

IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 7262/MUM/2018
(Assessment Year: 2014-15)

India Medtronic Private Limited
(Successor to Covidien Healthcare India -
Private Limited),
1241, 4th Floor, Solitaire Corporate Park,
Building No. 12, Andheri-Ghatkopar
Link Road, Andheri (East),
Mumbai - 400093
[PAN: AABCT6021C]

..... Appellant

Vs

Deputy Commissioner of Income Tax –
Range 10(1)(1), Mumbai,
Room No. 209, 2nd Floor, Aayakar Bhavan,
M.K. Road, Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Shri Rajan Vora/Nikhil Tiwari
For the Respondent/Department : Dr. Yogesh Kamat
Shri Soumender Kumar Das

Date of conclusion of hearing : 02.12.2022
Date of pronouncement of order : 27.01.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal is directed against the Final Assessment Order dated, 31.10.2018, passed under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], as per directions issued by Dispute Resolution Panel-1, (West Zone) Mumbai (hereinafter referred to as 'the DRP') under Section 144C(5) of the Act pertaining to the Assessment Year 2014-15.

2. The relevant facts, in brief, are that the present appeal has been filed by India Medtronic Private Limited as a successor to Covidien Healthcare India Private Limited. The return for the Assessment Year 2014-15 was filed by the Covidien Healthcare India Private Limited (CHPL) on 28.11.2014. The case was selected for scrutiny and notice under Section 143(2) of the Act dated 03.09.2015 was issued to CHPL. During the assessment proceeding, reference was made to the Transfer Pricing Officer (TPO) on 30.12.2016. Before the Transfer Pricing Order could be passed, the amalgamation of CHPL with India Medtronic Private Limited (IMPL) was approved by NCLT vide order, dated 10.08.2017. On 31.10.2017 Transfer Pricing Order was passed under Section 92CA(3) of the Act in the name of CHPL. Thereafter, Draft Assessment Order was passed on 29.12.2017 in the name of CHPL. Objections were filed before DRP against the Draft Assessment Order by IMPL as successor to CHPL. Vide order dated 10.09.2018, the DRP issued directions under Section 144C(5) of the Act leading to the passing of Final Assessment Order, dated 31.10.2018 in the name of IMPL as successor to CHPL. The present appeal has been preferred by IMPL (as a successor to CHPL) against the Final Assessment Order dated 31.10.2018.

3. When the appeal was taken up for hearing, the Ld. Authorised Representative for the Appellant invited our attention to Ground No. 23 raised as additional ground vide letter dated, 08.04.2021 which read as under:

“Ground No. 23

Without prejudice to ground no. 2, the learned TPO erred in passing the transfer pricing order dated 31 October 2017 in the name of CHIPL, a non-existent entity [as the entity has been

merged with IMPL with effect from 26 August 2016] and hence, the transfer pricing assessment may be quashed treating the order as null and void.”

4. He submitted that the above ground is legal in nature and therefore, the same be admitted and taken up first as it goes to the root of the matter. The Ld. Departmental Representative opposed admission of the additional ground on the ground that the same has been raised belatedly. We have heard both sides on admitting the above additional ground and are of the view that the same would not require examination of any facts not already on record. Accordingly, in view of the judgment of the Hon’ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT: 229 ITR 383, the additional ground raised by the Appellant is admitted.

5. We note that the above Ground No. 23, has been raised by the Appellant, without prejudice to Ground No. 2 which read as under:

“On the facts and in the circumstances of the case and in law, learned AO, Deputy Commissioner of Income-tax – Transfer pricing Officer- 1(1), Chennai (‘learned TPO’) and Hon’ble DRP on fact and in law has:

(1) xx

Draft order passed in the name of non-existent entity

(2) *Erred in passing the draft assessment order in the name of Covidien Healthcare India Private Limited (‘CHIPL’) which was not in existence as on the date of passing the draft assessment order and accordingly, subsequent final assessment order passed is null and void and should be quashed.”*

6. The Ld. Authorised Representative for the Appellant, while advancing arguments in relation to Ground No. 2 and Ground

No. 23 above submitted that the Transfer Pricing Officer and Assessing Officer, despite being aware of the fact of merger of CHPL with IMPL, passed the Transfer Pricing Order, dated 31.10.2017 and Draft Assessment Order, dated 29.12.2017, in the name of unknown existent entity (i.e. CHPL the amalgamating company which had ceased to exist when the Draft Assessment Order was passed on). Therefore, the Final Assessment Order, dated 31.10.2018, passed in the name of IMPL is null and void and therefore, liable to be quashed. In support of his contentions the Ld. Authorised Representative for the Appellant referred to the following sequence of events.

S.No.	Date	Particulars
1.	17.07.2017	Submissions, dated 17.07.2017, filed before Assistant Commissioner of Income Tax (OSD), Corporate Range-1 [hereinafter referred to as the 'Assessing Officer'] in the name of CHPL
2.	08.08.2017	Submission, dated 08.08.2017, filed before Assessing Officer in the name of "Covidien Healthcare India Private Limited"
3.	10.08.2017	Amalgamation order passed by National Company Law Tribunal (NCLT)
4.	29.08.2017	Certified copy of the NCLT order received
5.	01.09.2017	Certified copy of the NCLT order filed with Ministry of Corporate Affairs along with Form INC 28
6.	07.09.2017	Submission, dated 07.09.2017, filed before The Deputy Commission of Income Tax, Transfer Pricing Officer (TPO) in the name of "Covidien Healthcare India Private Limited (now merged with India Medtronic Private

- Limited)”
7. 19.09.2017 Submission, dated 19.09.2017, filed before TPO in the name of “Covidien Healthcare India Private Limited (now merged with India Medtronic Private Limited)”
 8. 25.09.2017 Submission, dated 25.09.2017, filed before TPO in the name of “Covidien Healthcare India Private Limited (now merged with India Medtronic Private Limited)”
 9. 11.10.2017 Submission, dated 11.10.2017, filed before TPO in the name of “Covidien Healthcare India Private Limited (now merged with India Medtronic Private Limited)”
 10. 31.10.2017 Transfer Pricing Order, dated 31.10.2017, passed in name of Covidien Healthcare India Private Limited
 11. 14.12.2017 Submission, dated 14.12.2017, filed before Assessing Officer in name “Covidien Healthcare India Private Limited (now merged with India Medtronic Private Limited)”
 12. 18.12.2017 Submission, dated 18.12.2017, filed before Assessing Officer in the name of “Covidien Healthcare India Private Limited (now merged with India Medtronic Private Limited)”
 13. 21.12.2017 Submission, dated 21.12.2017, filed before Assessing Officer in the name of “Covidien Healthcare India Private Limited (now merged with India Medtronic Private Limited)”
 14. 26.12.2017 Intimation about merger of Covidien Healthcare India Private Limited with India Medtronic Private Limited given to Assistant Commissioner of Income Tax - Corporate Circle – 1(2) along with copy of the NCLT order vide letter dated

26.12.2017 submitted in Tapal on
27.12.2017

15. 28.12.2017 Intimation about merger of Covidien Healthcare India Private Limited with India Medtronic Private Limited given to Assistant Commissioner of Income Tax (OSD) - Corporate Range - 1 along with copy of the NCLT order
 16. 29.12.2017 Draft Assessment Order passed in name of M/s Covidien Healthcare India Private Limited
 17. 30.01.2018 DRP objections filed in the name of India Medtronic Private Limited (successor to Covidien Healthcare India Private Limited)
 18. 10.09.2018 DRP directions passed in the name of India Medtronic Private Limited (successor to Covidien Healthcare India Private Limited)
 19. 31.10.2018 Final Assessment Order passed in the name M/s India Medtronic Private Limited (successor to Covidien Healthcare India Private Limited) with PAN No. AABCT6021C (pertaining to Covidien India)
7. The Ld. Authorised Representative for the Appellant submitted that Transfer Pricing Order as well as the Draft Assessment Order having been passed in the name of non-existing entity were void-ab-initio. Therefore, the Final Assessment Order is liable to be quashed since the entire proceedings are based upon invalid Transfer Pricing Order and invalid Draft Assessment Order. In this regard, he placed reliance upon the decision of the Delhi Bench of the Tribunal in the case of Fedex Express Transportation and Supply Chain Services (India) Private Limited (2019) (108 taxmann.com 542(Mumbai), dated 11.07.2019 and in the case of BOEING India Private Limited

(2020) (121 taxmann.com 276) (Delhi-Trib) dated 17.08.2020.

8. Per contra, the Ld. Departmental Representative submitted that the transfer pricing order was passed on 31.10.2017. No intimation regarding amalgamation of CHPL with IMPL was given to the TPO. The intimation letter, dated 26.12.2017 addressed to the Assistant Commissioner of Income Tax, Corporate Circle 1(2) was filed on 27.12.2017 in 'Tapal' at receipt and dispatch section. In a similar manner, intimation letter, dated 28.12.2017 was addressed to Assistant Commissioner of Income Tax (OSD)- Corporate Ragne-1 on 28.12.2017. He submitted that the Draft Assessment Order was passed on 29.12.2017 and therefore, intimation given by the Appellant could not be considered as a valid intimation. The certified copy of the order passed by NCLT was received by the Appellant on 01.09.2017. However, the Appellant held back the intimation for a period of three months and ultimately filed the same one-two days before closing of the passing of the Draft Assessment Order. The Ld. Departmental Representative submitted that the assessment proceedings were initiated by the Assessing Officer by validly assuming jurisdiction to frame assessment on CHPL, an entity existing on that date, by issuing notice under Section 143(2) of the Act. The Final Assessment Order, dated 31.10.2018 was also passed in the name of IMPL, an entity existing on that date. Thus, the initiation and the conclusion of the proceedings was in the name of an existing entity. The irregularity in the form of passing of the Transfer Pricing Order and the Draft Assessment Order stood corrected upon passing of the Final Assessment Order.
9. In rejoinder, the Ld. Authorised Representative for the

Appellant submitted that there was no delay on the part of the Appellant in giving information about the amalgamation of CHPL into IMPL. He submitted that various letters/submissions were filed before the Transfer Pricing Officer and the Assessing Officer wherein in the subject itself it was clearly stated that CHPL stood merged with IMPL. Vide letter dated 17.11.2017, Assistant Commissioner of Income-tax, Corporate Circle-1(2) *[which also fall under the Range - Corporate Circle 1(2)]*, was specifically informed that CHPL has ceased to exist with effect from 26.08.2016 and there was no liability to pay advance tax for the previous year 2017-18 relevant to the Assessment Year 2018-19. It is admitted position that specific intimation was given to the Assessing Officer vide letter dated 28.12.2017. He submitted that identical contentions raised by the Revenue were rejected by the Tribunal in the cases cited by him.

10. We have considered the rival submissions and perused the material on record. We note that the Delhi Bench of the Tribunal has, in the case of Fedex Express Transportation and Supply Chain Services (India) Private Limited (supra), held as under:

“20. The next question which we are required to examine now is as to whether a valid draft assessment order is mandatory to assume jurisdiction under Section 144C of the Act. In other words, it would be appropriate to examine as to whether an invalid draft assessment order, as noted above in the earlier paras, can be construed as a jurisdictional defect meaning thereby that the same is incurable thereby making the subsequent assessment proceedings null and void in the eyes of law. The phraseology of Sec. 144C(1) of the Act itself shows that the Assessing Officer is required to forward a draft of the proposed order of assessment if he proposes to make a variation in the returned income or loss which is prejudicial to the interests of the assessee. Undoubtedly, the draft assessment order has legal connotations as it lays the foundation of any prospective reduction in the income of the

assessee or creates a tax liability over and above the returned income. Thus, in that sense, it is not merely a procedural step in the assessment proceedings. Further, if we go a little deeper into the scheme of Sec. 144C of the Act and consider sub-section (3) of Sec. 144C of the Act, which reads as under

"(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if",

it envisages that an assessment has to be completed on the basis of a draft assessment order, thereby making it apparent that the draft order is a core component of assessment. In fact, the assessee has an option to accept the draft order proposed by the Assessing Officer as per Sec. 144C(2) of the Act. In such a case, the Assessing Officer will proceed to pass the final assessment order under Section 143(3) r.w.s. 144C(13) of the Act without making any further variation in income/loss as assessed by him in the draft assessment order. In such a situation, the Assessing Officer would not have the option to amend the draft order of assessment proposed by him. Thus, looked at from the angle of the Assessing Officer, the draft assessment order is in fact the final assessment of income/loss of the assessee since only the assessee has been accorded a right under Section 144C(2) to file objections before the DRP. Further, the fact that the Assessing Officer does not have any right to appeal against the final assessment order passed under Section 143(3) r.w.s. 144C(13) further proves the point that the draft assessment order proposed is a final order of assessment from the point of view of the Department.

21. Thus, it can be concluded that Sec. 144C of the Act impacts the assessee as it empowers the Assessing Officer to make a variation in the income or loss returned which is prejudicial to the interest of the assessee. Against such variation proposed by the Assessing Officer in the draft assessment order, it is only the assessee who has been given a right to object. Hence, such a right must arise from a legally sustainable valid draft order. If under the provisions of the Act an authority is required to exercise power or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner, a proposition which is fortified by the judgment of the Hon'ble Allahabad High Court in the case of Dr. Shashi Kant Garg v. CIT [2006] 152 Taxman 308/285 ITR 158. In other words, the existence of a legally valid draft order becomes the premise or foundation for the commencement of a legally valid DRP proceedings and consequently, a legally valid final assessment order as per Sec. 143(3) r.w.s. 144C(13) of the Act. In view of the above,

we hold that it is mandatory for the Assessing Officer to pass a legally valid draft assessment order and without the same, he cannot assume jurisdiction to proceed with the assessment under Section 144C of the Act.

22. Our above understanding stands fortified by the judgment of the Hon'ble Bombay High Court in the case of International Air Transport Association (supra) which has clearly held that a draft assessment order under Section 144C(1) of the Act is 'mandated' before the Assessing Officer passes a final order under Section 143(3) of the Act in case of an 'eligible assessee', and the relevant extract of the judgment reads as under :—

"5. Therefore, in view of Section 144C(15) of the Act which defines eligible assessee to whom Section 144C(1) of the Act applies to inter alia mean any foreign company. Therefore, a draft assessment order under Section 144C(1) of the Act is mandated before the Assessing Officer passes a final order under Section 143(3) of the Act in case of eligible assessee. An draft assessment order passed under Section 144C(1) of the Act bestows certain rights upon an eligible assessee such as to approach the DRP with its objections to such a draft assessment order. This is for the reason that an eligible assessee's grievance can be addressed before a final assessment order is passed and appellate proceedings invoked by it. However, these special rights made available to eligible assessee under Section 144C of the Act are rendered futile, if directly a final order under Section 143(3) of the Act is passed without being preceded by draft assessment order.

6. In the above view, the assessment order dated 23rd March, 2015 passed by the Assessing Officer for the assessment year 2012-13 is completely without jurisdiction. This is so as it has not been preceded by a draft assessment order. Hence, the foundational/basic order viz. the assessment order dated 23rd March, 2015 is set aside and quashed as being without jurisdiction. Consequent orders passed on rectification application as well as on penalty are also quashed and set aside being unsustainable."

23. The Hon'ble Bombay High Court in the case of Dimension Data Asia Pacific PTE Ltd. v. Dy. CIT [2018] 96 taxmann.com 182/257 Taxman 442 has also emphasised that it is imperative for the Assessing Officer to first pass a draft assessment order as per provisions of section 144C in the case of an eligible assessee and a final assessment order cannot be passed in absence of a draft assessment order

since the assessee has been granted special rights to appeal under the scheme of section 144C of the Act. The relevant portion of the judgment reads as under :—

" 7. We note that, it is an undisputed position before us, that the petitioner is a Foreign Company and an eligible assessee as defined in Section 144C(15)(b)(ii) of the Act. It has been held by this Court in *International Air Transport Association (supra)* that a Foreign Company is entitled to being assessed in accordance with Section 144C of the Act. It is the above Section 144C of the Act, which provides a separate scheme for the manner in which the Assessing Officer would pass assessment orders under the Act and a separate procedure to challenge a draft order i.e. before an assessment order which is subject to appeal under the Act is passed. The entire object is to ensure that the disputes of Foreign Companies are resolved expeditiously and final assessment orders are not passed without a re-look to the proposed order (draft order), if so desired by the Foreign Company. In essence, it obliges the Assessing Officer to first pass a draft of the proposed assessment order indicating the proposed variation in the income returned. This draft Assessment Order is to be passed under Section 144C(1) of the Act, which entitles an eligible assessee such as a Foreign Company to approach the DRP with its objection to the Draft Assessment order. This is so provided, so that an eligible assessee can have his grievance addressed before the final assessment order is passed. In case, an assessee does not object to the draft assessment order, then a final assessment order is passed in terms of the draft assessment order by the Assessing Officer. It is only on passing of the final assessment order that the assessee, if aggrieved by it, would be able to approach the appellate authorities under the Act. These special rights are made available under Section 144C of the Act to an eligible assessee such as the petitioner. Therefore, it cannot be ignored by passing a final order under Section 144(13) of the Act without preceding it with a Draft Assessment order as required therein.

10. Moreover, so far as a Foreign Company is concerned, the Parliament has provided a special procedure for its assessment and appeal in cases where the Assessing Officer does not accept the returned income. In this case, in the working out of the order dated 5th May, 2017 of the Tribunal results in the returned income being varied, then the procedure of passing a draft assessment order under Section 144C(1) of the Act is mandatory and has to

be complied with, which has not been done." (underlined for emphasis by us)

24. A perusal of the aforesaid judgments of the Hon'ble Bombay High Court leads to an irresistible conclusion that the draft assessment order imbibes a jurisdictional power in terms of Sec. 144C(1) of the Act. Obviously, passing of draft assessment order creates a right upon an 'eligible assessee' to approach the DRP. In other words, the triggering of special provisions contained in Sec. 144C of the Act or the special right available to the 'eligible assessee' springs up only by virtue of passing of draft assessment order under Section 144C(1) of the Act on the 'eligible assessee'. Thus, if such an order is passed on an assessee who is not an 'eligible assessee' as defined in Sec. 144C(15)(b)(i) of the Act, it would render the entire proceedings pursuant to such order null and void. Therefore, in the present case, as the draft assessment order has been passed in the name of FEIPL, which is a non-existent entity, and there is no draft assessment order passed in the name of FETSCS, the existing amalgamated company, there cannot be said to be a valid draft assessment order in existence. It is for this reason we are inclined to uphold the stand of the assessee that all the subsequent proceedings post the invalid draft assessment order are illegal, bad in law and void ab initio.

25. We also derive support from the judgment of the Hon'ble Madras High Court in the case of Vijay Television (P.) Ltd. (supra) and from the Hon'ble Andhra Pradesh High Court in the case of Zuari Cements Ltd. (supra) where a draft assessment order was required to be passed as per law but was not passed and hence the final assessment order was held to be without jurisdiction. Further, even in cases where a draft assessment order was passed but it was not so required to be passed in law, since the assessee was not an 'eligible assessee', the entire assessment proceedings thereafter have been held to be bad in law and liable to be quashed by the Hon'ble High Courts in the cases of Honda Cars India Ltd. (supra), Pankaj Extrusion Ltd. (supra) and ESPN Star Sports Mauritius S.N.C ET Compagnie (supra).

26. xx xx

27. xx xx

28. In conclusion, to summarise, we hold that since the Transfer Pricing order under Section 92CA(3) of the Act was passed in the name of the amalgamating company, FEIPL, which was not an 'eligible assessee' as per Sec. 144C(15)(b)(i) of the Act, the Assessing Officer did not have any jurisdiction under Section 144C(1) of the Act to pass a draft assessment

order. Furthermore, the draft assessment order was also passed in the name of the amalgamating company, FEIPL which was a non-existent entity in the eyes of law on the date of passing of such order; thus, the draft assessment order passed in the present case is illegal and bad in law. Accordingly, the entire assessment proceedings based on such a draft assessment order are illegal and the same are hereby quashed.

29. Before we conclude, we may also discuss the reference made by the appellant to the provisions of Sec. 170 of the Act in order to demonstrate that the actions of the income-tax authorities (in the context of the order passed by the TPO and draft assessment order passed by the Assessing Officer) were not as per law. In this context, we may peruse Sec. 170 of the Act, which reads as under :—

"170.(1) Where"

31. A reading of the above provisions suggest that where the predecessor cannot be found, then, the assessment of income upto the date of succession and of the previous year preceding the year of succession, shall be made in the like manner and to the same extent as it would have been made on the predecessor and all the provisions of this Act shall, so far as may be, apply accordingly. Thus, Section 170(2) of the Act has clearly laid down the requirement of making an assessment on the successor in respect of the predecessor's income, in the like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly. This position has also been upheld by the Hon'ble Delhi High Court in the case of Dimension Apparels (P.) Ltd. (supra) and also by our co-ordinate bench at Kolkata in the case of Pampasar Distillery Ltd. v. Asstt. CIT [2007] 15 SOT 331.

32. Accordingly, in the present case, as on the date of passing of the draft assessment order, the amalgamating company, FEIPL had amalgamated with and into FETSCS, the amalgamated company. Thus, on the date of such order, the amalgamating company could not be found/was not in existence. Accordingly, we are of the view that as per provisions of Section 170(2) of the Act, the Assessing Officer ought to have made the assessment in the name of amalgamated entity, in like manner and to same extent, had the assessment been made on amalgamating company, i.e. the transfer pricing order under Section 92CA(3) of the Act and the draft assessment order by the Assessing Officer ought to have been made on FETSCS, the amalgamated company. As regards the argument of the Ld. DR to the effect

that the Assessing Officer has complied with Section 170 of the Act; according to the Ld. DR, the assessment referred to Sec. 170 of the Act means completion of assessment by passing a final order of assessment and the final assessment order has been passed in the name of FETSCS, the successor amalgamated company. In our view, the word 'assessment' under the Act cannot be interpreted so narrowly but has to be understood in each section with reference to the context in which it has been used, as held by the Hon'ble Supreme Court in the case of A.N. Lakshman Shenoy v. ITO [1958] 34 ITR 275 (SC). In fact, the Hon'ble Privy Council in the case of CIT v. Khemchand Ramdas [1938] 6 ITR 414 (PC) has observed as under :—

"One of the peculiarities of most Income-tax Acts is that the word "assessment" is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable, and sometimes the procedure laid down in the Act for imposing liability upon the tax-payer."

33. Thus, the expression 'assessment' can also mean the procedures laid down in the Act, if the context so requires; and, qua Sec. 170 of the Act, the word 'assessment' has to be understood as procedure laid down therein. Accordingly, under Section 170 of the Act, the Assessing Officer was required not only to complete, but also to conduct assessment (i.e. following the prescription of Sec. 144C of the Act in this case) in the hands of the successor in the like manner and to the same extent as it would have been done in the hands of the predecessor. Ostensibly, in the present case, the TPO as well as the Assessing Officer have failed to do so by passing the transfer pricing order under Section 92CA(3) of the Act and the draft assessment in the name of FEIPL, a non-existent entity and hence the argument of the Ld. DR that the provisions of Section 170 of the Act have been complied is untenable.

34. In view of the above, we hold that the entire assessment in the present case is vitiated in law and is hereby quashed. In the result, Ground of appeal no. 1 is allowed." (Emphasis Supplied)

11. The above decision of the Tribunal was followed by the co-ordinate Bench of the Tribunal in the case of Boeing India Private Limited (supra).
12. In the present case also the Transfer Pricing Order, dated

31.10.2017, and the Draft Assessment Order, dated 29.12.2017, have been passed in the name of non-existent entity. Therefore, respectfully following the above decisions of the Tribunal, we hold that the Draft Assessment Order framed under Section 144C(1) of the Act in the name of non-existent entity is void-ab-initio, making all subsequent proceedings non-existent in the eyes of law. Accordingly, the Final Assessment Order, dated 31.10.2018 is set aside. Ground No. 2 raised by the Appellant is allowed. All the other grounds (including Ground No. 23) raised by the Appellant are disposed off as being infructuous.

In the result, the present appeal is allowed.

Order pronounced on 27.01.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.01.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai