

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1058/Mum/2021

(Assessment Year: 2016-17)

Mahindra and Mahindra
Limited
Corporate Taxation,
P.K.Kurane Chowk,
Worli,
Mumbai-400 018

Vs.

Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/
Income tax Officer, National e-
Assessment Centre, Delhi
Local Jurisdictional Assessing
Officer
Asst. Commissioner of income
Tax, Circle 2(2)(1),
Mumbai

(Appellant)

(Respondent)

PAN No. AAACM3025E

Assessee by : Shri H.P. Mahajani, AR
Revenue by : Shri Manoj Kumar, CIT DR

Date of hearing: 18.07.2023

Date of pronouncement : 20.07.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.1058/Mum/2021 is filed by Mahindra and Mahindra Ltd [Assessee/ Appellant] for A.Y. 2016-17, against the assessment order passed by the National e-assessment Centre, Delhi, [The Id AO] dated 29th April, 2021, passed under Section 143 read with section 144C(13) read with section 144(3) of the Income-tax Act, 1961 (the Act), wherein total income was assessed at ₹3,83,48,30,210/-. The assessee filed its return of income [ROI] on 28th



November, 2016 at ₹848,57,12,006/-. Subsequently, the same was revised on 29th March, 2018. Subsequently, modified return was also filed and total income was returned at 1,967,46,57,185/-. The return of income was picked up for complete scrutiny stating ten reasons for selection of return for scrutiny. As the assessee company is engaged in the business of manufacturing of Automobile, engine parts and several other activities, entered into several international transactions, reference was made to the learned Transfer Pricing Officer for determination of Arm's Length Price of the international transactions. The reference was made on 1st October, 2019. Based on this, the Asst. Commissioner of Income Tax, Transfer Pricing Officer, 3(2)(1), Mumbai (the learned Transfer Pricing Officer) passed an order under Section 92CA(3) of the Act on 1st November, 2019, wherein the total adjustment to the Arms Length Price was proposed to ₹32,06,92,286/-. The learned Assessing Officer passed draft assessment order under Section 143(3) read with section 144C (1) of the Act on 28th December, 2019, wherein the total income of the assessee was proposed to be assessed at ₹3,135,08,560/-, wherein the adjustment on account of Arm's Length Price of international transaction was also included. Against the draft Assessment order, assessee preferred the objection before the learned Dispute Resolution Panel. The learned Dispute Resolution Panel passed direction on 26th March, 2021. Based on this, the final assessment order was passed on

29th April, 2021. Wherein the total income of the assessee was assessed at ₹3,83,14,13,210/-.

02. The assessee aggrieved with the same has preferred this appeal on several grounds.
03. At the time of hearing assessee filed an application for admission of additional ground of appeal as under, The application of the additional ground shows that the following two grounds are raised:-

"1. Reference to TPO under section 92CA was made beyond permissible period as prescribed under section 153(1) and hence assessment is barred by limitation

On the facts and in the circumstances of the case and in law, the reference to the TPO made on 1.10.2019 is barred by limitation within the meaning of s 153(1)/ (4) of the Act and hence bad in law, rendering the TP Order dated 1.11.2019 non-est, the reference to the DRP u/s 144C bad in law and the assessment order u/s 143(3) r.w.s. 144C r.w.s 153 barred by limitation;

2. Final assessment order passed by AO is barred by limitation

Without prejudice to the above, in any event, the said final assessment order is barred by limitation, the TPO order u/s 92CA (3) itself having being passed on 1/11/2019, instead of

'on or before 31st October 2019, i.e. beyond the prescribed time period.'

04. Assessee submitted that additional ground raised are purely jurisdictional, legal and goes to the root of the matter. Therefore, same should be admitted.
05. The learned Departmental Representative vehemently opposed and submitted that assessee has not raised this additional ground before the lower authorities and therefore, assessee should not be allowed to raise the same at this point.
06. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also considered the application for admission of the additional ground raised by the assessee. By this ground of appeal assessee challenges the validity of the assessment order stating that assessment order passed by the learned Assessing Officer is beyond the time limit prescribed u/s 153 of the Act . For verification of the same only respective dates are required to be looked into the various orders. Other than that no other facts are required to be investigated. This is a jurisdictional issue which can be raised at any time. Accordingly, we admit the additional ground raised by the assessee.
07. The learned Authorized Representative submitted that this issue is squarely covered by the decision of the Hon'ble Madras high court and several decision of coordinate

benches. In this case, the learned Transfer Pricing Officer has passed the order under Section 92CA(3) of the Act on 1st November, 2019. The due date for passing of the order of the learned Transfer Pricing Officer expired on 31st October 2019 and therefore, the Transfer Pricing order [92CA(3)] is passed beyond the due date and requires to be quashed. He further stated that as the transfer pricing order is beyond the due date, assessee is not an eligible assessee and therefore, the extended time limit of 12 months is also not available to the learned Assessing Officer. Accordingly, the assessment order passed by the learned Assessing Officer is also barred by limitation. Accordingly, he submitted that assessment order passed in case of the assessee is barred by limitation.

08. The learned Departmental Representative vehemently opposed the above objection and submitted that order of the learned Transfer Pricing Officer is within the time limit.
09. We have carefully considered the rival contentions, verified the dates for the orders of lower authorities and also perused the judicial precedents cited before us. We find that for A.Y. 2016-17, the due date for passing final assessment order is 31st December, 2018, being 21 months time from the end of the assessment year under Section 153(1) of the Act. If valid reference to the transfer pricing officer is made, further 12 months time is available in terms of provision of 153(4) of the Act. According to the provisions of Section 92CA(3A) of the Act, the transfer pricing officer has to pass an order under

Section 92CA(3) of the Act, before 60 days prior to the date on which the period of limitation under Section 153 expires. Accordingly, the due date for passing of the order of assessment is 31st December, 2019 and consequently, the due date for passing of the order of the learned Transfer Pricing Officer is 31st October, 2019. In this case, admittedly, the learned Transfer Pricing Officer has passed the order under Section 92CA(3) of the Act on 1st November, 2019. Therefore, the order passed by the learned Transfer Pricing Officer is beyond the time limit prescribed under Section 92CA(3A) of the Act i.e. delayed by one day. Therefore, the order of the learned Transfer Pricing Officer is illegal as it is barred by limitation. Thus, in the case of the assessee there is no variation as a consequence of transfer pricing order. The assessee is also a resident company. Therefore, according to section 144C(15)(b) of the Act, assessee is not an 'eligible assessee' and therefore, extended the time limit of 12 months as prescribed under Section 153(4) of the Act is also not available to the learned Assessing Officer. Therefore, the assessment order should have been passed on or before 31st December, 2018, which is passed on 29th April, 2021, hence, final assessment order passed is barred by limitation and hence, quashed. Our view is also supported by several judicial precedent including the decision of Hon'ble Madras High Court in 139 taxmann.com 361 in Virtusa Consultancy Pvt. Ltd. Similar view has been taken by the co-ordinate Bench in case of Atos India Pvt. Ltd. in ITA No.1795/Mum/2017. Therefore,



respectfully following the decision of the Hon'ble Madrass High Court and co-ordinate Bench, the additional ground raised by the assessee is allowed and the assessment order passed by the learned Assessing Officer is held to be barred by limitation and hence, adjudicated as quashed.

010. In view of our finding in case of additional grounds raised by the assessee, all other grounds are not required to be adjudicated.

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

Order pronounced in the open court on 21.07. 2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.07.2023

Sudip Sarkar, Sr.PS

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