

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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 92/DEL/2020 [A.Y. 2015-16]

The A.C.I.T.,  
Circle 1(1)(2)  
International Taxation  
New Delhi

Vs.

M/s Innways Venture Ltd  
C/o 115 Georgiou, Giva Digeni  
Limassol Trident Centre  
999999 Cyprus

PAN - AACCI 6156 L

(Applicant)

(Respondent)

Assessee By : Shri Ravi Sharma, Adv  
Shri Rishab Malhotra, AR

Department By : Shri Vizay B. Vasanta, CIT-DR

Date of Hearing : 05.10.2023

Date of Pronouncement : 11.10.2023

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the  
ld. CIT(A) - 43, New Delhi dated 31.10.2019 pertaining to Assessment  
Year 2015-16.

2. The grievances of the Revenue read as under:

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate the fact that the assessee company is not the beneficial owner of the interest income and as per article 11(2) of the DTAA between India-Cyprus, the benefit of this article is available to the beneficial owner the interest.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has failed to appreciate the fact that is difficult to believe that there is no necessity of having any employee on payroll to run affairs of the assessee company i.e. to make decision as regards investment or to carry out functions pertaining to administration, management, accounts, taxation and law. That only the Directors manage all these functions without any other human resource which goes on to establish Directors manage all these functions without any other human resource which goes on to establish that the company is only an entity created to make advantage of the lower tax rates under the DTAA.

3. The appellant craves to add, amend, modify or alter any grounds of appeal at any time or before the hearing of the appeal."

3. Vide application dated 20.04.2023, made u/r 27 of the ITAT Rules, the assessee raised an issue which was decided against it by the ld. CIT(A). It is the say of the assessee that the Assessing Officer erred

in passing the impugned order u/s 144C(13) r.w.s 143(3) of the Income-tax Act, 1961 [the Act, for short] for the subject year beyond the time limit prescribed under the Statute. Since the issue raised vide application u/r 27 of the ITAT Rules goes to the root of the matter, we decided to adjudicate it first.

4. The facts on record show that a draft assessment order u/s 144C(1) r.w.s 143(3) of the Act was framed on 31.12.2018 without appreciating the provisions of section 144C(1) of the Act in its true perspective which provides that a draft order can be passed only in a case where there is any variation in income or loss, which is prejudicial to the interest of the assessee. Since there is no variation in the income of the assessee, the final assessment order passed by the Assessing Officer is barred by limitation.

5. When this issue was raised before the Id. CIT(A), the Id. CIT(A) dismissed the claim by referring to the decision of the Hon'ble Madras High Court in WP No. 7135 & 7138/2019 order dated 30.08.2019 in the case of Worldpart Limited.

6. Before us, the ld. counsel for the assessee drew our attention to several decisions of the co-ordinate benches wherein the co-ordinate benches have held such order barred by limitation.

7. Per contra, the ld. DR supported the findings of the ld. CIT(A) on this issue.

8. We have given thoughtful consideration to the orders of the authorities below. It is an undisputed fact that the returned income of the assessee at Rs. 19,54,27,500/- has been assessed at the same figure, though taxed @ 20%, which means that there is no variation in the income as such. Therefore, recourse to the provisions of section 144C(1) of the Act was unwarranted making the final assessment order barred by limitation.

9. On identical facts, this Tribunal in the case of Super Brands, UK 147 Taxmann.com 323 has held as under:

"In our understanding of the provisions of section 144C of the Act mentioned hereinabove, we are of the considered view that the Assessing Officer wrongly assumed jurisdiction u/s 144C of the Act when there is no variation in the income returned by the assessee.

23. *Our view is supported by the decision of the co-ordinate Mumbai Bench in the case of Mousmi SA Investment LLC in ITA No. 7076/MUM/2018. Pertinent findings of the co-ordinate bench are given as under:*

"11. In the instant case, the assessee herein is an eligible assessee. However, there is no variation in the income or loss returned, which is prejudicial to the interests of the assessee. Hence the second condition prescribed in sec.144C(1) was not satisfied. Hence the approach of the AO in adopting the procedure prescribed in sec.144C of the Act is not in accordance with the mandate of law. We get support for our view from the decisions rendered by Chennai bench and Pune bench of Tribunal in the cases referred above. Hence the assessment order passed by the AO gets vitiated and the same is liable to be quashed. We order accordingly."

24. Similar view was taken by the Tribunal Mumbai Bench in IPF India Property Cyprus [No. 1] in ITA No. 6077/MUM/2018. Relevant observations of the co-ordinate bench in this case read as under:

"5. So far as the first issue is concerned, we find that, in the present case, there are no variations in the returned income and the assessee income. The controversy is thus confined to the question as to what will be the rate on which income returned by the assessee is to be taxed.

While the assessee has claimed taxation @ 10% under [article 11\(2\)](#) of the India Cyprus DTAA, the Assessing Officer has declined the said treaty protection on the ground that the assessee was not beneficial owner of the said interest, and, accordingly, brought the income is to tax @ 40% thereof. There is, quite clearly, no variation in the quantum of income. The question whether it was a case in which the Assessing Officer could have issued the draft assessment order, on the facts of this case, needs to be examined in the light of provisions of [Section 144C\(1\)](#) which provides that, "The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward<sup>5</sup> 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 [Emphasis, by underlining, supplied by us]. The assessee before us is a non-resident company incorporated, and fiscally domiciled, in Cyprus. Accordingly, in terms of [Section 144C\(15\)\(b\)\(ii\)](#), the assessee is an eligible assessee but then there is no change in the figure of income returned by the assessee vis-a-vis the income assessed by the Assessing Officer. Clearly, there is no variation in the income returned by the assessee. There is, therefore, no question of a draft assessment order being issued in this case. It is also important to note that the Finance Bill proposes to make

the issuance of draft assessment orders in the case of eligible assesseees mandatory even when there is no variation in the income or loss returned by the assessee but then this amendment seeks to amend the law with effect from 1st April 2020. Explaining this amendment, Memorandum Explaining Amendments in the Finance Bill 2020 states as follows:

.....

6. Once this amendment is being introduced with effect from 1st April 2020, it is beyond any doubt of controversy that so far as the period prior to 1st April 2020 is concerned, the cases in which no variations in the returned income or loss were proposed, the draft assessment orders were not required to be issued. We, therefore, uphold the plea of the assessee on this point.

7. Coming to the second point, we find that there is no dispute that if no draft assessment order was to be issued in this case, the assessment would have been time barred on 31st December 2017 but the present assessment order is passed on 17th August 2018. Once we hold that no draft assessment order could have been issued in this case, as the provisions of [Section 144C\(1\)](#) could not have been invoked in this case, the time limit of completion of assessment was available only upto 31st December 2017. The mere issuance of draft assessment order, when it was legally not required to be issued, cannot end up enhancing the time limit for

completing the assessment under [section 143\(3\)](#). We, therefore, uphold the plea of the assessee on this point as well. The impugned assessment order is indeed, in our considered view, time barred. We, accordingly, hold so.

8. As the impugned assessment order itself is held to be time barred, all other grievances raised in appeal, which deal with the merits of stand taken by the Assessing Officer in the assessment order, are rendered academic and infructuous. No adjudication, therefore, is required on these grievances at this stage."

25. This view also finds support from the Delhi Bench in the case of Silver Bells 189 ITD 678. The relevant findings read as under:

"8.Provision of section 144C(1) read as under:-

"144C. (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 [84a Words " in the income or loss returned" omitted by the Finance Act, 2020, w.e.f. 1-4-2020] which is prejudicial to the interest of such assessee."

9. A perusal of the aforesaid provisions shows that the Assessing Officer shall forward the draft of the proposed order if he proposes to make any variation in the income or loss returned. The aforesaid proposal in the draft assessment order clearly shows that the Assessing Officer did not intend to make any variation in the income of the assessee, therefore, the assessment order should have been framed as per the provisions of section 153 r.w.s. 143(3) of the Act meaning thereby that the assessment order dated 7-9-2018 is barred by limitation.

10. In the light of the facts mentioned elsewhere when considered within the provisions of section 144C(1) *supra*, we have no hesitation to hold that the assessment order is barred by limitation."

26. In light of the above discussion, we hold that the Assessing Officer wrongly assumed jurisdiction u/s 144C of the Act, and therefore, the final assessment order framed in Assessment Years 2007-08 and 2010-11 to 2015-16 are barred by limitation and accordingly, the impugned assessment orders are liable to be quashed as void ab initio. This additional ground is, accordingly, allowed."

10. On finding parity of facts, application u/r 27 of the ITAT Rules is allowed. Assessment order is held to be barred by limitation.

11. Before parting, the decision relied by the ld. CIT(A) for dismissing the claim of the assessee is not relevant in as much as firstly, the said case was a writ petition dismissed by the Hon'ble High Court as alternative remedy was available and secondly, all the other issues were kept open which is evident from the following findings of the Hon'ble High Court :

"3 Owing to all that have been set out thus far, this court does not find any ground to interfere with the impugned orders in writ jurisdiction. Both writ petitions fail and the same are dismissed, albeit preserving the rights of the writ petitioner to pursue the case by resorting [section 246A](#) of IT Act. If such a course is adopted, it is made clear that all questions in the instant writ petitions are left open. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

12. Even on merits of the case, we do not find any reason to interfere with the findings of the ld. CIT(A) as in the earlier A.Ys, on identical transactions, the Assessing Officer has given benefit of DTAA with Cyprus on the basis of valid Tax Residency Certificate. Assessment order for A.Y 2014-15 is at page 297, for A.Y 2012-13 is at page 304, for A.Y 2013-14 is at page 306. Therefore, following the

Rule of Consistency, on merits also, we decline to interfere with the findings of the ld. CIT(A).

13. In the result, the appeal of the Revenue in ITA No. 92/DEL/20202 is dismissed.

The order is pronounced in the open court on 11.10.2023.

**Sd/-**

**[SAKTIJIT DEY]  
VICE PRESIDENT**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> October, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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