

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI PAVAN KUMAR GADALE, JM

**ITA No. 3705/Mum/2019**  
(Assessment Year: 2013-14)

3I Infotech Limited  
Tower No.5,  
3<sup>rd</sup> to 6<sup>th</sup> Floors,  
International Infotech Park,  
Vashi, Navi Mumbai-400 703

**(Appellant)**

PCIT-15  
5<sup>th</sup> Floor, Aaykar Bhavan,  
Mumbai-400 020

Vs.

**(Respondent)**

**PAN No. AAACI5205Q**

**Assessee by** : Shri Bhupendra Karkhanis,  
Shri Jay Dharod, ARs  
**Revenue by** : Ms. Samruddhi Hande, DR

**Date of hearing:** 17.02.203  
**Date of pronouncement :** 10.05.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 3705/Mum/2019 is filed by the assessee against the Revision Order passed under Section 263 of the Income-tax Act, 1961 (the Act) by the Pr. Commissioner of Income Tax-15, Mumbai, (in short learned 'PCIT') for A.Y. 2013-14 on 29<sup>th</sup> March, 2019, wherein it has been held that the assessment order passed under Section 143(3) of the Act read with section 144C(3) of the Act passed on 31<sup>st</sup> January, 2017, assessing the total loss at ₹673.50 crores is erroneous so far as prejudicial to the interest of the Revenue and therefore, the learned PCIT set aside the assessment order directing the learned Assessing Officer to refer the international transaction of

loan given to the Associated Enterprises, M/s 3I Infotech Holdings Pvt. Ltd., Mauritius which came into existence on conversion of assessee's investment in redeemable preference share in F.Y. 2012-13 and to incorporate the Arm's Length Price determined by the learned Transfer Pricing Officer to be incorporated in the assessment order.

02. The assessee has raised following grounds of appeal: -

*"The following grounds of appeal are without prejudice to one another:*

*1.(a) On the facts and in the circumstances of the case and in law, the Id. Pr. Commissioner of Income Tax erred in passing an order u/s. 263 of the Income Tax Act, 1961 whereby he directed the AO to refer the international transaction of interest on loan on conversion of preference shares to the Associated Enterprise (AE) to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961, and the Rules made there under.*

*(b) The Id. Pr. Commissioner of Income Tax erred in invoking the revisionary powers under section 263(1) of the Income Tax Act, 1961 without appreciating the fact:*

*(i). That the appellant had reported said transaction in Form 3CEB filed before the Income Tax Department.*

(ii). That the Id. Assessing Officer had referred to the TPO for determination of Arm's Length Price all international transactions entered into by the appellant including the said transaction.

(iii). That the Id. Transfer Pricing Officer, after applying his mind to the Form 3CEB and Transfer Pricing Study Report, wherein a detailed note benchmarking the transaction is mentioned, determined the Arm's Length Price of said transaction at NIL and therefore, did not make any upward transfer pricing adjustment in respect of said transaction

(iv). That even during assessment proceedings, the Id. Assessing Officer also asked for details regarding the said international transaction and after applying his mind to the submissions made by the appellant and order of TPO, accepted the appellant's contention that no income accrued to the appellant and did not make any additions to total income in respect of the said transaction.

Hence, the order passed by the Id. Pr. CIT is wrong, bad in law and contrary to the provisions of the Income Tax Act, 1961 and the Rules made there under.

(c) The Id. Pr. Commissioner of Income Tax erred in invoking the revisionary power under section 263(1) of the Income Tax Act, 1961 without appreciating the fact that the view adopted by the Id. Transfer Pricing Officer as well as the Id. Assessing Officer is one of the possible views within the provisions of the Income

*Tax Act and such an order cannot be termed as "erroneous" and therefore, invoking the revisionary power under section 263(1) is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made there under.*

*(d) The Id. Pr. Commissioner of Income Tax erred in holding that TPO has failed to decide the ALP of interest free loan to AE without appreciating the fact that it is a general practice to mention in the assessment/ transfer pricing order the matters for which adjustments/ disallowances are made and that the transactions whose ALP is accepted or expenses for which no disallowances are to be made, do not find any place in either assessment order or in Transfer Pricing Order.*

*2. Without prejudice to the above, the Id. Pr. Commissioner of Income Tax erred in passing revision order u/s. 263 of the Income Tax Act, 1961, with respect to an international transaction which falls within the jurisdiction of the Director of Income Tax (Transfer Pricing) and therefore, the revision order passed by the Id. Principal Commissioner of Income Tax is without jurisdiction, bad in law and against the provisions of the Income Tax Act, 1961 and deserves to be quashed.*

*That the above grounds of appeal are without prejudice to each other."*

03. The brief facts of the case shows that assessee is a company engaged in software development and

consultancy services along with providing ITES services filed its return of income on 30<sup>th</sup> November, 2013, declaring a total loss of ₹1,152,05,81,718/-. The return of income was selected for scrutiny. Assessee has entered into international transactions and therefore, after obtaining the approval of the Pr. Commissioner of Income Tax-15, Mumbai, the reference was made to The Jt. Commissioner of income Tax (Transfer Pricing)-4(1), Mumbai (the learned Transfer Pricing Officer), as per letter dated 22<sup>nd</sup> February, 2016 to determine the Arm's Length Price of International Transactions. The respective order of the learned Transfer Pricing Officer passed under Section 92CA (3) of the Act on 26<sup>th</sup> October, 2015, wherein transfer pricing adjustment of ₹27,84,86,725/- was made was added to the total income of the assessee. Several corporate tax additions were also made and the total income of the assessee was determined at a total loss of ₹673,51,82,759/- by an assessment order passed under Section 143(3) read with section 144C(3) of the Act on 31<sup>st</sup> January, 2017.

04. On examination of record, The learned PCIT found that in A.Y. 2014-15, the interest of ₹ 29.46 crores was added on accrual basis to the total income of the assessee under the head income from other sources. On further verification, it was found that in A.Y. 2013-14 the assessee's investment in redeemable preference shares in its associated enterprise 3I Infotech Holdings Pvt. Ltd., Mauritius has been converted into loan with effect from 1<sup>st</sup> July, 2012 at the coupon rate of 5%. Accordingly, the interest accrued

up to 31<sup>st</sup> February, 2014 of ₹48.29 crores on the loan. This interest was added to the total income of the assessee in A.Y. 2014-15, however, the balance interest of ₹18.83 crores was not included in the total income of the assessee company in the assessment order dated 31<sup>st</sup> January, 2017 passed for A.Y. 2013-14. Therefore, an order passed by the learned Assessing Officer was considered as erroneous in so far as it is prejudicial to the interest of the Revenue as interest of ₹18.83 crores was not added. Accordingly, notice under Section 263 of the Act was issued on 18<sup>th</sup> February, 2019.

05. The assessee submitted that conversion of redeemable preference shares was limited only to two financial year i.e. F.Y. 2012-13 and 2013-14. It was stated that the preference shares which was converted into loan were once again brought back to the status of redeemable preference shares for the reason that conversion of preference shares into unsecured loan was not in accordance with the local laws of Mauritius. The assessee further stated that action under Section 263 of the Act is not warranted as the issue has already been examined by the learned Transfer Pricing Officer and the learned Assessing Officer, both, during transfer pricing assessment as well as regular assessment. Assessee also contended that notice under Section 263 of the Act has been issued due to the addition made in subsequent years by the learned Assessing Officer and not by the learned Transfer Pricing Officer. It was further contended that on identical issue in A.Y. 2014-15, the learned Transfer Pricing Officer



did not make any adjustment in respective loan transactions and the learned Assessing Officer has made the addition in violation of the Provision of Section 92CA(4) of the Act. Therefore, there is no error in the assessment order, which is prejudicial to the interest of the Revenue.

06. The learned PCIT called for report of Id AO, which was received on 25<sup>th</sup> March, 2019, wherein, it has been submitted that the learned Transfer Pricing Officer has not discussed the transaction of investment in redeemable preference shares of its related party which has been converted into loan with effect from 1<sup>st</sup> July, 2012 at the coupon rate of 5% and in his order under Section 92CA (3) has not discussed any arm's length adjustment on that count. The learned Assessing Officer categorically held that the learned Assessing Officer has not decided the Arm's Length Price of international transaction.
07. The learned PCIT examined the form no. 3CEB and noted that in that form at Para no.14, the assessee in reply to particulars of lending and borrowing money has stated 'yes', however, the amount is not reported. Therefore, the learned Transfer Pricing Officer has not decided the Arm's Length Price during the assessment year. He held that it is not proper to say that the learned Transfer Pricing Officer has accepted the Arm's Length Price of the international transaction without any adjustment. Therefore, he reached at the conclusion that the factual position is that the learned transfer-pricing officer has not decided the arm's-length price of the international transaction of



interest on loan arising on conversion of redeemable preference shares in financial year 2012 – 13 relevant to assessment year 2013 – 14. Therefore he set-aside the assessment order and directed the learned assessing officer to refer the international transaction of loan given to its associated enterprises in Mauritius that came into existence on conversion of assessee's investment in redeemable preference shares in assessment year 2013 – 14. He further directed that that the adjustment proposed by the learned transfer-pricing officer will be incorporated in the assessment order to be passed by the learned assessing officer. Accordingly, order under section 263 of the income tax act was passed on 29/3/2019.

08. The assessee is aggrieved with that order and has challenged the same in this appeal. The learned authorized representative submitted that that the international transaction of investment in preference shares was reported at serial number 9 recorded by the learned transfer pricing officer in his order under section 92CA (3) of the act. He also referred to the transfer pricing study report for assessment year 2013 – 14 wherein at serial number 6 the transaction of conversion of redeemable preference shares into unsecured loans was mentioned at page number 33 of TPSR. He also referred to the notice issued under section 142 (1) of the act dated 4/11/2016 by the learned AO where the details of interest free unsecured loans was asked and why interest is not charged that on was questioned. He further submitted that the learned PCIT in the present case has directed the



learned assessing officer to refer a particular international transaction to the learned transfer-pricing officer for determination of arm's-length price. He submitted that the learned that assessing officer has referred the matter of determination of arm's-length price to the learned transfer pricing officer wherein the above transaction were recorded and the learned TPO did not take any adverse view. He further submitted that the learned PCIT does not have any power to direct the learned TPO to recompute the arm's-length price of international transaction. He submitted that such powers under section 263 of the income tax act are available only with effect from 1/4/2022. The issue in the present case is related to assessment year 2013 - 14. The learned principal Commissioner of income tax also passed the order under section 263 of the act on 29/3/2019. Therefore, the revisionary order passed by the learned PCIT is not sustainable. Assessee referred to his factual paper book containing 97 pages and also referred to several judicial precedents. He specifically relied upon the decision of the coordinate bench in case of Essar steel Ltd versus additional Commissioner of income tax in ITA number 4007/M/2010 stating that in assessee's case assessing officer has passed the order under section 143 (3) read with section 144C (3) in conformity of the arm's-length price determined by the learned transfer pricing officer and therefore the learned PCIT does not have any power to hold that such an order is erroneous and prejudicial to the interest of revenue.



09. The learned CIT DR vehemently supported the order of the learned PCIT. It was submitted that on examination of the record it has come to the notice of the learned and PCIT that the order passed by the learned assessing officer is erroneous insofar as prejudicial to the interest of revenue as the learned assessing officer has not referred the matter of conversion of preference shares into unsecured loan and therefore the order of the learned assessing officer is erroneous so far as it is prejudicial to the interest of revenue and sustainable in law. He further submitted that judicial precedents cited by the learned authorized representative are distinguishable and are not applicable to the facts of the case.
010. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that during the course of assessment proceedings it was found that in assessment year 2014 – 15 the interest of ₹ 29.46 crores was added to the total income of the assessee under the head income from other sources on accrual basis on account of conversion of preference shares issued to Mauritius associated enterprises of the assessee. For the assessment year, 2013 – 14 also involves the balance interest of 18.83 crores to be added in the hands of the assessee. This is so because in assessment year 2013 – 14 the assessee's investment in redeemable preference shares in its associated enterprises has been converted into loan with effect from 1/7/2012 at the coupon rate of 5%. Therefore, from 1/7/2012 to 31/3/2013 the interest has accrued in the hands of the



assessee. This fact has come to knowledge because of assessment proceedings for assessment year 2014 – 15 wherein the interest of ₹ 29.46 crores was added by the learned assessing officer. Therefore, in nutshell the interest of ₹ 18.83 crores was not included/added to the total income of the assessee.

011. Now the facts also shows that that for assessment year 2014 – 15 the learned TPO did not make any adjustment in respect of transaction of loan but the learned assessing officer has made the addition in the hands of the assessee on account of above transaction. The assessee filed an application under section 154 of the act for assessment year 2014 – 15 stating that the learned assessing officer could not have made any addition on account of international transaction, which could have only been made by the learned transfer pricing officer and therefore there is a mistake apparent from the record and the addition requires to be deleted. Thus, the assessee challenged the above addition of ₹ 29.46 crores for assessment year 2014 – 15.
012. Thus from the above facts it was clear that there was an adjustment to the international transaction for assessment year 2014 – 15 which the assessing officer has made and not the learned transfer pricing officer.
013. However, for the assessment year 2013 – 14, the learned PCIT has directed the learned assessing officer to refer this international transaction to the learned TPO for determination of arm's-length price. We find that the



original reference is already made by the learned assessing officer by obtaining the prior approval of the principal Commissioner of income tax – 15, Mumbai. Such reference was made on 22/2/2016. It is also to be noted that reference was made for all the transactions reported in form number 3CEB filed by the assessee. We have also stated that in the transfer pricing study report of the assessee above transactions were clearly disclosed. Transfer pricing study report prepared by the assessee is nothing but a document prescribed under rule 10 D of the income tax rules. The learned transfer pricing officer was having form number 3CEB coupled with documents prescribed under rule 10D. Based on his examination, he passed an order under section 92CA (3) of the act. According to the provisions of section 92CA (4) of the act the learned assessing officer is duty-bound to compute the total income of the assessee in conformity with the arm's-length price so determined by the transfer pricing officer. It is an undisputed fact that conversion of redeemable preference shares into unsecured loan is an international transaction entered into by the assessee with its associated enterprises in Mauritius. Therefore, any adjustment arising on account of the arm's-length price of this international transaction is falling into the domain of the learned transfer-pricing officer only. Sole responsibility lying on the learned assessing officer is to make reference of this international transaction to the learned transfer-pricing officer which has been made by the learned assessing officer after obtaining the prior approval of the



learned principal Commissioner of income tax. It is also not the case of the learned principal Commissioner of income tax while passing order under section 263 of the income tax act that the provisions of explanation 2 are applicable as the order of the assessment has not been made in accordance with any orders/directions or instruction issued by the board under section 119 of the act. Therefore, there is no allegation/assertion in the order under section 263 of the income tax act that the learned assessing officer has not followed the mandatory instructions issued by the central board of direct taxes of referring to the learned transfer-pricing officer. It is also clear that prior to The Finance Act 2022 amended with effect from 1/4/2022, the order of the learned transfer pricing officer were not subject to revision under section 263 of the income tax act by the principal Commissioner of income tax. By The Finance Act 2022, with effect from 1/4/2022 clause (iii) to explanation 1 inserts order under section 92CA by the transfer-pricing officer. Thus, it is clear that the order passed under section 92CA by the learned TPO was not subject to revision under section 263 of the income tax act by the principal Commissioner of income tax. The order of the learned principal Commissioner of income tax is indirectly revising the order of the learned transfer-pricing officer. In the assessment order passed under section 143 (3) of the act there is no error on the part of the learned assessing officer either in making reference to the learned transfer pricing officer or in not incorporating any modification made by the learned



transfer pricing officer. Therefore, we do not find any error in the order of the learned assessing officer but it is an attempt by the learned principal Commissioner of income tax to revise the order of the learned transfer-pricing officer, which is not permitted prior to 1/4/2022.

014. It is also not the case of the learned principal Commissioner of income tax to direct the learned assessing officer to make an addition for assessment year 2013 – 14 as has been made by the learned assessing officer for assessment year 2014 – 15. It is not the case of the learned principal Commissioner of income tax that the addition that is required to be made by the learned assessing officer as has been made in subsequent year has not been made in this year.

015. In view of the above facts and our findings, we hold that the order passed by the learned principal Commissioner of income tax under section 263 of the income tax act is not sustainable in law and hence quashed.

016. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 10.05.2023.

Sd/-

(PAVAN KUMAR GADALE)

(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)

(ACCOUNTANT MEMBER)



*Sudip Sarkar, Sr.PS/ Dragon*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai