

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" DELHI**

**BEFORE SHRI SAKTIJIT DEY-VICE PRESIDENT
&
SHRI PRADIP KUMAR KEDIA-ACCOUNTANT MEMBER**

I.T.A. No.1628/DEL/2022
Assessment Year 2018-19

Nikon India Private Ltd. Plot No.71, Sector-32, Institutional Area, Gurgaon, Haryana	Vs.	ACIT Central Circle -3(1) Gurgaon
TAN/PAN: AACCN5100F		
(Appellant)		(Respondent)

Appellant by:	Shri Vishal Kalra, Advocate Shri Ankit Sahni, Advocate Shri Yishu Goel, AR		
Respondent by:	Shri Rajesh Kumar, CIT (DR)		
Date of hearing:	29	02	2024
Date of pronouncement:	19	03	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been instituted by the assessee against the assessment order dated 30.06.2022 passed by the AO under Section 143(3) r.w. Section 144C(13) of the Act for the AY 2018-19 in question.

2. The grounds of appeal raised by the assessee read as under:

"1. That on the facts and circumstances of the case and in law, the AO has erred in assessing the total income of the Appellant under section 143(3) read with sections 144(13) of the Act, for the subject assessment year at INR 135, 15,97,200 [which has been subsequently revised to INR 183,88,53,900 vide order dated July 01, 2022, passed under section 154 r.w.s. 143(3)] as against the returned income of INR 82,67,73,620.

2. That on the facts and circumstances of the case and in law, the assessment order passed by the AO is bad in law and void ab-initio as the same has been passed without following the mandatory provisions of section 144C(13) of the Act and the rectification order dated July 01,2022, passed in pursuance to such invalid order is also equally bad in law.

3. That on the facts and circumstances of the case and in law, the order passed by the DRP is bad in law and void ab-initio as the same has been passed without following the mandatory provisions of section 144C(8) of the Act.

4. That on the facts and circumstances of the case and in law, the orders passed by the AO / TPO were bad in law as the pre-requisite for applying Chapter - X, i.e., existence of an international transaction between two Associated Enterprises ("AE") under section 92B of the Act, was not satisfied or existed as there was no agreement, understanding or arrangement between the Appellant and the AE for incurrence of such expenditure by the Appellant and the Dispute Resolution Panel ("DRP") erred in upholding the same.

4.1 That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred in re-characterizing the Appellant as service provider rendering brand building services to its AE, without appreciating that it is a full risk bearing distributor incurring AMP expenditure in the course of its own business to promote its sales in India.

5. That on the facts and circumstances of the case and in law, the orders passed by the AO / DRP / TPO were bad in law as the unilateral AMP expenditure incurred by the Appellant was categorized as international transaction' under chapter X of the Act, by the AO / DRP / TPO, contrary to law in as much the AO neither granted any opportunity of being heard to the Appellant, nor passed a speaking order recording his satisfaction in relation to characterisation / categorization of the AMP expenditure as an 'international transaction'.

6. That on the facts and circumstances of the case and in law, the TPO erred in re-characterizing the unilateral AMP expenditure being payments made by Appellant to independent third parties as an 'international transaction' under chapter X of the Act, particularly when section 92CA of the Act enables the TPO only to compute the arm's length price ("ALP") of 'international transaction. Further, the DRP erred in not adjudicating the objections challenging the jurisdiction of the TPO in this regard.

6.1 That on the facts and circumstances of the case and in law, the TPO erred in suo-moto benchmarking the alleged international transaction related to AMP expenditure without their being any order or reference from the AO in relation thereto.

Notwithstanding and without prejudice to the above grounds that the AMP expenditure incurred by the Appellant does not constitute an international transaction under Chapter X of the Act, the Appellant craves to raise following grounds on merits:

7. That on facts and circumstances of the case and in law, DRP has erred in not directing AO / TPO to exclude the sales and distribution expenditure from the quantum of alleged excessive AMP expenditure while benchmarking the alleged international transaction using substantive and / or protective methods, disregarding the decision of the Hon'ble Tribunal in Appellant's own case and various decisions of the High Courts).

8. That on the facts and circumstances of the case and in law, the AO / TPO grossly erred in applying Bright Line Test ('BLT') for making

transfer pricing adjustment amounting to INR 101,10,35,905, on protective basis, without appreciating that BLT has been expressly rejected by the Hon'ble Tribunal in Appellant's own case for earlier AYs. The DRP further erred in upholding the action of the AO/ TPO.

9. That on facts and circumstances of the case and in law, the AO / DRP / TPO have erred in making an adjustment in respect of alleged AMP expenditure as an international transaction, without appreciating that adjusted gross profit margin as well as operating margin of the Appellant was better than the comparable companies.

10. That on the facts and circumstances of the case and in law, AO / DRP / TPO have erred in not appreciating that the Appellant had not provided any value added / brand building services to its AE by incurring AMP expenditure, and therefore, no mark-up could have been charged / levied on such expenditure, even if the same was to be characterized as an 'international transaction'.

10.1. Notwithstanding and without prejudice that no mark-up could have been levied, on the facts and circumstances of the case and in law, AO / TPO have erred in cherry picking the comparable companies for purpose of computing the mark-up for the alleged AMP as an international transaction. The DRP further erred in upholding the above action of the Assessing Officer / TPO, observing that the Appellant has not filed any submissions on comparables, ignoring the details submissions made in the DRP objections.

10.2. Notwithstanding and without prejudice that no mark-up could have been levied, on the facts and circumstances of the case and in law, the AO / TPO have erred in selection of improper comparable companies for application of mark-up, being entities providing market support functions and without sharing a search process for identifying the comparable companies. Further, the DRP erred in upholding the erroneous approach of AO / TPO.

10.3. Notwithstanding and without prejudice that no mark-up could have been levied, on the facts and circumstances of the case and in law, AO / DRP / TPO have erred in not considering the search conducted by the Appellant on a without prejudice basis.

11. That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred in not granting set-off of excess profit from distribution of products while benchmarking the alleged international transaction of incurrence of excessive AMP expenditure.

12. That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred in not granting quantitative / economic adjustments (such as non-payment of royalty / expenses incurred on new product launches) while quantifying arm's length price of the alleged international transaction of AMP expenditure.

13. That on the facts and circumstances of the case and in law, AO / DRP erred in not allowing the deduction amounting to INR 10,44,363 being bonus paid as per the provisions of Section 43B of the Act.

14. That on the facts and circumstances of the case and in law, the NEAC have erred in levying / charging interest under sections 234B and 234C of the Act.”

3. Briefly stated, the assessee-company (Nikon India Pvt. Ltd.) operates as a wholly owned subsidiary of Nikon Singapore Pte. Ltd. The assessee-company is engaged in import, sales and distribution of Nikon Imaging products in India and it also provides after-sales services for the complete range of Nikon Imaging and Instrument products. The assessee filed return of income (ROI) for AY 2018-19 in question at Rs.82,67,73,620/-. The ROI so filed was subjected to scrutiny assessment. A draft order under Section 144C(1) dated 29.09.2021 was passed proposing TP adjustments towards alleged international transactions alleging excessive Advertisement / Marketing Promotion (AMP) expenditure for development of brand owned by its foreign AE.

4. Aggrieved, the assessee filed objection against the said order before the Dispute Resolution Panel (DRP) under Section 144C(2) of the Act. The DRP vide order dated March 17, 2022 endorsed the AMP spends to be bracketed in the league of ‘international transaction’ and issued certain directions to the TPO/AO under Section 144C(5) of the Act. the TPO passed another order dated May 19,2022 giving effect to the directions of DRP and modified the additions towards AMP at Rs. 1,01,10,35,905/- Subsequent to the DRP order, the Jurisdictional Assessing officer (JAO) eventually passed final assessment order dated June 30,2022 under Section 143(3) r.w. Section 144C(13) of the Act. A TP adjustment of Rs. 49,97,50,823/- was however made in the final assessment order towards alleged international transactions of AMP alleged to be incurred for development of the brand owned by its foreign AE. The AO also made certain additions of Rs.2,40,28,377/- as disallowance of reversal of provisions and another disallowance of bonus under Section 43B of the Act.

5. The assessee preferred appeal before the Tribunal against the impugned final assessment order.

6. When the matter was called for hearing, the Id. counsel for the assessee at the outset submitted that although several legal and factual grounds have been taken as per the grounds of appeal, he seeks to advert to Ground No.2 of the appeal at the outset and seeks to challenge final assessment order so passed on the pivotal issue that such order is vitiated in law owing to bar of limitation and thus *non est* in law at the threshold. To buttress such plea, the Id. counsel pointed out that directions of the DRP issued under s. 144C(5) are dated March 17, 2022. The assessee received the same under covering letter dated March 30, 2022 on April 11, 2022 via speed post. As a corollary, the copy of DRP directions has been also simultaneously provided to the AO. Section 144C(13) provides embargo of limitation owing to which the stipulated date to pass the final assessment order is 30 days from the end of the month in which the DRP directions were received by the AO. The AO, as per record, has supposedly received the DRP directions in the month of March, 2022. The AO however passed the final assessment order belatedly on 30 June 2022. Thus, the final assessment order has been passed beyond the limitation period available upto 30.04.2022 being one month from the end of the month in which the DRP directions have supposedly served on the AO. The Assessee thus contends that the final assessment order passed is in contravention of the limitation period prescribed under Section 144C(13) of the Act and clearly barred by limitation and hence bears no existence in the eyes of law. To buttress his contentions on bar of limitation, the assessee cited several case laws which shall be dealt with at appropriate place.

7. Owing to the sharp allegation of the assessment order being barred by limitation itself and thus void and can not be acted upon in law, an opportunity was given to the Id. CIT-DR to obtain report from the AO in this regard. The Revenue filed its report dated 05.07.2023 and thereafter again another elaborate report dated 19.01.2024 was filed in support of its claim that the assessment order has been duly passed within the stipulated time period in tune with Section 144C(13) r.w. Section 144B

of the Act. The Id. AR also filed a letter dated 07.11.2023 along with affidavit of the AO in support of its contention that the DRP directions were actually received by the AO in the month of May 2022 rather than March/April 2022 as contended on behalf of the Assessee and hence the final assessment order was duly passed within the limitation period and without any breach of s. 144C(13) of the Act. The copy of such reports was provided to the assessee and the hearing continued thereafter.

8. The Id. DR for the Revenue, on its part, vehemently objected to such contentions on bar of limitation raised on behalf of the assessee. The Report of the AO, noted above, was extensively referred and it was asserted that the limitation period requires to be counted from the date on which the AO actually received the DRP directions and became privy to such order, which in the instant case stands at 2nd May, 2022. The Id. DR contended that mere delivery of directions in the portal of NFAC cannot be reckoned and equated with receipt of order by AO. The Ld. CIT-DR extensively referred to faceless scheme in vogue and the provisions of s. 144B governing methodology and procedures adopted in newly introduced 'faceless assessment' and attempted to dispel the purportedly wrong notions on delivery of DRP order to the AO[faceless or jurisdictional] in a faceless environment.

9. As noted above, the assessee has predominantly challenged the legal existence of the impugned assessment order passed under Section 143(3) r.w. Section 144C(13) of the Act. Since the challenge involves bar of limitation for passing the assessment order and thus strikes to the root of the whole controversy, it will be ostensibly appropriate to adjudicate this aspect of the appeal in primacy to other aspects.

9.1 To determine the controversy of limitation, it may be appropriate to list chronology of events as under:

<i>Date</i>	<i>Particulars</i>
<i>March 17, 2022</i>	<i>Date of DRP directions, bearing document No. ITBA/DRP/M/144C(5)/2021- 22/1042081052(1), with manual</i>

	<i>signatures.</i>
<i>March 25, 2022</i>	<i>Manual signing date of DRP directions.</i>
<i>March 30, 2022</i>	<i>Intimation letter bearing DIN & Document No. ITBA/DRP/S/91/2021-22/10420811381, evidencing the date of upload of DRP directions on ITBA portal.</i>
<i>April 7, 2022</i>	<i>TPO issued notice bearing DIN No. ITBA/COM/F/17/2022-23/1042633765(1) to give effect to the DRP directions.</i>
<i>April 11, 2022</i>	<i>Physical receipt of DRP directions by Appellant via speed post.</i>
<i>June 30, 2022</i>	<i>AO passed the final Assessment Order.</i>

9.2 From the various dates listed above, it is the case of the assessee that while the DRP directions have been issued in the month of March, 2022 and uploaded in ITBA Portal, the service of the order to the AO stands completed on that date. Consequently, it was incumbent upon the AO to complete the assessment within one month from the end of the month in which such directions were received by it in terms of Section 144C(13) of the Act. The final assessment has however been passed on 30th June, 2022 as against the time limit available upto 30th April, 2022 and therefore, impugned final assessment order under challenge is barred by limitation.

10. The Revenue, on the other hand, contends that in terms of s.144C(13), it is the receipt of direction by the AO, in distinction to mere issue of direction, is the starting point for determination of limitation. The Revenue contends that while the DRP directions have been issued on 17th March, 2022, such directions were uploaded manually in the system. The Revenue refers to and relies upon the report of the AO dated 12.01.2024 annexed to the covering letter dated 19.01.2024 along with 'Systems Report' annexed to such report of the Assessing Officer, to submit that in the instant case, the DRP order has been uploaded by using the option of manually entering the details of Section 144C(5) order to the System and therefore, such DRP order passed does not automatically become visible inside the 'Case History Noting' of pending assessment

proceedings work – item of the AO (JAO/FAO) in the faceless environment. The Revenue also refers to the ‘Systems Report’ to submit that the DRP order was uploaded in the ‘Case History Noting’ of the pending assessment proceedings by the DC/ACIT/NeAC-2(2)(2) Delhi on 02.05.2022 at 15:37:02 p.m. The AO thus could obtain custody of such order on 02/05/2022 and not before. The uploading of order manually to NFAC *per se* is not the receipt of the order by an AO contemplated under s. 144C(13) of the Act, be it FAO or JAO. The JAO (in the instant case) thus was having direct access to DRP order from May 2, 2022 and was accountable for actions from this date. The Revenue thus contends that while the DRP order was uploaded manually, the said order was lying with National Faceless Appeal Centre (NFAC) only but was not available in the ‘Case History Noting of the assessment proceedings’ with the assessment unit empowered by the Act to carry out assessment functions. With reference to S. 144B of the Act providing for scheme of faceless assessment and procedures inbuilt therein, the revenue contends that there is a qualitative difference between the NFAC and the assessment unit working under its umbrella. The NFAC requires to assign the case to the assessment unit to put the assessment action in motion. The NFAC is a centralized agency and a mere facilitator or a conduit to carry out the assessment by the designated assessment unit. Thus, mere uploading of DRP directions with NFAC would not tantamount to providing the directions to the AO i.e. assessment unit. The revenue thus reinforces its case that the DRP directions was actually uploaded in the ‘Case History Noting of the assessment unit’ on 02.05.2022 and therefore, the limitation period would run from the end of the month of receipt of order of the assessment unit in contrast to uploading of the order with NFAC manually by the office of the DRP.

11. Adverting to s. 144B of the Act, The Revenue submits that on a nuanced understanding of scheme of faceless assessment, it will be borne out that the NFAC merely serves as a facilitation centre and mere uploading of DRP order with NFAC does not tantamount to making

available such order to the concerned assessment unit. The date of receipt of the directions to the assessment unit/ AO is thus the date on which the directions are uploaded and finds way in the 'Case History Noting of the assessment proceedings' pending before the concerned AO at that time. The accountability of the AO to act upon, begins from this date when any document figures in the case history noting.

12. In elaboration, the Revenue refers to clause (xxvii), (xxviii) and (xxix) to sub-section (1) to Section 144B to canvass the subtle but vital difference on the role of NFAC *vis a vis* assessment unit in the matter of implementation of DRP directions. The said clauses when read in combination, it can be easily gathered that NFAC is merely required to consign the DRP directions to assessment unit and the NFAC centre merely acts as a channel to facilitate the conduct of faceless assessment proceedings in a centralized manner. The receipt of an order or directions by the NFAC centre can not be read to be receipt of such order / directions by the assessment unit entrusted with the task of assessment. Significantly, the DRP order has been uploaded with NFAC manually and therefore, such manual uploading does not automatically get an entry or passage in the Case History Notings of the assessment unit. While the AO concerned can possibly access such information as a mere ITBA user by entering appropriate passwords such as PAN etc, the AO cannot be made accountable statutorily in the capacity of AO unless such information does figure in the case history noting. As per scheme of things, thus, the date of receipt of order by the assessment unit has to be necessarily counted as the date on which such document / DRP order becomes visible inside the Case History Noting of the assessment proceedings pending before an AO and not any date before. The role of NFAC is not that of an AO but it only act as a co-ordinating agency. The NFAC exercises some powers and functions of the AO concurrently in a limited manner to merely facilitate the conduct of faceless assessment proceedings contemplated under Section 144B of the Act. In the absence of the DRP order being visible in the Case History Noting, it is not

practically feasible for the assessment unit to proceed with the assessment. The limitation needs to be seen in this backdrop/ scheme of faceless assessment.

13. While the revenue professed its case in the light of s. 144B of the Act as noted above, the bench made enquiries about order sheet details annexed to covering letter dated 04.07.2023 placed by the AO before the Bench wherein it is observed that the assessment case is being transferred to JAO under Section 144B(8) of the Act for completion of assessment showing date of 22.04.2022. In this regard, the Revenue submits that the date of 22.04.2022 in the order-sheet merely represents the transfer of jurisdiction of 'assessment case' by faceless AO[FAO] to jurisdictional AO [JAO] to implement approval and directions of CBDT towards assignment of jurisdiction to JAO by the FAO. Such notings, by itself, can not be read to mean that the DRP order was available or delivered with the faceless AO (FAO) prior to in turn transfer of jurisdiction over the case to JAO. As claimed on behalf of the revenue, what was transferred was only the assessment case, i.e., jurisdiction vested initially with FAO was transferred to jurisdiction of JAO. The DRP order could not have been transferred by the FAO on 22.04.2022 to JAO in the absence of such record available in the 'Case History Noting' of FAO at the time of transfer of assessment case. The Revenue thus essentially submits that while the case was transferred by FAO to JAO in April 22, it does not in any manner requires to be understood that the DRP order was in possession of the FAO and was also transferred to JAO who ultimately passed the assessment order. As claimed, neither FAO nor the JAO were privy to DRP order before 02.05.2022 due to manual uploading of DRP order in the system. The DRP order gets reflected in the case history noting simultaneously only where such uploading is automated and system driven. The Revenue thus contends that the limitation would run from the date of service of order on the assessment unit which is 02.05.2022, be it FAO or JAO.

14. An affidavit dated 15th September, 2023 of the AO has been

referred to assert that as per the records of the AO, the directions of DRP passed vide order dated 17.03.2022 was received by the deponent of the affidavit, i.e. JAO- (DCIT) Circle-3(1) Gurugram on 02.05.2022 digitally after uploading the same by DC/ACIT (NeAC)-2(2)(2) Delhi i.e FAO.

15. The System's Report annexed in the status report of the AO filed by covering letter dated 19.01.2024 heavily relied upon on behalf of Revenue being relevant is extracted herein:

"Dear AO

Please refer to the trailing email.

In this regard, I am directed to furnish the requisite information as under:

Visibility of the DRP Orders to Assessing Officers (FAO or JAO):

(a) The DRP Order is reflected automatically in the pending assessment work-item (pending either with FAO or JAO), if DRP user initiates DRP proceedings in the ITBA DRP Module, by using the option of "SELECT DRAFT ORDER U/S 144C" in the screen. When DRP proceedings are initiated in this manner, this creates linkage with the Assessment Module and hence when DRP passes the order u/s 144C(5), such order is automatically reflected in the Case History Noting of AO (FAO or JAO) with whom the assessment work-item is pending.

(b) However, in a case wherein the DRP user initiates DRP proceedings by using the option of manually entering the details of draft order u/s 144C in the screen, (Manual to System), the DRP Order passed does not reflect automatically inside the case history noting of pending Assessment Proceedings work-item of the AO (JAO/FAO). The facts regarding the visibility of DRP orders - explaining the above is part of the 'FAQ on where the orders passed by DRPs can be seen by other ITBA users available in ITBA Help Guide on the ITBA Home Page. The document is available at S. No. 4(a) FAQ in the 'Assessment' folder and at S.No. 4 (d) in the "Faceless Assessment" folder.

Uploading of DRP directions/order in ITBA in the present case:

(a) As checked from system, in the present case, the DRP order u/s. 144C(5) was uploaded by the DRP in the system on 30.03.2022 at 3:03:34 PM. Since at the time of the creation of the DRP proceedings, the DRP had manually entered the details of draft order u/s 144C in the screen (Manual to System), the said DRP Order, when uploaded in ITBA on 30.03.2022, did not automatically become visible inside the case history noting of assessment proceedings pending before the AO at that time.

(b) Subsequently, the said DRP order u/s.144C(5) was uploaded in Case History/Noting of the pending assessment proceedings by the DC/ACIT(NeAC)-2(2)(2), Delhi on 02.05.2022. The relevant portion of Case History/Noting is extracted below:

<i>Date</i>	<i>Action/Description</i>	<i>From User</i>
<i>02/05/2022 15:37:02</i>	<i>Document/Response received from 'Uploading of document based on DIN/PAN-AY' screen</i>	<i>DC/ACIT (NeAC)-2(2)(2) DEL</i>

The information regarding when and how the DRP order was received by DC/ACIT (NeAC)-2(2)(2), Delhi, may be obtained from the National Faceless Assessment Centre (NaFAC).

Thus, as far as the Case History/Noting of the assessment proceedings in this case is concerned, the DRP order u/s 144C(5) appeared in the Case History/Noting on 02.05.2022 only.

However, as explained in the afore-mentioned FAQ, it is also a fact that, once the DRP order is uploaded/generated on the system by the DRP user, it becomes available on an almost real-time basis in the View/Download screen. The JAO or the FAO with whom the assessment proceedings are pending can view the DRP order by entering PAN of the case. It can be accessed by JAO/FAO from the 360 Degree facility also. The question as to whether the availability of the DRP order in '360 Degree or "View Download - Order/Letter/Notices Tab" functionality, without the order appearing in the 'Case History/Noting', would amount to receipt" of the order for the purpose of Section 144C(13) of the Act, is a purely legal question not within the purview of ITBA.

It may be reiterated that the ITBA team can only provide inputs with respect to the description of workflows in ITBA software and inputs regarding the information available in the system. Legal and administrative aspects vest with the field authorities/their hierarchies.

16. To appreciate the facts in perspective, it will also be relevant to reproduce the affidavit filed by the AO on the subject matter.

Affidavit

I, Sonia Nain, D/o Sh. Balwant Singh Nain, aged about 34 years presently holding the additional charge of Circle-3(1), Gurugram do hereby solemnly affirm and state as under:

1. I am, in my official capacity as Dy. Commissioner of Income Tax Officer, Circle-3(1), Gurugram is conversant with the facts and circumstances of the present case, as such, competent to swear the present affidavit.

2. That as per records of this office, the directions of Hon'ble DRP-1, New 7 Delhi passed vide order dated 17.03.2022 was received in this office on 02.05.2022(digitally) after uploading the same by DC/ACIT (NeAC)-2(2)(2), Delhi.

Verified at Gurugram, on this the 15th day of September, 2023 that the contents of the above affidavit are true and correct as per the official records maintained in this office and believed to be correct, no part of it is

false and nothing material has been concealed there from.

17. The order-sheet filed by the Revenue along with covering letter dated 04.07.2023 of the AO annexed to the covering letter dated

05.07.2023 filed by the Id. CIT-DR, ITAT New Delhi also throws light on the controversy and thus being critical also needs to be extracted.

22/04/2022	Transfer	RANGE Assessment Unit	-	Circle - 3(1), Gurgaon	
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Notings/Remarks: This assessment case is being transferred to you as JAO u/s 144B(8) of the Income-tax Act with the approval of CBDT for their completion within the limitation. The assessment cannot be finalized by Faceless AU because amended provisions of section 144B of the Act has become effective from 01.04.2022 and required changes in Systems/hierarchy is under implementation. Kindly note that as per FAU the limitation. In this case, is falling in the month of April 2022 on 25.04.2022.

22/04/2022	Transfer	RANGE Assessment Unit	-	Circle - 3(1), Gurgaon	
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Notings/Remarks: This assessment case is being transferred to you as JAO u/s 144B(8) of the Income-tax Act with the approval of CBDT for their completion within the limitation. The assessment cannot be finalized by Faceless AU because amended provisions of section 144B of the Act has become effective from 01.04.2022 and required changes in Systems/hierarchy is under implementation. Kindly note that as per FAU the limitation. In this case, is falling in the month of April 2022 on 25.04.2022.

02/05/2022	Document/Response received from 'Uploading of document based on DIN/PAN- AY' Screen	DC/ACIT (NeAC)- 2(2)(2) Del		Circle - 3(1), Gurgaon	AACCN5100F 2018-19. pdf
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Noting / Remarks:

Signature:

02/05/2022	Document/Response received from 'Uploading of document based on DIN/PAN- AY' Screen	DC/ACIT (NeAC)- 2(2)(2) Del		Circle - 3(1), Gurgaon	AACCN5100F 18.rar
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Noting / Remarks:

Signature:

02/05/2022	Response to Letter	Circle - 3(1) Gurgaon		AO - Regional e-Assessment Unit	Response to Letter 1043268433(1)- 31052022.pdf
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Noting / Remarks:

Signature:

31/05/2022	Response to Letter	Circle - 3(1) Gurgaon	AO - Regional e-Assessment Unit	Response to Letter 1043268433(1)-31052022.pdf
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Noting / Remarks:

Signature:

31/05/2022	Response to Letter	Circle - 3(1) Gurgaon	AO - Regional e-Assessment Unit	Response to Letter 1043268433(1)-31052022.pdf
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Noting / Remarks:

Signature:

30/06/2022	Response to Draft Order submitted.	Circle - 3(1) Gurgaon	Circle - 3(1) Gurgaon	
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Noting / Remarks: Objection filled by Assessee as per order

Signature:

30/06/2022	Order generated u/s. 143(3) of Income Tax Act, 1961	Circle - 3(1) Gurgaon	Nikon India Pvt. Ltd.	AACCN5100F-Order u/s. 143(3)-1043694861(1)-30062022.pdf
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Noting / Remarks: Objection filled by Assessee as per order

Signature:

30/06/2022	Action Taken	Circle - 3(1) Gurgaon	-	
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Noting / Remarks: Objection filled by Assessee as per order

Signature:

30/06/2022	Demand Notice generated u/s.156 of	Circle - 3(1) Gurgaon	Nikon India Pvt.	AACCN5100F_Demand Notice u/s.156_1043694894(1)_30062022.pdf
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	<i>Income Tax Act 1961</i>		<i>Ltd.</i>	
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Noting / Remarks: Objection filled by Assessee as per order

Signature:

<i>30/06/2022</i>	<i>Issued Computation sheet.</i>	<i>Circle – 3(1) Gurgaon</i>	<i>Nikon India Pvt. Ltd.</i>	<i>AACCN5100F_computatio Sheet_1043694892(1)_30062022.pdf</i>
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18. Three dates are relevant for determination of the controversy in hand and to kick-start the date on which limitation period is set in motion. Firstly, the date on which the DRP directions were issued, i.e., 17.03.2022 and uploaded manually on March 30, 2022 vide DIN number assigned on that date. Another date cropped up from the order-sheet filed on behalf of the Revenue stands on 22.04.2022 which signifies the transfer of assessment case from FAO (Range – Assessment Unit) to JAO (Circle-3, Gurgaon). The third date relevant for determination is 02.05.2022, i.e., the date on which the DRP directions were uploaded and stated to be found visible in the ‘Case History Noting of pending assessment’ on the records of JAO.

19. The Revenue contends that for the purposes of determination of limitation, the relevant date is 02.05.2022 on which the DRP directions were actually received by the jurisdictional AO in its ‘Case History Noting’ to enable it to proceed and continue with the assessment proceedings. The assessee, on the other hand, contends that the date on which the DRP directions were uploaded in ITBA portal / NFAC on 30th March, 2022 is the determinative date for count of limitation period under s. 144C(13) of the Act. The assessee further contends that, at best, and on a most conservative basis, date of 22.04.2022 may be taken as a date in the alternative, which is the date on which the assessment case was transferred by FAO to JAO under Section 144B(8) of the Act. The assessee contends that once the DRP directions has been served and

uploaded in ITBA Portal and where assessment case itself has been transferred in the month of April, 2022 with a clear noting / stipulation by the system itself that limitation gets expired in April 2022, there is no reason to view the limitation period differently, more so in the absence of any cogent evidence to the contrary. Even if April 2022 is regarded as the month in which DRPs order was received by the faceless AO, the limitation stands expired in May 2022. The final assessment order passed in the month of June 2022 is thus rendered non est by operation of law and cannot be upheld in any event being manifestly barred by limitation.

20. On a nuanced consideration of the rival arguments and on perusal of the material placed before us, we are of the considered view that limitation period prescribed under Section 144C(13) is clearly breached in the present case. On a combined reading of 'Systems Report', affidavit of the AO and order sheet notings extracted in paragraphs 15, 16 and 17 respectively, it is seen that embargo of limitation for passing the final assessment order is not complied with.

20.1 As per Section 144C(13) of the Act, the AO is required to pass the final assessment order within one month from the end of the month in which the DRP directions are received by the AO. The AO would encompass both FAO as well as JAO without any distinction for the purposes of limitation. To put it little differently, a transfer of case records by FAO to a different jurisdiction, i.e. JAO will not entitle the Department to get extension of the limitation period for framing assessment. The limitation period does not get extended by virtue of transfer of the case record internally from FAO to JAO.

20.2 From the order-sheet noting, it is evident that assessment case was transferred on 22.04.2022. From the Systems' Report, when read in conjunction, it is observed that while the DRP order was stated to be received by the JAO on 02.05.2022 but however, the Systems' Report itself is not in a position to clarify as to when FAO (before transfer of case to JAO) has received the DRP order. The System's Report clearly

say that information regarding when the DRP order was received by DC/ACIT (NeAC)-2(2)(2), Delhi is not known. Coupled with such assertions, the affidavit of the AO is critical to throw light on the date of receipt of DRP directions by the FAO. The affidavit vouches for the fact that the DRP order was received by JAO digitally on 02.05.2022 which was uploaded by FAO i.e. DC/ACIT (NeAC)-2(2)(2), Delhi. Thus, from such assertions in the affidavit, it is ostensible that FAO in the instant case was privy to the DRP order prior to its transfer to JAO. When these facts are seen along with order-sheet, it becomes more clear that the DRP orders were available with the FAO on or before 22.04.2022 which was the date on which the records were transferred. The order-sheet itself points out and cautions the JAO for completion of the assessment and that points out that limitation ends in April 2022. The revenue despite having raised long drawn defense, failed to furnish any material of evidentiary value towards the date on the DRP directions came to the privy of FAO which was in turn uploaded to the case history noting of the pending assessment of JAO on 2nd May 2022. In the absence of any affirmative evidence in this regard, the inference needs to be drawn from the chain of events mentioned in order sheet, systems report and affidavit of the JAO. The inference thus needs to be drawn adverse to the revenue for the reason that order sheet provides for transfer of assessment case in April 2022 and the FAO has uploaded the DRP directions in May 2022. In the absence of any material to indicate that the FAO also received the DRP directions in May 2022 for its onward transmission to JAO on 2/05/2022, we are in no position to dislodge the order sheet notings indicating transfer of records in the month of April 2022. The limitation thus stands expired in May 2022 in the present case.

20.3 As a sequel to such delineations, the claim of the Revenue that assessment unit was served with the DRP order electronically on 02.05.2022 do not resonate with the records available before us. This date only signifies the date of receipt of order by JAO whereas the limitation would be counted from the date on which the DRP directions

were received by FAO prior to its onward uploading to JAO in terms of approval under s. 144B(8) of the Act. The combined reading of three documents extracted above as analysed, gives an infallible impression that FAO being designated assessment unit (even if considered distinct from NFAC) was privy to DRP order in April 2022. Therefore, the limitation in extreme case scenario would run from April 2022 and will end on 31st May, 2022. The assessment order however has been passed on 30th June, 2022 and thus is clearly time barred and outside the limitation period assigned under Section 144C(13) of the Act.

21. We may also usefully refer to various judgments governing the field on the issue of limitation. The Hon'ble Delhi High in case of *PCIT vs. Fiberhome India P. Ltd. [ITA 91/2025 judgment dated 05.02.2024]* has held that the time lines as provided under section 144C(13) are mandatory in character. The judgment squarely supports the case of the Assessee. The Hon'ble Delhi High Court in the case of *Louis Drefus company India Private Limited vs. DCIT judgment dated 30.01.2024* in similar facts have also taken a view adverse to the Revenue. In consonance with the view expressed, we see substantial merit in the plea of the assessee that the impugned assessment order passed is barred by limitation.

22. Having come to such conclusion that assessment order is barred by limitation, we do not consider it expedient to delineate on other aspects of the controversy raised in different grounds of Appeal.

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

Order pronounced in the open Court on 19/03/2024

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

DATED: /03/2024

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**