

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 399/Rjt/2018
Assessment Year: 2014-15**

M/s. Kandla Energy and Chemicals Ltd. , C/O, R.K. Doshi & CO. LLP (CA), Doshi Corporate Park, Akshar Marg, End, Near Utkarsh School, Rajkot PAN No: AACCB5722H (Appellant)	Vs	The Add. CIT, Gandhidham Range, Gandhidham (Kutch), Gandhdham, Gujarat (Respondent)
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Assessee Represented: None
Revenue Represented: Shri Shramdeep Sinha, Sr.D.R.

Date of hearing : 11-09-2023
Date of pronouncement : 15-09-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the order dated 28.08.2018 passed by the Dispute Resolution Panel-2, Mumbai, as against the draft assessment order passed under section 143(3) r.w.s. 144 r.w.s. 144C(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The solitary issue in this appeal is whether the DRP is right in dismissing the objection filed by the assessee which is beyond the period of 30 days as provided u/s. 144C(2)(b)(ii) of the Act?

3. The brief facts of the case is that the assessee is engaged in manufacturing of Fertilizers, Chemicals and Paints. For the Assessment Year 2014-15, the assessee filed its original Return of Income declaring total income of Rs. 5,43,24,000/-. During the assessment proceedings, it was noticed that the assessee company had entered into certain specified domestic transactions whose value exceeded Rs. 5 Crores with related party u/s. 40A(2)(b) of the Act and also Chartered Accountant's report u/s. 92E of the Act on international/domestic transactions. Therefore the case was referred to Transfer Pricing Officer for determination of Arm's Length Pricing u/s. 92CA of the Act. The Ld. TPO determined the Arm's Length Price of the specified domestic transactions and recommended an upward adjustment of Rs. 1,89,74,894/- vide order dated 31-10-2017. After receipt of the TPO's order, the Assessing Officer passed a draft assessment order dated 15-11-2017 u/s. 144C(1) of the Act and duly served on the assessee on 16-11-2017.

3.1. As per Section 144C(2) of the Act, within 30 days of the receipt of the draft assessment order, the assessee is supposed to

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

(b) file his objections, if any, to such variations with-

(i) The Dispute Resolution Panel: and

(ii) The Assessing Officer.

3.2. After passing of the draft assessment order, the Assessing Officer has not received any intimation either (a) acceptance of the variations or (b) filing of objections before DRP by the assessee within the stipulated period of 30 days namely (on or before 15.12.2017). Therefore the Assessing Officer as per Section 144C(3) passed the final assessment order on 19.12.2017 and served the same to the assessee on 21.12.2017.

4. However the assessee filed its objection before DRP on 18.12.2017 (Monday) which is the next working day (since 16.12.2017 and 17.12.2017 happen to be Saturday and Sunday-which are declared holidays). The assessee further claimed that its factory is based at Gandhidham Kutch District of Gujarat and its Administrative Office located at Ahmedabad and DRP's Office at Mumbai. The assessee thought it fit to file its objection before DRP at Mumbai and then submit copy of the said objection to the A.O. at Gandhidham with proof of filing the objection before DRP, Mumbai. Due to the logistic reasons, the assessee could file its objection application before the A.O. on 21-12-2017 i.e. after expiry of 30 days. The assessee further pleaded that the company had discontinued its business activity during the financial year 2014-15 and all employees of the company had left the employment and there was not a single person to attend any tax or legal matters. When the assessee company was in acute financial crisis and the director of the company Mr. Sanjay Rai was also under the heavy mental depression due to the huge financial losses as well as

serious personal family matters. Therefore the assessee pleaded to condone the delay in filing the objection before the DRP as well as before filing the copy of the same before the Assessing Officer as required u/s. 144C(2) of the Act.

4.1. The Ld. DRP considered the above submissions of the assessee and dismissed the objection observing as follows:

“...12. We have also considered the decision of Hon'ble ITAT Chennai Bench in the case of Allaya Jewel Industries Pvt. Ltd. (TS-243-ITAT-2018) (CHNY)-TP wherein the ITAT has categorically stated that DRP does not have authority to condone the delay in filing of objections as if granted, the same would result in curtailing the time available to the DRP for dealing with the objections of the assessee. The Hon'ble ITAT has also observed that it is important that the application is filed with the DRP as well as the AO simultaneously within 30 days of receipt of the draft assessment order.

13. Since in this case the application was filed before the AO after the specified period of 30 days and the AO has already passed the final order within the period specified in section 144C(4) on 19.12.2017, prior to receiving the application in his office, which was filed on 04.01.2018, we do not find any infirmity in passing the final order by the AO and. since, the twin conditions of filing the objection before the DRP and AO is not satisfied in this case, we dismiss the objection of the assessee has not admitted.”

5. The Ld. DRP also further observed that since final assessment order dated 19.12.2017 is already passed by the Assessing Officer and served on the assessee on 21.12.2017, it is always open to the assessee to challenge the same before Ld. CIT(A) with appropriate condonation of delay, explaining the reasons of pendency of the Objection Petition before DRP and can proceed with the appeal remedy available to the assessee.

6. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

(1) The order giving the direction, issued by the Dispute Resolution Panel 2, Mumbai u/s. 144C(5) of the Act and the order u/s 143(3) r.w.s. 144C(3) of the Act to is bad in law and contrary to the facts of the case.

(2) The learned DRP has erred in not condoning the delay in filing the objection before the AO within the specified period of 30 days from the receipt of draft order.

(3) The learned DRP has erred in dismissing the objection without considering the facts and circumstances and reasonable cause under which the appellant could not file the objection before the AO within the specified period, even though the objection was filed well within the specified time limit before the DRP.

(4) The learned DRP has erred in not admitting the objection and also not considering the merits of the case on the ground that the objection before the AO was filed late by three days even though the same was filed before the DRP in time.

(5) The directions/order u/s.144C(5) passed by the DRP is illegal, unjustified and against the principles of natural justice.

(6) Without prejudice to the above your appellant craves leave to add, amend, alter, vary or withdraw all or any of the grounds on or before the hearing of appeal.

7. Today is the 8th time of hearing of the above appeal, None appeared on behalf of the assessee in spite of service of notices to the assessee. It is seen from record, M/s. R.K. Doshi & Co. LLP, Chartered Accountant who had filed their Letter of Authority, which was also withdrawn by them, vide letter dated 28.03.2023, informing that they could not contact the assessee and get instructions to proceed with the above appeal. It is thereafter the case was listed for hearing six times on various dates and notices was also served on the assessee. However none appeared in any of the occasions before this Tribunal, so therefore with the available material on record, we proceed to decide the case on merits exparte.

8. Ld. CIT-DR Shri Shramdeep Sinha appearing for the Revenue supported the order passed by the Ld. DRP and pleaded that there is no power available under the Act, for DRP to condone the delay in filing objections before it u/s. 144C(2) of the Act. Further as rightly held by the Ld. DRP as against the final assessment order dated 19.12.2017 passed by the Assessing Officer u/s. 144C(3) of the Act, the assessee is open to file its appeal before Ld. CIT(A). Therefore the order passed by the Ld. DRP does not require any interference and therefore the appeal filed by the assessee is liable to be dismissed.

9. We have given our thoughtful consideration and perused the materials available on record. For adjudicating whether the objection filed by the assessee is well within the provisions of time limit prescribed under Act, Section 144C is reproduced for ready reference:

“Sec.144C. REFERENCE TO DISPUTE RESOLUTION PANEL

(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 subsection (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, 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 subsection (5) for further enquiry and passing of the assessment order.

(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, 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 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 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."

9.1. As per sub-section (2) of Section 144C eligible assessee has an option to file, either his acceptance of the variation proposed in the

draft assessment order to the Ld. Assessing Officer under clause 2(a), or if he objects to the draft assessment order, to file an objection before DRP as well as before the Assessing Officer as per clause 2(b) of the Act, within 30 days of receipt of the draft assessment order. These sub-clauses namely 2(a) & 2(b) are joined by the term '**or**' which is disjunctive expression. Thus the assessee has to choose any one of the two options, namely either to file acceptance or to file his objection. Thus if the assessee chooses the second option given in sub-clause (b), then he has to comply with the two limbs namely "(i) & (ii)" of the above sub-clause. Here these two limbs are joined with the term '**and**' which is a conjunctive term. Hence, if the assessee chooses to file his objection, such objections ought to have been filed both before the DRP as well as before the Assessing Officer within 30 days period.

9.2. Here in the present case, draft assessment order u/s. 144C(1) was passed by the Assessing Officer on 15.11.2017 and duly served on the assessee on 16.11.2017. The assessee chosen to file his objections against the draft assessment order, which ought to have been filed on 16.12.2017 being a (Saturday) and next working day being 18.12.2017 (Monday) as per section 4 of the Limitation Act, is the 30th day where the assessee ought to have filed his objection both before the DRP at Mumbai as well as before the Assessing Officer at Gandhidham. The assessee has filed his objection before the DRP on 18.12.2017. However filed the copy of the objection before the Assessing Officer on 21.12.2017 which is beyond the period of limitation as prescribed under sub-section (2) of section 144C of the Act. As the Assessing Officer is not intimated or filed

the objection petition by the assessee well before 18.12.2017. Therefore the Ld. Assessing Officer passed final assessment order dated 19.12.2017 u/s. 144C(3) of the Act and served the same on the assessee on 21.12.2017. As rightly pointed by the Ld. DRP, there is no power u/s. 144C of the Act for the DRP to condone the delay. The powers of the DRP are exhaustively set out in section 144C of the Act and it has no power to condone any delay in filing objections either before it or before the Assessing Officer. Hence, the Ld. DRP rightly rejected the objection filed by the assessee as not maintainable.

9.3. In our considered view, delayed filing of objections gives rise to the same consequence as of non-filing of the objections. This is because objection filed after 30 days, which is beyond statutory limit, is as good as no Application filed by the assessee. Thus the assessee did not satisfy the conditions as stipulated in sub-section 2(b)(ii) of Section 144C of the Act. When there is no objection petition filed by the assessee against the draft assessment order, the Assessing Officer is required to pass, within further time period of 30 days, a final assessment order under sub-section (4) of section 144C of the Act. Here in this case, the final assessment order was passed by the Assessing Officer on 19.12.2017 and served the same to the assessee on 21.12.2017. Therefore in our considered view, the assessee has an option to challenge the final assessment order before the Ld. CIT(A) in accordance with law. Therefore we do not find any merits in the grounds raised by the assessee. Therefore the present appeal filed by the assessee is devoid of merits and against the provisions of section 144C (2)(b)(ii)

of the Act. Therefore the appeal filed by the Assessee is hereby dismissed.

10. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 15-09-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 15/09/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट