THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'I', NEW DELHI

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 812/Del/2022 : Asstt. Year: 2017-18
&
SA No. 114/Del/2022 : Asstt. Year: 2017-18

Fiberhome India Pvt. Ltd., 411, Vishal Tower, 10, District Centre, Janakpuri, New Delhi-110058	Vs.	DCIT, Circle-2(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCF9623N		

Assessee by : Sh. Sh. K. M. Gupta, Adv.
Ms. Shruti Khimta, AR
Revenue by : Sh. Bhaskar Goswami, CIT DR

Date of Hearing: 15.12.2022		**Date of Pronouncement: 13.03.2023**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal and Stay Application have been filed by the assessee against the order dated 26.03.2022 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. The assessee is engaged in the business of manufacturing telecommunication equipments and providing maintenance and other allied services of telecommunication equipments in India.

3. The pertinent facts for adjudication of the case are as under:

- Date of filing return – 29.11.2017
- Date of order of the TPO – 22.01.2021

- Date of draft order by the AO – 03.03.2022
- **Date of order of the DRP – 16.12.2021**
- **Date of Assessment Order – 26.02.2022**

4. We have gone through the page no. 4 of the Assessment Order wherein the issue of order being "barred by limitation" has been rebutted by the AO.

5. The provisions of Section 144C reads as under:

"Reference to dispute resolution panel.

144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variation with,—

(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer.

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

(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires.

(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.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(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.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in sub-section (12) of section 144BA.

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose;

(b) "eligible assessee" means,—

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any foreign company."

6. Heard the arguments of both the parties and perused the material available on record. We do not find any strength of the arguments of the Assessing Officer and the ratio given by the revenue authorities is against the law laid down. The final order passed by the Assessing Officer is beyond the period of limitation as provided u/s 144C of the Income Tax Act, 1961 and hence, the same is liable to be declared as *null and void*.

7. Since, the appeal of the assessee is disposed off, the Stay Application of the assessee is dismissed as infructuous.

8. In the result, the appeal of the assessee is allowed and the SA of the assessee is dismissed.

Order Pronounced in the Open Court on 13/03/2023.

Sd/-	Sd/-
(Yogesh Kumar US) **Judicial Member**	**(Dr. B. R. R. Kumar)** **Accountant Member**

Dated: 13/03/2023
Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR