

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT AND SHRI  
SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No.1889/Del/2022**  
Assessment Year: 2017-18

Urvashi Narain, 1818h, Street NW,MC 10- 1019, Washington, United States of America, USA, USA, 20433	<b>Vs.</b>	ITO, Ward International Taxation)-2(1)(2), New Delhi
<b>PAN :ABUPN1486E</b>		
<b>(Applicant)</b>		<b>(Respondent)</b>

Appellant by	Shri Ved Jain, Adv. & Ms. Uma Upadhyay, CA
Department by	Shri Vizay Vasanta, CIT DR

Date of hearing	06.04.2023
Date of pronouncement	31.05.2023

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

Captioned appeal has been filed by the assessee challenging the final assessment order dated 27.06.2022 under Section 143(3) read

with section 144C(13) of the Income-Tax Act,1961 pertaining to assessment year 2017-18.

2. At the outset, learned counsel appearing for the assessee drew out attention to ground no. 5 and urged the Bench to decide the appeal on this preliminary issue.

3. Ground no.5 reads as under:

On the facts and circumstances of the case, the learned A.O has erred both on facts and in law in not complying with the directions of DRP has held that once the final order dated 15.09.2021 has been passed under Section 143(3) of the Act, the same cannot be annulled/modified/amended at a subsequent date on the ground that the same order passed inadvertently.

4. Briefly, the facts relating to this issue are, the assessee is a non-resident individual. For the assessment year under dispute, assessee filed her return of income on 23.10.2017 declaring income of Rs.10,33,910. The return of income filed by the assessee was selected for scrutiny under CASS. In compliance to the statutory notices issued under Section 142(1) and 143(2) of the Income-Tax Act,1961, assessee appeared before the Assessing Officer from time to time and ultimately the Assessing Officer completed the assessment under Section 143(3) of the Act vide order dated 15.09.2021 determining the total income at Rs.6,31,98,895. Immediately thereafter, on

30.09.2021, the Assessing Officer passed a draft assessment order purportedly under Section 144C(1) of the Act determining the total income at the very same figure of Rs.6,31,98,875. Against the draft assessment order, the assessee raised objections before learned Dispute Resolution Panel (DRP), inter alia, challenging the validity of the draft assessment order.

5. After considering the submissions of the assessee in the context of facts and material on record, learned DRP upheld assessee's objection challenging the validity of the draft assessment order and accordingly issued directions to the Assessing Officer. However, instead of complying with the directions of learned DRP, the Assessing Officer passed the final assessment order on 27.06.2022 repeating the draft assessment order.

6. Before us, learned counsel appearing for the assessee submitted that the final assessment order is a nullity in the eyes of law as it has been passed without complying with the directions of learned DRP. Thus, he submitted, the final assessment order has to be declared as invalid and set aside.

7. In support of such contention, learned counsel for the assessee relied upon the following decisions:

1. M/s. Olympus Medical Systems Pvt. Ltd. Vs. the ACIT, Circle 3(1), Gurgaon;
2. M/s. Global One India Pvt. Ltd. Vs. DCIT, Circle-12(1), New Delhi;
3. M/s. Software Paradigms Infotech Pvt. Ltd. Vs. ACIT, Circle 1(2), Mysore; &
4. Flextronics Technologies (India) Pvt. Ltd. Vs. ACIT, Circle-3(1)(1), Bangalore.

8. Learned Departmental Representative submitted, the final assessment order cannot be declared as invalid as the Assessing Officer has passed it complying with the directions of learned DRP.

9. Drawing our attention to section 144C(13) of the Act, he submitted, as per the statutory mandate the Assessing Officer has to pass final assessment order as per the directions of learned DRP and accordingly, he has passed the assessment order.

10. We have considered rival submissions in the light of decisions relied upon and perused the material available on record.

11. Before we proceed to decide the issue, it is necessary to bear in mind the following dates and events:

15.09.2021	Assessment order passed under Section 143(3) of the Act determining the total
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	income at Rs.6,31,98,895.
30.09.2021	Draft assessment order passed under Section 144C of the Act determining the total income at Rs.6,31,98,895
17.05.2022	Directions issued by the learned DRP;
27.06.2022	Final assessment order passed under Section 143(3) read with section 144C(13) of the Act determining income at Rs.6,31,98,895.

12. From the aforesaid dates and events, it is very much clear that the Assessing Officer, in exercise of jurisdiction under Section 143(3) of the Act, had originally passed an assessment order on 15.09.2021 under Section 143(3) of the Act. A fortnight thereafter, the Assessing Officer having become wiser has passed a draft assessment order purportedly under Section 144C(1) of the Act, determining the total income at the very same figure of Rs.6,31,98,895. The opening paragraph of the draft assessment order reads as under:

“Order under Section 143(3) of the Income-Tax Act,1961 was passed in this case on 15.09.2021 inadvertently. The order may be read as draft order under Section 144C of the Income-Tax Act,1961.”

13. It is evident, while issuing directions, learned DRP considered it appropriate to address only ground 4(ii) raised by the assessee,

whereas, all other grounds were not adjudicated. Learned DRP's directions qua ground no.4(ii) are as under:

“3.1 In the instant case, the AO has passed the final order u/s 143(3) of the Act on 15/09/2021 for the assessment year under reference. The said assessment order states as follows:

“Assessed at total income of Rs.6,31,98,895/-. Issue necessary forms. Give credit for pre-paid tax after verification. Charge interest as applicable under the Act. Penalty proceedings u/s. 270A to be initiated separately for mis-reporting of income as per Income-Tax Act, 1961”

3.2 The assessee has also been issued a notice of demand under Section 156 of the Act for Rs.9,98,942/- which is shown as outstanding for the year under consideration on the ITBA portal.

3.3 Subsequent to passing the order u/s. 143(3) of the Act dated 15.09.2021 for the year under reference where it has been stated as follows in para 1:-

“Order u/s. 143(3) of the IT Act was passed in this case on 15.09.2021 inadvertently. The order may be read as Draft order u/s. 144C of the IT Act.”

3.4 Under sub-section (1) of section 144C of the Act, the Assessing Officer is required, in the first instance, to forward a draft of the proposed order of assessment (‘draft assessment order’) to the eligible assessee, if he proposes to make any variation which is prejudicial to the interest of such assessee. Sub-section (2) thereof, inter alia, allows the eligible assessee to file objections to such variation before the DRP and the Assessing Officer. In a case where any such objection is received, the DRP is empowered under sub-section 5 of section 144C to issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment. Thereafter, under sub-section (13) of section 144C, the

Assessing Officer is required to complete the assessment in conformity with such directions without providing any further opportunity of being heard to the assessee within the prescribed time period. Thus, under the scheme laid down in section 144C of the Act, the DRP can issue directions on objections filed by the eligible assessee against the draft assessment order passed under sub-section (1) of section 144C, following which the Assessing Officer shall pass the final assessment order in conformity with such directions under sub-section (13) of section 144C.

3.5 In the present case, however, as seen above, the final assessment order has already been passed by the Assessing Officer vide the above-mentioned order under section 143(3)/144C(3) dated 30.09.2021. Under such circumstances, the operation of sub-section (5) of section 144C of the Act fails. The DR.P also notes that the once the final order has been passed on 15.09.2021 u/s 143(3) of the Act, the same cannot be annulled/modified/amended at a subsequent date on the ground that the same was passed inadvertently.

3.6 Hence the objection of the assessee listed at ground No.4(ii) is accepted. In view of the same, the other grounds become infructuous.”

14. As could be seen from the observations of learned DRP in paragraph 3.5 and 3.6, it is not uncertain direction, learned DRP has held that once the final assessment order has been passed on 15.09.2021 under Section 143(3) of the Act, the same cannot be annulled, modified, amended at a subsequent date on the ground that the same was passed inadvertently. Further, learned DRP has upheld the objection raised by the assessee in ground no. 4(ii). For this reason, learned DRP, thought it prudent not to adjudicate rest of the

grounds. Thus, the direction of learned DRP is clear and categorical enough to indicate that the draft assessment order passed under Section 144C(1) of the Act is without jurisdiction, hence, invalid.

15. Surprisingly, while implementing the directions of learned DRP in terms of section 144C(13) of the Act, the Assessing Officer has virtually replicated the draft assessment order. This, in our view, is contrary to the statutory mandate of section 144C(13) of the Act, hence, in excess of jurisdiction or wholly without jurisdiction. Once, learned DRP has held that after passing of the assessment order under section 143(3) of the Act on 15.09.2021, the same cannot be annulled, modified, amended at a subsequent date, the only course left open to the Assessing Officer was to implement the directions of learned DRP in letter and spirit and drop the assessment proceedings and nothing else.

16. As per the scheme of the Act, once an assessment order has been passed under Section 143(3) of the Act in respect of any assessment year, the Assessing Officer cannot tinker with that assessment. Of course, he can either reopen the assessment or rectify the assessment order after strictly complying with the conditions of section 147 and

154 respectively. The statute does not confer any powers on the Assessing Officer to either withdraw or modify or substitute the assessment order passed under Section 143(3) of the Act with another assessment order. If the Assessing Officer is allowed to do so, it will lead to disastrous consequences and will give a free hand to the Assessing Officer to pass an assessment order and subsequently withdraw or modify it according to his own whims and caprices. This is not only against the scheme of the Act but against all canons of law.

17. In view of the aforesaid, we hold that in the peculiar facts of the present appeal, the impugned assessment order passed, being wholly without jurisdiction or in excess of jurisdiction, is unsustainable, hence, deserves to be set aside and quashed. Accordingly, we do so. Ground no.5 is allowed.

18. In view of our decision in foregoing paragraphs, other grounds having become academic, do not require adjudication.

19. In the result, the appeal is allowed as indicated above.

*Order pronounced in the open court on 31<sup>st</sup> May, 2023.*

*Sd/-*  
**( G.S. PANNU )**  
**PRESIDENT**

*Sd/-*  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 31<sup>st</sup> May, 2023.

**Mohan Lal**

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi