

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'K' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 1498/Mum/2014 (A.Y. 2009-10)

Credit Suisse AG (as a successor of Credit Suisse (International Holdings AG) C/o. SRBC & Associates LLP Chartered Accountants 14 th Floor, The Ruby, 29 Senapati Bapat Marg Dadar West, Mumba-400 028. PAN : AADCC5995J (Appellant)	Vs.	ACIT(International Taxation)-3(2) Room No. 119 Scindia House Ballard Estate Mumbai-400 038. (Respondent)
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Assessee by	Shri Nishant Thakkar
Department by	Dr. Yogesh Kamat
Date of Hearing	06.03.2023
Date of Pronouncement	10.03.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the assessment order dated 31.1.2014 passed by the Assessing Officer under section 143(3) read with section 144C(13) of the I.T. Act in pursuance of the directions given by learned Dispute Resolution Panel (DRP). All the grounds urged in this appeal are directed against the transfer pricing adjustment made in respect of the shares sold by the assessee.

2. The assessee is rendering investment banking services which includes financial advisory and capital pricing services, security under writing and banking services. The assessee is incorporated in Zurich, Switzerland. During the year under consideration, the assessee has sold shares held by it in M/s. Credit Suisse Investment Holdings (Mauritius) Limited. The actual

sale value at Rs. 10.16 per share. However the TPO computed the arms' length price of sale value of share at Rs. 32.62 per share. Accordingly he proposed transfer pricing adjustment of Rs. 338.87 crores. After order passed by learned DRP, the transfer pricing adjustment came to be reduced to Rs.270.20 crores, which was added by the Assessing Officer to the total income. The assessee has filed this appeal challenging the said addition.

3. The assessee has also raised an additional ground contending that the order passed by TPO is barred by limitation and hence the Assessing Officer could not have made addition towards transfer pricing adjustment on the basis of the order of TPO. He submitted that the last date for passing the order by learned TPO was 29.1.2013, whereas the learned TPO has passed the order on 30.1.2013. By placing reliance on the decision rendered by Hon'ble Madras High Court in the case of Pfizer Healthcare India P. Limited & Ors. (2021) 124 taxman.com 536/433 ITR 28, learned AR submitted that Hon'ble Madras High Court has held that when the order passed by learned TPO is barred by limitation the Assessing Officer could not have made addition towards transfer pricing adjustment. He submitted that the Mumbai Bench of the Tribunal has passed many orders on identical issues by following the decision rendered by Hon'ble Madras High Court (referred supra).

4. The Learned AR further submitted that if the legal issue raised by the assessee in the additional ground is decided in the favour of the assessee, then there is no requirement to dispose of the original grounds of appeal urged by the assessee.

5. The Learned DR, however, submitted that the Revenue has challenged the decision rendered by various Benches of the Mumbai ITAT in favour of

the assessees on an identical issue by filing appeals before Hon'ble High Court of Bombay.

6. We heard rival contentions and perused the record. The assessee has furnished following date sheet in support of his submission that the order passed by learned TPO is barred by limitation.

Events	Relevant Dates
Assessment Year	2009-10
End of Assessment Year	31-03-10
Due Date for completion of assessment under the Third Proviso to section 153(1) of the Act (i.e. 3 yrs from the end of AY)	31-03-13
Time limit for passing the order under Section 92CA(3A) of the Act	60 Days
Less: Date on which limitation under section 153 of the Act i e. 31 March 2013	
Less : remaining days of March 2013	30
Less : remaining days of Feb 201 3	28
Less : remaining days of Jan 2013	2
Last date of passing the Order under Section 92CA(3) of the Act	29-01-13
Date of passing the TP Order under Section 92CA(3) of the Act	30-01-13

It is the submission of the learned AR that the time limit for passing the order by learned TPO is expired on 29.1.2013, whereas learned TPO has passed the order on 30.1.2013. Accordingly it was contended that the order passed by learned TPO is barred by limitation and hence the Assessing Officer could not have made the addition on the basis of the said order.

7. We notice that an identical issue regarding time limit for passing the order by the TPO was examined by this Bench in the case of M/s. Emerson Electric (Company) India Pvt. Ltd. (supra), wherein it was held as under :-

“9. The Ld. A.R. for the assessee while discussing the factual position qua the order passed by the Ld. TPO and statutory provisions applicable thereto contended inter alia that the order passed by the Ld. TPO dated 01.11.2019 is not sustainable being barred by limitation; that the last date to pass the transfer pricing order by the Ld. TPO was 31.10.2019; that the order passed by the Ld. TPO is barred by limitation as the period of 60 days is completed in accordance with the provisions of section 153 of the Act by excluding the last date and relied upon the decision rendered by the Hon'ble Madras High Court in case of M/s. Pfizer Healthcare India Pvt. Ltd. & ors. vs. DCIT in WAno.1120 of 2021 & ors. judgment dated 31.03.2022.

10. However, on the other hand, the Ld. D.R. for the Revenue to repel the argument addressed by the Ld. A.R. for the assessee contended that the Ld. TPO passed order in this case well within the time i.e. on 01.11.2019.

11. In order to determine if the order dated 01.11.2019 passed by the Ld. TPO is barred by limitation as contended by the Ld. AR for the assessee, we would advert to the provisions contained under section 92CA(3) read with section 153 of the Act.

12. Undisputedly, sub-section (3A) to section 92CA has been inserted w.e.f. 01.06.2007 providing time limit for the Transfer Pricing Officer to pass the order i.e. within a period of 60 days prior to the date of completion of assessment as per section 153. So, under section 92CA (3A) read with section 153, Ld. TPO was required to pass the order within the period of 60 days prior to the date on which the period of limitation referred to in section 153 expires i.e. 21 months.

13. Undisputedly the assessment order was passed on 01.11.2019 whereas the Ld. TPO was required to pass the order within 60 days prior to the date of which period of limitation referred to in section 153 of the Act expires.

14. Now the question arises as to how the period of 60 days prior to the date of transfer pricing order i.e. 01.11.2019 is to be computed. Hon'ble Madras High Court in case of M/s. Pfizer Healthcare India Pvt. Ltd. (supra) while dealing with the issue held that for computing the period of 60 days, the last date as per section 153 should be excluded. Operative part of the judgment is extracted for ready perusal as under :-

"30. Now, coming to the question of how the 60 day period is to be computed, the critical question would be whether the period of 60

days would be computed including the 31st of December or excluding it. Section 153 states that no order of assessment shall be made at any time after time expiry of 21 months from the end of the assessment year in which the income was first assessable. The submission of the revenue is to the effect that limitation expires only on 12 am of 01.01.2020. However, this would mean that an order of assessment can be passed at 12 am on 01.01.2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31.12.2019. The period of 21 months therefore, expires on 31.12.2019 that must stand excluded since Section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to Section 153 expires'. Excluding 31.12.2019, the period of 60 days would expire on 01.11.2019 and the transfer pricing orders thus ought to have been passed on 31.10.2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31.10.2019. The impugned orders are thus, held to be barred by limitation."

15. Identical issue has been decided by the co-ordinate Bench of the Tribunal in case of ECL Finance Ltd. vs. ACIT in ITA No.899/M/2018 order dated 22.09.2021 and in case of Louis Dreyfus Commodities India Pvt. Ltd. vs. DCIT in ITA No.2381/Del/2014 order dated 11.03.2021 in favour of the assessee by following M/s. Pfizer Healthcare India Pvt. Ltd. (supra) case rendered by Hon'ble Madras High Court.

16. In view of what has been discussed above and following the order passed by the Hon'ble Madras High Court in case of M/s. Pfizer Healthcare India Pvt. Ltd. (supra) and order passed by the co-ordinate Bench of the Tribunal in case of ECL Finance Ltd. (supra) and Louis Dreyfus Commodities India Pvt. Ltd. (supra) on the identical issue, we are of the considered view that as per limitation prescribed under section 153 of the Act that assessment order was required to be passed within a period of 21 months from the end of assessment year i.e. A.Y. 2016-17 and a further period of 12 months is to be added in case reference is made under section 92CA of the Act to the Ld. TPO, meaning thereby the period of 60 days expires to pass the transfer pricing order on 31.10.2019 whereas the transfer pricing order has been passed in this case on 01.11.2019 i.e. beyond the period of 60 days, hence barred by limitation.

17. Since the order passed by the Ld. TPO is held to be barred by limitation the same is illegal, null and void ab-initio, hence quashed. Consequently, the assessment order passed by the AO, qua transfer pricing adjustment only, is also without jurisdiction and as such is no order in the eyes of law hence quashed. Keeping in view the findings returned by the Bench on legal issue we deem it not necessary to go into the grounds raised by the assessee on merit. Consequently, appeal filed by the assessee is allowed."

8. We notice that this bench, in the above cited case, has followed the decision rendered by Hon'ble Madras High Court in the case of Pfizer Healthcare India P Ltd (supra). In the instant case also, the last date for passing order by TPO was 29th January, 2013 as per the ratio laid down by Hon'ble Madras High Court in the case of Pfizer Healthcare India P Ltd (supra). However, the TPO has passed the order only on 30th January, 2013. Accordingly, following the decision rendered by Hon'ble Madras High Court in the above said case, we hold that the order passed by learned TPO is barred by limitation and hence the Assessing Officer could not have made addition towards transfer pricing adjustment on the basis of the said order. Accordingly, we delete the addition made by the Assessing Officer on account of transfer pricing adjustment.

9. Since we have decided the legal issue in favour of the assessee, we do not find it necessary to adjudicate the grounds urged on merit.

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

Pronounced in the open court on 10.3.2023.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

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

Mumbai; Dated : 10/03/2023

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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai