

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No. 337/Ahd/2020
Assessment Year : 2015-16**

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| The DCIT, Circle 1(1)(1), Ahmedabad | Vs | Abhilasha Pharma Pvt Ltd., 11, Chaudhari Co-op. Housing Society Ltd., Paldigam, Paldi, Ahmedabad-380007 PAN : AAFCA 5539 E |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |
| Assessee by : | | Shri S.N. Soparkar, Sr. Advocate, and Shri Parin Shah, AR |
| Revenue by : | | Dr. Darsi Sumar Ratnam, CIT-DR |

सुनवाई की तारीख/**Date of Hearing** : **02/05/2024**
घोषणा की तारीख /**Date of Pronouncement** : **10/05/2024**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER :

This appeal is filed by the Revenue as against the appellate order dated 19.03.2020 passed by the Commissioner of Income-Tax (Appeals)-1, Ahmedabad (hereinafter referred to as the “CIT(A)” in short), arising out of the assessment order passed u/s 143(3) r.w.s. 144C of the Income-tax Act, 1961 (hereinafter referred to as the “the Act” in short), relating to the Assessment Year (AY) 2015-16.

2. The brief facts of the case are that the assessee is a private limited company, engaged in the business of manufacturing of bulk drugs and formulations. The assessee filed its return of income on 12.09.2016 declaring total income of Rs.28,55,340/-. The assessee had entered into specified domestic transactions of Rs.16,34,41,898/-. Therefore, the case was referred to Transfer

Pricing Officer (TPO) for computing the Arm's Length Price (ALP) in respect of the specified domestic transactions entered into by the assessee. The TPO passed order u/s 92CA(3) of the Act on 26.10.2018 whereby upward adjustment of Rs.3,45,39,464/- was made. The Assessing Officer, while completing the assessment, upheld the upward adjustment determined by the TPO and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the CIT(A). The CIT(A) held the transactions carried out by the assessee are not international transactions and the provisions of Section 92BA of the Act will not be applicable and thereby deleted the upward adjustment made by the Assessing Officer by observing as follows:-

"Further I also observe that there is amendment w.e.f. 01/04/2017 in the provisions of section 92BA of the IT Act, "Specified Domestic Transaction" in case of an assessee means any of the following transactions (the aggregate of which exceeds INR 20 crore in previous year and which is not an international transaction), namely:-

(1) any transaction referred to in section 80A;

(2) any transfer of goods or services referred to in section 80-1A(8);

(3) any business transacted between the assessee and other person as referred to in section 80-1A(10);

(4) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which section 80-1A(8) or section 80-1A(10) are applicable; or

(5) any other transaction as may be prescribed,

If a transaction is an International Transaction, then the same will not be a Specified Domestic Transaction.

Considering the amendment in the section, I do not find that the transactions carried out by the appellant falls under the provisions of section 92BA of the Act and thus the decision is not going to be setting any precedence.

Respectfully following the above given findings of the Tribunals and the Honorable High Courts, these transactions are undisputedly carried out by the Appellant are at arms-length price, therefore, the additions made by the assessing officer in relation to upward adjustment for Rs. 3,45,39,464/- are required to be deleted. The ground no 1 to 5 are allowed. The A.O. is directed accordingly and issue revised demand notice.”

4. Aggrieved against the same, the Revenue is in appeal before us raising the solitary ground that the CIT(A) erred in deleting the upward adjustment of Rs.3,45,39,464/- in respect of “Specified Domestic Transactions”.

5. Ld. Sr. Counsel Shri S. N. Soparkar, appearing for the assessee, submitted before us that this issue is *no more res integra* following the judgment passed by the Hon’ble Karnataka High Court in the case of PCIT Vs. Texport Overseas (P.) Ltd., reported in [2020] 114 taxmann.com 568 (Karnataka). It was further submitted that the principle laid down by the Hon’ble Karnataka High Court in regard to the applicability of Section 92BA(i) of the Act, after the omission from the statute by and under the Finance Act, 2017 with effect from 01.04.2017, was followed by different Benches of the Hon’ble ITAT in the case of Ammann India Pvt. Ltd. Vs. ACIT in ITA No. 2262/Ahd/2018, Shri Durga Loha Bhandar (P.) Ltd. Vs. PCIT, reported in [2023] 151 taxmann.com 483 (Delhi Trib.) and Intas Pharmaceuticals Ltd Vs. ACIT, reported in [2023] 156 taxmann.com 391 (Ahmedabad Trib.). Respectfully following the same, the order

passed by the Id. CIT(A) does not require any interference and the appeal of the Revenue is liable to be dismissed.

6. Per contra, the Id. CIT-DR, Dr. Darsi Suman Ratnam, appearing for the Revenue, supported the order passed by the Id. TPO and the Assessing Officer.

7. We have given our thoughtful consideration and perused the materials available on record including the case laws filed by the assessee. The short point to be decided is the maintainability of the order passed by the Assessing Officer on the issue as to whether under the present facts and circumstances of the case Section 92BA(i) would be applicable, particularly when the said section was omitted from the statute by the Finance Act, 2017 w.e.f. 01.04.2017. In fact, it is to be considered as to whether Clause (i) of Section 92BA of the Act, which has been omitted w.e.f. 01.04.2017, would be applicable retrospectively. It is a settled principle of law that when a particular provision is repealed from the statute, the normal effect would be to obliterate it from the statute book as completely as if it had never been passed and the statute must be considered as a law that never existed. Further that in a case where a particular provision in a statute is unconditionally omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue, but fresh proceedings for the same purpose may be initiated under the new provision. If that be so, then since the Clause (i) of Section 92BA was omitted by Finance Act, 2017 w.e.f. 01.04.2017 from the statute, the same cannot be made applicable in the pending proceeding. It is, therefore, to be

considered *non-est* in the concerned statute as if it had never been passed.

8. In that view of the matter once the said clause being omitted w.e.f. 01.04.2017, the decision made by AO/TPO invoking such Section 91BA is without any basis, and/or jurisdiction, invalid and bad in law and thus, the same is liable to be quashed. On this aspect, we have further carefully considered the judgment passed by the Hon'ble Karnataka High Court in the case of Texport Overseas (P.) Ltd. (cited *supra*). While dealing with the issue the Hon'ble Court was pleased to observe as follows:

“6. In fact, Coordinate Bench under similar circumstances had examined the effect of omission of sub-section (9) to Section 10B of the Act w.e.f. 01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of Section 10B. In the matter of GENERAL FINANCE CO. vs. ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of Section 92BA(i) of the Act. Thus, when clause (i) of Section 92BA having been omitted by the Finance Act, 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of Section 92BI and reference made to the order of Transfer Pricing Officer TCP under Section 92CA could be invalid and bad in law.”

9. Thus, relying upon the ratio laid down upon the Hon'ble Karnataka High Court and different benches of the Tribunal, we find no justification in the order passed by the TPO/AO making upward adjustment invoking Section 92BA(i) of the Act, in the present facts and circumstances of the case, particularly when the said section stood omitted w.e.f. 01.04.2017 from the statute itself. Hence, we find that the order passed by the TPO/AO is without any basis, *void*

ab initio and without jurisdiction. We, therefore, uphold the order passed by the CIT(A) deleting the upward adjustment made by the TPO/AO of Rs.3,45,39,464/- u/s 92BA of the Act in respect of “Specified Domestic Transactions”.

10. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open Court on 10th May, 2024 at Ahmedabad.

Sd/-

Sd/-

(NARENDRA PRASAD SINHA)
ACCOUNTNAT MEMBER

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, Dated 10/05/2024

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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 CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad