

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 3232 to 3235/Mum/2018**

(Assessment Year: 2006-07 to 2009-10)

Marriott International Inc  
C/o. Marriott Hotels India Private  
Limited  
303A, 304, Fulcrum, B-Wing  
Hiranandani Business Park  
Sahar road, Andheri (E),  
Mumbai-400 099

**(Appellant)**

**PAN No. AAECM8040K**

Vs.

Dy. Commissioner of Income  
Tax (International Taxation)  
3(2)(1)  
Room No.1607, 16<sup>th</sup> Floor,  
Air India Building,  
Nariman Point,  
Mumbai-400 021

**(Respondent)**

**Assessee by** : Shri Paras Savla/ Pratik Poddar, AR  
**Revenue by** : Shri Ajay Kumar Sharma, CIT DR

**Date of hearing:** 07.12.2023

**Date of pronouncement :** 29.01.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. All these four appeals have been recalled by the order of the coordinate bench in miscellaneous application number 220 – 223/M/2022 for assessment year 2006 – 07 to assessment year 2009 – 10 as per order dated 20/9/2023 wherein the additional ground raised by the assessee in the original appeal was not decided by the coordinate bench and therefore it was found that there is an error in the order of the coordinate bench dated 6 May 2022 in ITA number 3232 – 3235/M/2018 for

the above respective years. Therefore, now the only pending issue in this appeal is to decide on the additional ground raised by the assessee for all these years.

02. For all these years the assessee has raised the following identical additional ground of appeal: –

On the facts and circumstances of the case and in law, the draft assessment order dated February 29/2016 passed by the assessing officer along with the notice of demand under section 156 of the income tax act, 1961 (the act) is bad in law as the same has been passed in violation of provisions of section 144C of the act.

03. It is prayed by the application for additional ground that the above ground is jurisdictional in nature, no fresh facts are required to be investigated, could be raised at any time during the year and is bona fide, therefore should be admitted.
04. Identical additional grounds were raised for all these four assessment years.
05. The learned departmental representative vehemently objected to the same and stated that assessee could not raised this ground before the lower authorities and also in the original proceedings but is now

raising in the second round. Therefore, now this ground should not be admitted.

06. We have carefully considered the rival contention and perused the additional ground raised by the assessee along with the application thereof wherein it is found that this ground is jurisdictional in nature, goes to the root of the issue, does not require any investigation of facts, failure to raise this grounds earlier is a bona fide omission, therefore, this ground of appeal is admitted for all these years.
07. Coming to the facts for assessment year 2006 – 07 which is the first year in bunch of all these appeals, The facts for that year shows that
- a. the assessee filed return of income on 30/11/2006 at ₹ 26,186,356/- which was picked up for scrutiny and assessment was completed on 25/11/2008 assessing the total taxable income at ₹ 127,745,463/-.
  - b. The assessee filed appeal before the learned CIT – A who passed an order dated 30/12/2010 confirming the order of the assessing officer.
  - c. This order was challenged before the coordinate bench in ITA number 1996 and 1997/M/2011 wherein the issue was restored to the file of the assessing officer. The said

restored assessment proceedings were taken up.

d. This restored assessment proceedings resulted into a draft assessment order passed by the learned assessing officer under section 143 (3) read with section 254 with section 144C (1) of the income tax act, 1961 on 29/2/2016 assessing the total income of the assessee at ₹ 127,745,463/-.

e. The learned AO also computed the tax in ITNS 150 accompanied with the assessment order. The ITNS 150 is a notice of demand under section 156 of the act dated 29/2/2016 which computed the outstanding demand of ₹ 30,335, 927/-. It is also accompanied by the income tax computation form wherein the brief details of this outstanding demand are mentioned.

08. Based on this, the argument of the learned authorized representative is that the draft assessment order passed by the assessing officer along with the notice of demand under section 156 of the Act is bad in law as the same has been passed in violation of provisions of section 144C of the income tax act 1961. For this proposition he relied on the several judicial precedent submitted in a paper book containing 216 pages wherein 16 judicial precedents were relied upon.

09. The learned departmental representative vehemently objected to the above submission and submitted that demand notice has been attached to the draft assessment order but no prejudice caused to the assessee as it has not been acted upon. He further submitted that the demand notice is also a draft therefore no recovery could have been made on that basis.
010. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, in this case the draft assessment order is passed which is also accompanied by the notice of demand issued under section 156 of the income tax act on the same date along with the computation of tax payable by the assessee. We find that the issue is identical to the facts of the case of the Cisco Systems services BV decided by the honourable Karnataka High Court in 456 ITR 50 on 24/2/2023 wherein the facts were that the assessee received the notice of demand under section 156 of the income tax act 1961 along with the draft assessment order under section 143 (3) of the act passed by the learned AO. The honourable High Court held that provisions of section 144C lays down a detailed procedure wherein the assessing officer is required to forward a draft of the proposed order of assessment to the assessee. The assessee may file its acceptance/ objections before the dispute resolution panel and the AO. If the assessee intimates

acceptance of no objections or are not received within 30 days, the AO shall complete the assessment. Where the DRP receives any objections from the assessee, it shall issue necessary directions to the assessing officer to enable him to complete the assessment after considering the documents/material mentioned in section 144C (6) which includes the draft order. Before issuing the directions, the DRP may also make such further enquiry by any income tax authority. Upon receipt of the direction from dispute resolution panel the AO shall in conformity with a direction complete the assessment within one month from the end of the month in which the direction is received. Notice of demand under section 156 may be issued after computation of the assessment under section 144C (13) of the act. In that case, it was also claimed by the revenue that the order dated December 28, 2018 was a draft assessment order but the honourable High Court held that the assessing Officer has directed the issuance of demand notice and also initiated penalty proceedings. The honourable High Court also held that a provision of section 292B of the act does not come to the rescue of the revenue.

011. In the present case before us in the draft, assessment order dated 22/3/2016 the assessing officer in the last paragraph has directed computation of total tax payable as per ITNS 150, which was part of the order. The penalty under

section 271 (1) © is also initiated for the concealment of income in not reporting the receipts. In view of this we do not find any reason to not to follow the decision of the honourable Karnataka High Court wherein the draft assessment order so passed is quashed. Therefore, the additional ground filed by the assessee for assessment year 2006 – 07 in ITA number 3232/M/2018 is allowed and draft assessment order is quashed.

012. For assessment year 2007 – 08 the identical facts exist and assessment order was passed on February 29/02/2016 under section 143 (3) read with section 254 read with section 144C (1) of the income tax act 1961 determining total income of the assessee at ₹ 213,292,618/-. In the last paragraph of the assessment order, the learned assessing officer has held that computation of total tax payable is as per ITNS 150 accompanied and is a part of the order. Further the penalty under section 271 (1) © is initiated for furnishing of incorrect particulars of income. The draft assessment order was accompanied by the notice of demand under section 156 of the income tax act, 1961 dated 29/2/2016 computing the demand payable of ₹ 2,322,300/-. Along with that income tax computation form was also attached showing the demand payable of ₹ 2,322,300. Therefore the facts in the case of the assessee for assessment year 2007 – 08 is identical to the facts in case of the assessee for assessment

year 2006 - 07 wherein we have following the decision of the honourable Karnataka High Court in case of Cisco (supra) has quashed the draft assessment order. Therefore, for the similar reasons appeal of the assessee is allowed by admission of the additional ground and allowing the ground. Accordingly, ITA number 3233/M/2018 for assessment year 2007 - 08 is allowed.

013. For assessment year 2008 - 09 identical facts exist where the assessment order passed on February 29, 2016 under section 143 (3) read with section 254 read with section 144C (1) of the income tax act dated 29/2/2016 assessing the total income of the assessee at ₹ 185,318,070 by the draft assessment order accompanied with the notice of demand under section 156 of the income tax act along with the income tax computation form computing the tax payable of Rs. 130,07,780/-.
014. Further for assessment year 2009 - 10, draft assessment order was passed on 29/2/2016 under section 143 (3) read with section 254 read with section 144C (1) of the income tax act 1961 on 29/2/2016 along with the notice of demand under section 156 of the income tax act computing the tax payable of ₹ 33,277,830/- along with the income tax computation form giving the breakup of the above tax demand.

015. For both the above assessment years on identical facts and circumstances, we have quashed the assessment order passed for the assessment year 2006 – 07 following the decision of the honourable Karnataka High Court in case of Cisco (supra). For similar reasons, following the same decision, we also quash the draft assessment orders for assessment year 2008 – 09 and 2009 – 10
016. In the result, by allowing the additional ground raised by the assessee for all these four years, the draft assessment orders for those years are quashed and appeal of the assessee are allowed.

Order pronounced in the open court on 29.01.2024.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.01.2024

*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,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai