under section 80JJAA of the Act.

WITHOUT PREJUDICE TO GROUND NO. I AND II AS MENTIONED ABOVE:

GROUND NO. X: INTEREST ON REFUND U/S 244A OF THE ACT

1. On the facts and circumstances of the case and in law, the Ld. AO has erred in granting lower interest on refund under section 244A of the Act.

2. The Appellant prays that Ld. AO be directed to recalculate the amount of interest on refund under section 244A of the Act.

2. Briefly stated, facts of the case are that the assessee-company was engaged in the business of manufacturing of pharmaceutical formulations as well as trading in pharmaceutical goods. For the year under consideration, the assessee filed return of income in the month of November, 2017 declaring Nil income, which was further revised on 30.03.2019. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In view of international transaction and specified domestic transactions reported in Form No. 3CEB of Income-tax Form filed



by the assessee company, the Assessing Officer referred the matter of determination of arm's length price of international transaction and specified domestic transaction to the Ld. Transfer Pricing Officer (TPO). The Ld. TPO proposed transfer pricing adjustment in his order dated 29.01.2021. Considering the order of the TPO, the Ld. Assessing Officer issued draft assessment order u/s 144C of the Act on 24.02.2021. Against the said draft assessment order, the assessee filed objection before the Ld. Dispute Resolution Panel (DRP). The assessee also filed writ petition before the Hon'ble High Court of Bombay on the ground that no opportunity of personnel hearing was given by the Assessing Officer while passing draft assessment order. The Hon'ble High Court in its decision dated 30.07.2021 set aside the draft assessment order. Consequently, the Ld. DRP held the objection filed as infructuous. The Ld. Assessing Officer in the faceless process continued with the assessment proceedings and issued impugned final assessment order assessing total income of the assessee at ₹103,33,40,208/-.

3. Aggrieved, the assessee is in appeal before the Income-tax Appellate Tribunal (ITAT) raising the ground as reproduced above.

4. Before us, the Ld. Counsel of the assessee filed a paperbook containing pages 1 to 219 including the decision of the Hon'ble Bombay High Court in the case of the assessee.



5. Before us, the assessee has challenge the validity of the impugned order in view of direction of the Hon'ble Bombay High Court and submitted that impugned order is void.

6. The Ld. Departmental Representative (DR) on the other hand submitted that there is no violation on the part of the Assessing Officer.

7. We have heard rival submission and perused the relevant material on record. We find that in this case, the assessee is aggrieved with the draft assessment order dated 22.04.2021 passed u/s 144C(1) r.w.s. 143(3) of the Act wherein he proposed to addition u/s 14A of the Act and addition on account of closing stock along with transfer pricing addition. In the case, the assessee was having grievance that under the procedure laid down u/s 144B(vii) for the purpose of faceless assessment order under clause (vii), it is provided that in case of variation is proposed in draft assessment order, then opportunity has to be provided to the assessee by serving a notice of show cause and if the assessee or representative so request then personal hearing has also to be provided for making oral submission and present his case before the Income-tax Authorities. In view of grievance, the assessee filed writ petition before the Hon'ble Bombay High Court for praying to hold the draft assessment order as illegal and unsustainable in law. The Hon'ble High Court after considering arguments from both the sides, observed that opportunity has been provided under the procedure



of National Faceless Scrutiny Scheme but same has not been provided to the assessee. The relevant observation of the Hon'ble Bombay High Court, are reproduced as under:

“58. Sub-section (7) of section 144B for the purpose of faceless assessment under clause (vil) provides that in case where variation is proposed in draft assessment order, an opportunity is to be provided to the assessee by serving a notice to show-cause and the assessee or his representative can request for personal hearing so as to make his oral submissions or to present his case before the income-tax authorities in any unit. Further sub-section (7) provides under clause (ix for hearing through video conferencing or video telephone including use of any telecommunication application software which support video conferencing or video telephone.

59. Sub section (7), clause (vi) stipulates as under :-

'(7) For the purpose of faceless assessment -

*(1) to (vi) ***

(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to



make his oral submissions or present his case before the income-tax authority in any unit;"

60. Plainly reading aforesaid provision would show that whenever assessee requests for personal hearing so as to make oral submissions or to present case, it is before income-tax authority in any unit. Sub-section (7), clause (viii) shows that request for personal hearing is to be approved by the authorities referred to therein upon its opinion that the request is covered by sub-clause (h) of clause (xi). Clause (xi) empowers authorities with prior approval of the Board to lay down the standards, procedures and processes for effective functioning of National Faceless Assessment Centre and others, inter alia, circumstances in which personal hearing referred to in clause (vii) shall be approved.

61. Legislature is not unwary of situations arising, requiring personal hearing and oral submission and thus has provided the same under the faceless assessment scheme under section 144B. It emerges that where response is given by the assessee to show cause notice, the process under sub-section (7) would follow.

62. Learned senior counsel Mr. Pardiwala, during the course of hearing, had drawn attention to 'Standard Operating Procedure' (SOP) for Assessment Unit under Faceless Assessment Scheme, 2019' under Circular FNo.PR.CCIT/SOP/2020-21 dated 19-11-2020 providing for, under its clause T. that reasonable time is to be given to an assessee to comply with principles of natural Justice. He had also referred to Circular F. No. PR. CCIT/NCAC/SOP/2020-



21 dated 23-11-2020 to contend that personal hearing is to be allowed when there is response to DAO.

63. Principles of natural justice firmly run through fabric of section 144B(1) of the Income-tax Act, 1961. Whenever DAO, FDAO is prejudicial to the interest of assessee or RDAO is prejudicial to the interest of assessee in comparison to DAO or FDAO, upon a response to show- cause notice, personal hearing for oral submissions or to present its case before income tax authority is strongly entwined in the provisions on a request from an assessee unless it is absurd, strategised and/or intended to protract assessment etc. It would also emerge from various decisions, referred to above, ordinarily, such a request would not be declined.

Judgments cited on behalf of petitioner referred to hereinbefore give exposition on significance and importance of principles of natural justice.

64. Section 144B of the Income-tax Act, 1961 captioned 'Faceless Assessment' commences vide its sub-section (1) with a non-obstante clause and compulsively requires assessment u/ss 143(3) and 144 shall be by prescribed procedure contained in sub-section (1) of section 144B in the cases referred to in subsection (2) thereof.

65. Sub-section (9) of section 144B declares that assessment made under section 143(3) or under section 144(4) referable to sub-section (2) other than sub-section (8) on or after 1st day of April, 2021 shall be non est if such assessment is not made in accordance with the procedure laid down under



section 144B. There is a telling/pronounced rigour, to follow the procedure under section 144B, lest the assessment would be non est.

66. Going by the provisions under section 144B, when hearing has been envisioned and incorporated, it is imperative to observe principles of natural justice as stipulated.

67. In the present matter, it is not disputed that show-cause notice had been issued to the petitioner disputes 372021 to which the petitioner has responded to from time to time vide letters dated 26th March, 2021, 28th March, 2021 requesting for personal hearing and by sending responses dated 7th and 8th April, 2021. There is nothing to reflect upon that after receipt of response to show-cause-notice dated 26th March, 2021, 28th March, 2021, 7th and 8th April, 2021, prescribed procedure has been followed. The petitioner appears to be losing out on an opportunity as would be available to it under clause (xxiii)(b) read with sub section (7) sub-clause (vii).

68. In the circumstances, when an assessee approaches with response to show cause notice, the request made by an assessee, as referred to in clause (vii) of sub section 7 of section 144B, would have to be taken into account and it would not be proper, looking at the prescribed procedure with strong undercurrent to have hearing on a request after notice, to say that petitioner would have opportunity pursuant to section 144C in the present matter, would



intercept operation of the scheme contained under section 144B.”

7.1 In final concluding para, the Hon'ble Bombay High Court set aside the draft assessment order holding the same to be unsustainable, leaving the issue of carry forward of the process u/s 144B of the Act open to the authorities. The relevant para is reproduced as under:

“69. Foregoing discussion leads to that impugned draft assessment order dated 22-4-2021 is unsustainable. The petition is allowed in terms of prayer clause (a) leaving it open to the authorities to carry forward the process in accordance with section 144B of the Income-tax Act, 1961 by giving opportunity of hearing to the petitioner.”

7.2 In view of above direction, the Ld. DRP in its order dated 13.01.2022 also declined to comment on the objections of the assessee filed before the DRP holding the same to be infructuous. The relevant finding of the Ld. DRP is reproduce as under:

“4. In view of the judgement of the Hon'ble Bombay High Court in assessee's own case (supra), we are of the considered opinion that since the impugned draft assessment order us 144C of the Act has been set aside, therefore, the instant objections filed before the DRP become infructuous requiring no action on the part of the DRP.”

7.3 In view of above directions of the Hon'ble Bombay High Court, it is amply clear that the draft assessment order has been held to be



unsustainable and the Ld. DRP has also restrained from issuing any direction. In such circumstances, the Ld. Assessing Officer could not have proceeded in passing this final assessment order. Once, the draft assessment order passed itself has been set aside, in absence of which final assessment order passed is also not sustainable in law. Accordingly, we quash this impugned order of Ld. Assessing officer as void and invalid in law. The ground No. 1 of the appeal of the assessee is accordingly allowed.

7.3 Since, we have held the impugned assessment order has void we are not required to adjudicate upon other grounds of appeal as same are rendered only academic.

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

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 28/12/2022.**

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 28/12/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.



//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai