

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 240/Kol/2019  
Assessment Year: 2010-11  
&  
I.T.A. No. 241/Kol/2019  
Assessment Year: 2011-12

<b>Skylark Fiscal Services Private Limited</b> Room No.-506, 5 <sup>th</sup> Floor Shubham 1, Sarojini Naidu Sarani Kolkata - 700017 [PAN: AADCS7738R]	Vs	<b>Deputy Commissioner of Income Tax, Circle-8(2), Kolkata</b>
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Ketan K. Ved, C.A.
Revenue by :	Shri Rakesh Kumar Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 07/02/2024  
घोषणा की तारीख /Date of Pronouncement: 28/02/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

These present appeals are directed at the instance of the assessee against the separate orders of the Assistant Commissioner of Income – Tax, Circle-8(2), Kolkata [hereinafter the “ld. AO”] even dt. 06/12/2018 for the Assessment Years 2010-11 and 2011-12; framed u/s 144C(13)/147/143(3) of the Income Tax Act, 1961 (“the Act”) as per the directions of the Dispute Resolution Panel -2, New Delhi, vide order dt. 29/11/2018.

2. Before adverting to the main grounds of appeal we will first take up the additional ground raised by the assessee and the same reads as follows:-

**"3.0. Re.: Validity of the re-assessment order passed beyond the time limit stipulated under section 144C(13) r.w.s. 143(3) of the Act**

*The Learned Assessing Officer has erred in not passing the final assessment order within the time limit specified."*

3. In support of this additional ground, the assessee has filed written submissions, which reads as under:-

*"Brief Note on the issues involved in these appeals<sup>1</sup>) and the arguments of the Appellant thereon;*

1. *Vide its letter dated 09 August 2019 (filed on the same date), the Appellant had raised an additional ground of appeal, for both the years involved, challenging the validity of the Final Assessment Order(s) dated 06 December 2018 passed by the Assessing Officer u/s. 144C(13)/147/143(3) of the Act, in view of the fact that the same was passed beyond the statutory time limit prescribed u/s. 144C(13) of the Act.*

2. *In the instant case, since the Appellant was an "eligible assessee" as defined in section 144C of the Act, the Assessing Officer had passed a Draft Assessment Order dated 27 December 2017 u/s. 144C(1) r.w.s. 144A/147/143(3) of the Act making adjustments to the total income as returned by the Appellant for the years under consideration.*

3. *The Appellant had filed its objections against the said Draft Assessment Order before the Dispute Resolution Panel ("DRP").*

4. After considering the Objections raised and the arguments made by the Appellant, the DRP had issued its Directions u/s. 144C(5) of the Act.

5. In terms of section 144C(13) of the Act, the Assessing Officer had to complete the assessment for the years under consideration within the time limit specified therein. The said section 144C(13) of the Act is reproduced hereunder for ready reference:

(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 or section 153B, 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.

6. The aforesaid Directions issued by the DRP u/s. 144C(5) of the Act, were received by the Assessing Officer on 03 October 2018. This fact is clearly evident from the letter dated 11 April 2019 received by the Appellant from the Assessing Officer, which is on record.

7. Considering the fact that the Directions of the DRP was received by the Assessing Officer on 03 October 2018, the time limit prescribed u/s. 144C(13) to pass the Final Assessment Order ended on 30 November 2018 as explained hereunder:

a. Direction of the DRP received by the AO on 03 October 2018 i.e. in the

month of October 2018, which ends on 31 October 2018;

b. One month from the end of the month in which the directions are received therefore ended on 30 November 2018.

8. However, in the instant case, the Assessing Officer has passed the Final Assessment Order(s) for the 2 years under consideration only

on 06 December 2018, which is beyond the due date of 30 November 2018 which is prescribed in section 144C (13) of the Act.

9. Accordingly, it is submitted and it will be appreciated that the impugned Final Assessment Order(s) passed by the Assessing Officer are barred by limitation and should be struck down as such.

10. Reliance in this regard is also placed on the following decisions wherein too, in identical circumstances, the Final Assessment Order passed beyond the due date prescribed in section 144C (13) of the Act have been quashed as void-ab-initio being barred by limitation;

a. Decision of the Cochin Bench of the ITAT in the case of Envestnet Asset Management (India) (P,) Ltd. v/s. ACIT reported in [2015] 53 taxmann.com 430 (Cochin - Trib.); and

b. Decision of the Delhi Bench of the ITAT in the case of Dentsply India (P.) Ltd. v/s. ITO reported in [2019] 106 taAmanri.com 420 (Delhi - Trib.).

11. During the course of the hearing, the Departmental Representative ("CIT(DR)") also argued that, in this case, the DRP has vide its Order dated 29 November 2018, rectified a few errors in its Directions dated 25 September 2018 and hence the Final Assessment Order dated 06 December 2018 can be considered to be within the time limit if one were to consider the said rectified DRP Directions.

12. Here, it is respectfully submitted that, the time limit u/s. 144C(13) of the Act, for passing the Final Assessment Order is to be reckoned from the date on which the Directions of the DRP passed u/s. 144C(5) of the Act are received by the Assessing Officer.

13. In this case, admittedly the said Directions issued by the DRP u/s. 144C (5) of the Act were passed on 25 September 2018 and which were received by the Assessing Officer on 03 October 2018 and hence the time limit for passing the Final Assessment Order should be counted from the said date and not from any other date.

14. *The Order dated 28 November 2018 referred to by the CIT(DR) is not an Order u/s. 144C(5) but has been passed by the DRP under Rule 13 of the Income Tax (Dispute Resolution Panel) Rules, 2009 as is clearly evident for the said Order.*

15. *Hence, there can be no question of considering the date of 28 November 2018 for computing the time limit for passing the Final Assessment Order by the Assessing Officer.*

16. *Here, it would also not be out of place to point out that the Assessing Officer in his impugned Order dated 06 December 2018 makes no reference to the rectification Order passed by the DRP on 28 November 2018 and acknowledges the fact that Directions of the DRP u/s. 144C(5) of the Act are dated 25 September 2018 {refer last paragraph on page No. 2 of the impugned Final Assessment Order}.*

17. *Accordingly, it is submitted and it will be appreciated that the time limit to pass the Final Assessment Order can only be considered from the 03 October 2018 which is the date on which the DRP Directions u/s. 144C(5) were received by the Assessing Officer.*

*Prayer:*

*In view of the foregoing, the impugned Final Assessment Order(s) dated 06 December 2018 passed by the Assessing Officer being barred by limitation should be struck down."*

4. At the outset, the ld. Counsel for the assessee submitted that the assessment order passed u/s 144C(13)/147/143(3) of the Act dt. 06/12/2018, is barred by limitation as the last date of framing the assessment was 30/11/2018 but the assessment order has been framed on 06/12/2018, for both the Assessment Years in question and on this ground of limitation, both the assessment orders, deserve to be quashed.

On the other hand, the Id. D/R, submitted that the directions of the Id. DRP were sent to the Id. Assessing Officer as well as the Id. Transfer Pricing Officer (in short 'TPO') and the limitation period for the Assessing Officer starts from the date when he receives the information from the TPO of having given effect to the DRP's order and if the same is considered then the order is not barred by limitation.

5. We have heard rival contentions and perused the material placed before us. We notice that the assessee is a private limited company engaged in the export of iron order. Assessment Year 2010-11 and 2011-12 are under consideration in the instant appeals. The facts for both the years remain the same except for the figures. For Assessment Year 2011-12, the return of income was filed on 21/09/2011 declaring total income of Rs. 10,25,400/-. Notice u/s 148 of the Act was issued and duly served after recording the reasons. During the course of assessment proceedings, the Id. Assessing Officer observed that during the year, certain international transactions entered by the assessee with its AEs, namely, M/s. S.K. Resources Ltd.. For the purpose of computing the arms' length price, the said international transactions were referred to by the Transfer Pricing Officer (TPO). Subsequent to the receiving of the order of the TPO, the Id. Assessing Officer made the Transfer pricing adjustments of Rs.3,16,02,298/- vide draft order dt. 24/10/2017. Thereafter the

assessee filed objection before the ld. DRP against the draft order u/s 144C(1) r.w.s. 144A/147/143(3) of the Act. The ld. DRP after hearing the contentions of the assessee passed its order u/s 144C(5) of the Act on 25/09/2018 directing the ld. Assessing Officer to take recommended action. Undisputedly the Assessing Officer received the order of the ld. DRP on 03/10/2018. This order of ld. DRP was also sent to the ld. TPO. Now, the time limit under the Act within which the Assessing Officer has to give effect to the direction of the ld. DRP is prescribed u/s 144C(13) of the Act which reads as under:-

*“(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](#) [or section 153B], 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.”*

6. Now, the contention of the ld. D/R is that after the directions of the ld. DRP, firstly the ld. TPO had to give effect to the adjustments made by him in the original TPO order and thereafter when the necessary effect is given, the same has to be communicated to the Assessing Officer which ld. D/R has claimed that the ld. Assessing Officer received the said communication in the month of November, 2018, and therefore, the time limit for the Assessing Officer was expiring on 31/12/2018 and, therefore, there is no delay in giving effect to the ld. DRP directions.

6.1. We, however, do not agree with this contention of the ld. D/R because in our humble understanding, sub-section 13 of Section 144C of the Act only refers to the Assessing Officer and there is no mention about the TPO. Sub-section 13 of Section 144C of the Act prescribes the time limit of one month from the end of the month in which the directions of the ld. DRP issued u/s 144C(5) of the Act is received. In the instant case, it is not in dispute that the order of the ld. DRP was received by the Assessing Officer on 03/10/2018 and the last date for giving effect to the order of the ld. DRP was one month from the end of the month in which the direction was received i.e., the last day to give effect was 30/11/2018. However, the assessment order in question has been framed on 06/12/2018, which is beyond the prescribed time limit.

6.2. The Co-ordinate Bench of ITAT Cochin in the case of *Envestnet Asset Management (India) (P.) Ltd. vs. ACIT* reported in [2015] 53 *taxmann.com* 430 (Cochin Trib.) dealing with the similar issue has observed that where the Assessing Officer passed an assessment order after expiry of one month from the end of the month in which the directions of DRP was received in terms of Section 144C(13) of the Act, the said order was set aside for being barred by limitation.

Similar view was also taken by the Co-ordinate Bench of the ITAT Delhi in the case of *Dentsply India (P.) Ltd. v/s. ITO*.

7. Respectfully following the decision of the Co-ordinate Benches referred *supra* and also considering the provisions of Section 144C(5) and (13) of the Act, we find that the directions of the Id. DRP u/s 144C(5) were issued on 25/09/2018 and the same were communicated to the Assessing Officer on 03/10/2018 and the time limit to give effect to the order of the Id. DRP was expiring on 30/11/2018 but since the Assessing Officer failed to adhere to the said provisions and gave effect to the order of the Id. DRP on 06/12/2018, the impugned assessment orders u/s 144C(13)/147/143(3) of the Act for Assessment Year 2010-11 and similarly for Assessment Year 2011-12, are barred by limitation and, therefore, are quashed. Thus, the additional ground raised by the assessee are allowed for both the Assessment Years.

8. As the assessment orders are quashed, no addition remains and, therefore, the remaining grounds of appeal are rendered as academic in nature and need no adjudication.

9. In the result, appeals of the assessee are allowed.

**Order pronounced in the Court on 28<sup>th</sup> February, 2024 at Kolkata**

Sd/-  
(SONJOY SARMA)  
JUDICIAL MEMBER

Sd/-  
(DR. MANISH BORAD)  
ACCOUNTANT MEMBER

Kolkata, Dated 28/02/2024

*S/S*

**I.T.A. No. 240/Kol/2019**

**Assessment Year: 2010-11**

**&**

**I.T.A. No. 241/Kol/2019**

**Assessment Year: 2011-12**

**Skylark Fiscal Services Private Limited**

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**