



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

**BEFORE SHRI. PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA No.2511/MUM/2022
Assessment Year: 2018-19

APM Terminals Private Limited Unit No.401&402, Godrej Two Pirojshanagar, Eastern Express Highway, Vikharoli (East) Mumbai	v.	Dy. CIT Circle 6(1)(1) Mumbai
TAN/PAN:AAACM8741P		
(Appellant)		(Respondent)

Assessee by:	S/Shri Manish Kant and Devesh Gala, A.Rs		
Revenue by:	Pravin D Salunkhe, D.R.		
Date of hearing:	10	08	2023
Date of pronouncement:	27	10	2023

ORDER

PER PRASHANT MAHARISHI, A.M.:

1. This appeal is filed by the APM Terminals India Private Limited [Assessee/ Appellant] for assessment year 2018 – 19 against the assessment order passed under section 143(3) read with section 144C (13) read with section 144B of the Income Tax Act (the Act) dated 31/7/2022 by the assessment unit, determining the total income of the assessee at Rs.11,64,10,372/- making transfer pricing adjustment proposed by the learned Transfer Pricing Officer by an order under section 92CA (3) dated 12/7/2021 incorporated in draft assessment order dated 20/8/2021 pursuant to

direction of the learned Dispute Resolution Panel – 1, Mumbai – 2 (the learned DRP) dated 26/5/2022.

2. Assessee is aggrieved with the assessment order and as per the first ground of appeal itself, the assessee has raised the issue that the order passed by the learned Assessing Officer is barred by limitation under the provisions of section 144C (13) read with section 144B (1) of the Income Tax Act.
3. Brief facts of the case shows that the assessee is a company engaged in the business of Container Freight Station owner and operator, equipment maintenance and repairs and transportation of containers. It filed its return of income on 30/11/2018, declaring total income at Rs. Nil and having the gross total income of Rs.53,58,65,908/-, which was claimed as a deduction under section 80IA of the Act. Later on, the return of income was revised on 29/3/2019 at the same income and claiming the whole of the income as deductible under section 80IA of the Act. The return of income was picked up for the scrutiny.
4. As the assessee has entered into international transactions in the nature of Fees for Technical Services, according to the Transfer Pricing Risk parameter, reference was made to the Transfer Pricing Officer on 15/11/2019.
5. The learned Transfer Pricing Officer noted that the assessee has entered into 12 different international transactions and has adopted the Transactional Net Margin Method as the most appropriate method, considering the net profit as the profit level indicator. The margin of the assessee was considered and compared with three year weighted average margin of the comparable companies for European Nation range and Asia-Pacific region. The margin of the assessee was

determined at 5% from European region and Asia-Pacific region, the margin of the comparable company, after comparison with the margin of the assessee, as per the transfer pricing study report, the assessee submitted it to be at arm's-length.

6. The learned Transfer Pricing Officer examined the international transactions and ultimately passed an order under section 92CA (3) of the Act, whereas the transfer pricing adjustment of Rs.11,64,10,372/- was proposed.
7. Accordingly, draft assessment order under section 144C of the Income Tax Act was passed on 20/8/2021, wherein the only adjustment was with respect to the above transfer pricing adjustment.
8. The assessee preferred objection before the learned Dispute Resolution Panel, who passed the directions on 26/5/2022.
9. Consequent to that, the learned Assessing Officer passed the final assessment order on 31/7/2022.
10. The assessee is aggrieved with that and submitting that the order for transfer pricing adjustment was passed by the learned Transfer Pricing Officer under section 92CA (3) of the Act on 31/07/2021. The draft assessment order under section 143(3) read with section 144C of the Act was passed on 30/09/2021. The objections before the learned Dispute Resolution Panel were filed on 19/09/2021. The directions were issued by the learned DRP on 26/05/2022. The final assessment order under section 143 (3) read with section 144C is required to be passed within 30 days from the end of the month in which the directions are received. Accordingly,

the final assessment order should have been passed only on or before 30/06/2022. In this case, the learned Assessing Officer has passed the final assessment order on 31/07/2022, therefore, the final assessment order passed by the learned Assessing Officer is barred by limitation and therefore, the same deserves to be quashed. He further referred to the email dated 3/2/2023 of the ITO - Headquarter DRP -1, Western Zone, Mumbai, wherein it is categorically stated that the directions were passed and uploaded on ITBA system on 26/5/2022. He submits that is the date of receipt of order by the ld AO. Therefore, it was submitted that the assessment order passed is barred by limitation.

11. The learned D.R vehemently supported the order of the learned Assessing Officer and stated that the order is not barred by limitation, as it has been passed within the due time.
12. We have carefully considered the rival contentions and perused the timelines mentioned in the assessment order itself. Admittedly, in this case, the transfer pricing order under section 92CA (3) of the Act was passed on 12/07/2021. Based on the above transfer pricing order, the draft assessment order under section 144C of the Act was passed on 20/8/2021. Further, the direction of the Dispute Resolution Panel was issued on 26/5/2022. The final assessment order was passed by the learned Assessing Officer on 31/7/2022.
13. According to the provisions of section 144C (13) of the Act, on receipt of the direction of the learned Dispute Resolution

Panel, the Assessing Officer shall, in conformity with the directions, complete the assessment within one month from the end of the month, in which such direction is received. Therefore, it clearly says that the Assessing Officer gets one month time from the end of the month in which the directions are received. In the present case, the assessee has asked the secretariat of the Dispute Resolution Panel, as per letter dated 15/12/2022, about date of sending the directions to the Assessing Officer. To this, an email reply was received from the ITO Headquarter, DRP – 1, Western Zone, Mumbai that the DRP has passed the direction and uploaded the same in ITBA system on 26/5/2022. Therefore, apparently as soon as the order is uploaded on the ITBA website, the time limit of one month will start from the end of the month in which such directions are received/ uploaded. The learned Departmental Representative could not produce before us any evidence that on 26/5/2022, the directions of the DRP were not received by the learned Assessing Officer. Therefore, the time limit ends for passing the final order on 30/6/2022. However, the assessment order was passed on 31/7/2022 and therefore, it is barred by limitation.

14. Though the assessee has relied upon several judicial precedents, including in assessee's own case , , though we have considered all of them, but decide this issue as per the plain provisions of the law.
15. In the result, ground No.1 of the appeal of the assessee is allowed, holding that the assessment order passed by the learned Assessing Officer is barred by limitation and hence quashed.

16. All other grounds of the appeal are not adjudicated and left open.

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

Order pronounced in the open Court on 27.10.2023.

Sd/-
[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

DATED:27.10.2023

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar