

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, VICE PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA-TP No. 106/Hyd/2022  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Uber India Research and Development Private Limited, Hyderabad [PAN No. AABCU9192P]	Vs.	Deputy Commissioner of Income Tax, Circle-8(1), Hyderabad
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Jahangir D. Mistri, AR  
राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 18/10/2023  
घोषणा की तारीख/Pronouncement on: 31/10/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the final assessment order dated 14/02/2022 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of Uber India Research and Development Private Limited ("the assessee") for the assessment year 2017-18, under

section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short "the Act") assessee filed this appeal.

2. At the outset, learned AR submitted that though this appeal is preferred on several grounds, the preliminary issue that falls for consideration is in respect of the legality/validity of the final assessment order that was passed on 14/02/2022 subsequent to the order dated 28/01/2022 of the learned DRP giving the direction to accept Sundaram Business Services Ltd., as a comparable company and to consider margins of other alleged comparable companies from the annual reports. He expressed the grievance of the assessee that in spite of such directions, as are acknowledged by the learned TPO in the order dated 23/02/2022 purportedly giving effect to the directions of learned DRP under section 144C of the Act, learned Assessing Officer in his order dated 14/02/2022 recorded that the learned DRP confirmed the action of the learned TPO and rejected the objection filed by the assessee, which is factually incorrect. He submitted that the final assessment order in disregard to the directions of the learned DRP is without jurisdiction and nonest in the eye of the law. He placed reliance on various decisions including the decision of the Hon'ble Delhi High Court in the case of M/s. ESPN Star Sports Mauritius S.N.C ET Compagnie (Now known as ESS Advertising (Mauritius) S.N.C. ET Compagnie) vs. Union of India and batch in W.P.(C) 2384/2015 & CM No. 4277/2015 and W.P.(C) No. 2397/2015 & CM No. 4298/2015, dated 23/03/2016 followed by the Co-ordinate Bench of the Bangalore Tribunal in the case of Toyota Tsusho India P. Ltd., vs. DCIT, in IT(TP)A No. 175/Bang/2022, dated 09/09/2022. He also placed reliance on the decision of the Bangalore Bench of the Tribunal in the case of Flextronics

Technologies (India) Private Limited vs. ACIT in IT(TP)A No. 832/Bang/2017, dated 31/12/2018 upheld by the Hon'ble Karnataka High Court by order dated 09/01/2023 in PCIT vs. M/s. Flextronics Technologies (India) Private Limited, in IT Appeal No. 332 of 2019, holding that the order passed not in conformity with the directions issued by the learned DRP cannot be sustained.

3. Per contra, learned DR submitted that these proceedings took place during covid period, in the initial period of faceless assessment and appeal proceedings suffering with teething issues. She further submitted that the orders were passed manually and as on the date of the learned Assessing Officer passing the final assessment order, the order of the learned TPO, giving effect the learned DRP's directions, was not available to the learned Assessing Officer.

4. Learned DR further submitted that the learned Assessing Officer passed the impugned final assessment order because he did not receive the effect giving order from the learned TPO and since the time to pass final assessment order was fast approaching, he passed the said order. According to the learned DR, Co-ordinate Benches of the Tribunal took view in the cases of Yokogawa India Ltd., vs. ACIT, in ITA (TP) No. 1715 & 692/Bang/2016, dated 08/03/2021, Apollo Health Street vs. DCIT [2014] 45 taxmann.com 507 (Hyderabad – Trib.) and Gameloft Software Private Limited vs. ITO in ITA No. 432/Hyd/2018, dated 09/01/2023 that in the interest of justice, the matter could be restored to the file of learned Assessing Officer/learned TPO to pass a fresh order, giving effect to the directions of the learned DRP.

5. In reply, learned AR submitted that in the case of Apollo Health Street (supra), the legality/validity of the order passed in disregard to the directions of the learned DRP was not called in question, whereas in the case of Gameloft Software Private Limited (supra), this Tribunal followed the view taken by the Bangalore Bench of the Tribunal in the case of Yokogawa India Ltd., (supra), but as a matter of fact, in a Miscellaneous Petition No. 136/Bang/2021, the Tribunal corrected the operating portion of the order and held such an order to be bad in law and consequently quashed the same. He, therefore, submitted that the very basis for this Tribunal to remand the issue to the file of the learned Assessing Officer/learned TPO now stands removed. He further submitted that, be that as it may, in the teeth of the decisions of two Hon'ble High Courts, and in the absence of any view taken to the contrary, it would be in the fitness of things to quash the impugned order.

6. We have gone through the record in the light of the submissions made on either side. Brief facts are that the determination of the ALP for the international transactions of providing supporting services was referred to the learned TPO for determination of ALP and by order dated 29/01/2021, learned TPO suggested an upward adjustment of Rs. 18,49,57,981/-, incorporating which by way of draft order dated 07/04/2021, learned Assessing Officer determined the income of the assessee at Rs. 18,51,96,717/-. Aggrieved by the same, assessee filed objections before the learned DRP.

7. Learned DRP by order dated 28/01/2022, vide paragraph Nos. 2.1.19 and 2.1.30.10, directed the learned Assessing Officer/learned TPO to include Sundaram Business Services in the list of comparables and also

to take into consideration the correct margins of certain companies by computing from the annual reports available in the public domain. Subsequently, the learned Assessing Officer passed an order dated 14/02/2022 observing that on the objections filed by the assessee against the draft assessment order, the learned DRP vide order dated 28/01/2022, confirmed the action of the learned TPO and rejected the objections filed by the assessee. We find from the order dated 23/02/2022, passed by the learned TPO, purporting to be giving effect to the directions of the learned DRP, that as a matter of fact, the learned DRP gave such a direction and the learned TPO properly understood the same. But strangely, learned Assessing Officer missed that aspect and observed that learned DRP confirmed the action of the learned TPO and rejected the objections filed by the learned Assessing Officer. It is a factual mistake committed by the learned Assessing Officer. The result is that the upward adjustment proposed by the learned TPO at Rs. 18,49,57,981/-, so mentioned in the draft assessment order, is carried forward as it is to the final assessment order. The factual position is, therefore, clear that the final assessment order remained non-compliant with the directions of the learned DRP.

8. Hon'ble Bombay High Court in the case of M/s. ESPN Star Sports Mauritius S.N.C ET Compagnie (supra) and Hon'ble Karnataka High Court in the case of Flextronics Technologies (India) Private Limited (supra), held that under section 144C(10) of the Act, the learned Assessing Officer had no option, but to comply with the directions of the learned DRP and any order passed in disregard to such directions vitiates the entire exercise. Since such an order is without jurisdiction and null and void, the same is liable to be quashed. On the face of these two judgements of the Hon'ble

High Courts and respectfully following the same, we hold the issue in favour of the assessee and quash the impugned order. All the consequential orders do not survive.

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

Order pronounced in the open court on this the 31<sup>st</sup> day of October, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 31/10/2023

TNMM

Copy forwarded to:

1. Uber India Research and Development Private Limited, Sy. No. 13,  
11<sup>th</sup> Floor, Western Pearl Building, Kondapur, Hyderabad.
2. The Dy. Commissioner of Income Tax, Circle-8(1), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD