

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.319/Chny/2018
निर्धारणवर्ष/Assessment Year: 2013-14

M/s.Conferencecall – Services India Pvt. Ltd., RMZ Titanium, No.135, 1 st Floor, Old Airport Road, Bangalore-560 017.	v.	The Dy. Commissioner- of Income Tax, Corporate Circle-1(2), Chennai.
[PAN: AACCC 6574 A]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Soumen Adhak (Virtual)
प्रत्यर्थी की ओर से /Respondent by	:	Shri A. Sasikumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	25.04.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Assessing Officer (hereinafter 'the AO') u/s.143(3) r.w.s.144C(1) r.w.s.92CA of the Income Tax Act, 1961 (hereinafter 'the Act') dated 21.11.2017 for the Assessment Year (AY) 2013-14.

2. Ground No.1.1 of the assessee's appeal reads as under:

1.1 That on the facts and circumstances of the case, since the Ld. AO has passed the final assessment order after expiry of one month from the end of the month in which the directions of the Honorable Dispute Resolution Panel (Ld. DRP) were



**ITA No.319/Chny/2018 for AY 2013-14
M/s.Conferencecall Services India Pvt. Ltd.**

:: 2 ::

received by the Ld. AO, the impugned order shall be regarded as invalid as barred by limitation in terms of section 144C(13) of the Act.

3. Brief facts are that the assessee company is engaged in the business of providing audio, video, web conference to its customers. It filed its return of income (RoI) for AY 2013-14 on 31.03.2014 admitting total income of Rs.37,23,48,860/-. Later, the RoI was selected for scrutiny. The AO noted that in the relevant assessment year, the assessee had entered into international transaction with its Associated Enterprise (hereinafter 'AE') to the tune of Rs.1,33,64,73,845/-. Accordingly, a reference was made by the Transfer Pricing Officer (hereinafter 'the TPO') to determine the Arms Length Price (hereinafter 'ALP') in respect of the international transaction entered into by the assessee with its AE. Pursuant thereto, the TPO vide order dated 24.10.2016 made a downward adjustment of Rs.7,53,90,367/- in respect of the international transaction of the assessee. Pursuant thereto, the AO passed the draft assessment order on 26.12.2016 computing total income of the assessee at Rs.48,75,73,688/- in place of the returned income of Rs.37,23,48,860/-. Against the proposed addition made in draft assessment order, the assessee filed objection before the Dispute Resolution Panel (hereinafter 'the DRP') and the DRP was pleased to reject the objections of the assessee on 08.09.2017, thereby, confirmed the adjustment made by the TPO to the extent of Rs.7,53,90,367/-.



:: 3 ::

Pursuant thereto, the AO passed the impugned final assessment order on 21.11.2017 u/s.143(3) r.w.s.144C(1) r.w.s.92CA of the Act.

4. Assailing the action of the AO to have passed the final assessment order on 21.11.2017, the Ld.AR submitted that the AO had failed to pass the final assessment order within one month from the end of the month in which he received the order of the Ld.DRP; and therefore, the final order passed by the AO is time barred and is bad in law. To buttress this contention, he drew our attention to sec.144C(13) of the Act, and submitted that the AO was duty bound to complete the final assessment of the assessee in conformity with the directions of the DRP within one month from the end of the month in which such direction is received. According to him, the AO had received the order of the DRP in the month of September, 2017. To prove this fact, he drew our attention to Page No.1 of the Paper Book, wherein, a copy of the show cause notice dated 11.11.2017 issued by the AO is found placed, wherein, at Para No.1, the AO admitted that he had issued letter dated 21.09.2017 to the assessee fixing the case in October, 2017 (pursuant to the DRP direction 08/14.09.2017) and that assessee failed to reply/comply; and therefore, assessee was given one more opportunity by the AO before passing the final order.



:: 4 ::

5. According to the Ld.AR, the assessee objected to the framing of the final assessment order by pointing out to the AO vide letter dated 20.11.2017 [found placed at Page Nos. 3 to 4 of the Paper Book], wherein, it was asserted that the AO having received the direction of the DRP on or before 21.09.2017, he was bound to complete the final assessment order before 31.10.2017 and since, the last date for passing the order u/s.144C(13) of the Act has expired on 31.10.2017, he cannot pass the same being time-barred. Nevertheless, the AO passed the final assessment order on 21.11.2017 despite the assessee pointing out to him that the order is time barred. Now before us, assessee is assailing the action of AO passing final assessment order as bad being time-barred. In order to support such a proposition, he relied upon the decision of the Hon'ble Madras High Court order in Writ Petition No.12159 of 2023 and WMP No.11989 of 2023 dated 23.02.2024 of M/s.Taeyang Metal India Pvt. Ltd. v. DCIT/ITO/DRP, wherein, similar legal issue was asserted by the petitioner and the Hon'ble Madras High Court was pleased to allow the Writ Petition by quashing the impugned assessment order framed after time barring period u/s.144C(13) of the Act. Therefore, he pleaded that the impugned assessment order be quashed.

6. Per contra, the Ld.CIT-DR, after verifying from the Office of the AO submitted that, the DRP directions were received by the AO on



:: 5 ::

18.09.2017 and admitted that the AO had issued a notice to assessee dated 21.09.2017 in order to verify certain details as directed by the DRP. Drawing our attention to the DRP directions at Page No.7, wherein, the DRP had recorded the objection No.15 of the assessee has directed the AO to verify the claim of the assessee and give relief accordingly. The objection No.15 of the assessee and the direction of the DRP are as under:

4.0 Objection No.15

That on the facts and in the circumstances of the case, Ld A.O. has erred in disallowing an amount of Rs.38,221,482 under the impression that this represents royalty component included as part of management fees, without appreciating that a major part of this component has already been disallowed under section 40a(i) by Assessee itself and further that the amount that has been disallowed as transfer pricing adjustment does not contain any royalty component within it

4.1 Panel: This is a factual issue and the AO can verify the claim of the assessee and give relief if the facts are found to be correct.

7. According to the Ld.CIT-DR, the AO was bound to follow the direction of the DRP and since, the assessee failed to participate in the verification as ordered by the AO, the delay happened and therefore, the assessee cannot take benefit of his own wrong. Therefore, he wants us to dismiss the legal issue raised by the assessee.

8. We have heard both the parties and perused the materials available on record. We note that the assessee company is engaged in the business of providing audio, video, web conference to its customers and it filed its



ITA No.319/Chny/2018 for AY 2013-14
M/s.Conferencecall Services India Pvt. Ltd.

:: 6 ::

return of income (RoI) for AY 2013-14 on 31.03.2014 admitting total income of Rs.37,23,48,860/-. During scrutiny against proceedings the AO noted that the assessee had entered into international transactions with its AE to the tune of Rs.1,33,64,73,845/-. Accordingly, a reference was made by AO to the TPO to determine the ALP in respect of the international transaction entered into by the assessee with its AE; and pursuant thereto, the TPO vide order dated 24.10.2016 made a downward adjustment of Rs.7,53,90,367/-. Pursuant thereto, the AO passed the draft assessment order on 26.12.2016 computing total income of the assessee at Rs.48,75,73,688/- in place of the returned income of Rs.37,23,48,860/-. Against the proposed addition made in draft assessment order, the assessee filed objection before the DRP and the DRP was pleased to reject the objections of the assessee on 08.09.2017, thereby, confirmed the adjustment made by the TPO to the extent of Rs.7,53,90,367/-. Pursuant thereto, the AO passed the impugned final assessment order on 21.11.2017 u/s.143(3) r.w.s.144C(1) r.w.s.92CA of the Act. The assessee has challenged the action of the AO passing the final order in November, 2017, whereas, according to the Ld.AR, the AO was bound to pass the final assessment order on or before 31st October, 2017 as per the timeline given u/s.144C(13) of the Act. In order to adjudicate this legal issue, we note that following are admitted facts i.e. the AO received the directions of the DRP on 18.09.2017 (as confirmed by



:: 7 ::

the Ld.DR before us); and thereafter, AO issued notice to the assessee on 21.09.2017 (refer Paper Book Page No.1) and thereafter, notice was again issued on 11.11.2017; and assessee objected to the AO passing the final order in November, 2017 (refer Page Nos.3 & 4 of Paper Book); and thereafter, AO framed the final assessment order on 21.11.2017. The question is whether the AO has framed the final assessment order well within the time prescribed by the Act or not. In this regard, it would be gainful to refer to relevant statutory provisions which is necessary for adjudicating the dispute:

144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(a) File his acceptance of the variations to the Assessing Officer; or

(b) File his objections, if any, to such variation with,—

(i) The Dispute Resolution Panel; and

(ii) The Assessing Officer.

(3)

(4)

(5) The Dispute Resolution Panel shall, in a case where any objection is received under subsection (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in subsection (5), after considering the following, namely:—

(a) Draft order;

(b) Objections filed by the assessee;



**ITA No.319/Chny/2018 for AY 2013-14
M/s.Conferencecall Services India Pvt. Ltd.**

:: 8 ::

- (c) Evidence furnished by the assessee;
- (d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
- (e) Records relating to the draft order;
- (f) Evidence collected by, or caused to be collected by, it; and
- (g) Result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

- (a) make such further enquiry, as it thinks fit; or
- (b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

(9)

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(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.

9. From a bear reading of the provisions stated above, it is noted that the AO at the first instance need to forward a draft of the proposed order of assessment (hereinafter 'draft order') to the eligible assessee after he



:: 9 ::

proposes to make any variation in the returned income or loss which is prejudicial to the interest of the assessee. The assessee having received the draft order shall within 30 days file his acceptance of the variation to the AO (not relevant in this case) or file his objections, if any, to such variation with the DRP and the AO. In case, where the assessee has opted for filing an objection before the DRP, the DRP has to issue such directions as per sub-section (5) as it thinks fit for the guidance/acceptance of the AO to enable him to complete the assessment within nine months from the end of the month in which the draft order was forwarded to the assessee. Before issuing any directions as contemplated under sub-sec.5 of sec.144C of the Act, the DRP has power as given in sub-section (6) (*viz., to conduct any enquiry collect evidences, call for reports from AO/Valuation Officer/TPO or any other authority*) and thereafter, has power to confirm, reduce or enhance the variation proposed in the draft order. However, it is pertinent to point out that as per sub-sec. (8) of Sec.144C of the Act, the DRP is precluded from setting aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order. As per sub-section (10) of Section 144C of the Act, every direction issued by the DRP shall be binding on the AO. As per sub-section (13) of section 144C of the Act, upon receipt of the directions under sub-section (5) from DRP, the AO shall in conformity with the directions of the DRP, complete the



:: 10 ::

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.

10. Here, in this case, the pertinent facts to resolve the legal issue raised by the assessee is that the AO has passed the draft assessment order on 26.12.2016 and objection was filed by the assessee before the DRP on 27.01.2017 and the DRP directions were issued on 08.09.2017 and the AO received the DRP directions on 18.09.2017. Therefore, as per section 144C(13) of the Act, the AO has to complete the assessment (final 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. That means, in this case, the AO had received the directions of the DRP dated 08.09.2017, on 18.09.2017. Therefore, within one month from the end of the month of receipt of the DRP directions means 31st October, 2017 is the last date to pass the final assessment order. However, in this case, it is an admitted fact that the final assessment order was passed on 21st November, 2017, which means the final assessment order has been passed after the time barring date on 31st October, 2017. Therefore, such an order is bad in law and the AO has passed the order wholly without jurisdiction and therefore, is null in the eyes of law.



:: 11 ::

11. The Ld.CIT-DR's only defense was that the DRP had given directions (supra) to the AO (*to verify the claim of the assessee regarding objection No.15 raised before the DRP*). According to the Ld.DR, sub-section 13 of section 144C of the Act, clearly states that upon receipt of the directions issued by the DRP under sub-section (5), the AO shall pass the final order in conformity with the directions of the DRP. And since, the directions issued by the DRP are binding on the AO, he issued notice to the assessee dated 21st September, 2017 to verify as per the directions of the DRP and since, the assessee did not comply/respond before the AO, the AO again gave final opportunity to the assessee by another letter dated 11th November, 2017 and thereafter, has passed the final assessment order on 21st November, 2017. However, we do not countenance such a contention of the Ld.DR for the simple reason that sub-section (8) precluded DRP from setting aside any variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order, because DRP has been empowered as per sub-section (6) & (7) of Sec.144C of the Act, to make enquiry as it thinks fit; and more over, sub-section (13) of Section 144C of the Act, mandates the AO to complete 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 from DRP. Therefore, any verification, if any, had to be conducted by AO, he has to do so within the time line given [viz within



**ITA No.319/Chny/2018 for AY 2013-14
M/s.Conferencecall Services India Pvt. Ltd.**

:: 12 ::

one month from the end of the month of receipt of the DRP direction] and had to pass the final assessment order in this case before 31st October, 2017. For coming to such a conclusion, we rely on the decision of the Hon'ble Bombay High Court in the case of Vodafone Idea Ltd. v. Central Processing Centre & Ors [2023] SCC Online Bombay 2464, wherein, the Hon'ble Bombay High Court held as under:

20. Section 144C of the Act is a self contained provision which carves out a separate class of assessee, i.e., "eligible assessee". Section 144C of the Act was inserted in the Finance Act of 2009, and came into effect from October 1, 2009. In the Notes on Clauses to the Finance Bill, 2009 (Budget 2009-10) ([2009] 314 ITR (St.) 57), the reason for insertion of section 144C is given as under (page 160 of 314 ITR (St.)):

"The subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The correction of such view takes very long time with the existing appellate structure. With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative dispute resolution mechanism within the Income-tax Department and accordingly, section 144C has been proposed to be inserted so as to provide inter alia the Dispute Resolution Panel as an alternative dispute resolution mechanism."

21. Thus, if the provisions of section 144C as mandated by the statute are not strictly adhered to the entire object of providing for an alternate redressal mechanism in the form of Dispute Resolution Panel stand defeated. That is not the intention of the Legislature when the provision was introduced in the Act. Section 144C(10) of the Act provide that the directions of Dispute Resolution Panel are binding on the Assessing Officer. By failing to pass any order in terms of the provision, the Assessing Officer cannot be permitted to defeat the entire exercise and render the same futile. When a statute prescribes the power to do a certain thing in a certain way, then the thing must be done in that way and other methods of performance are forbidden. Once the statute has prescribed a limitation period for passing the final order, it is expected that the internal procedure of the Department should mould itself to give meaning to and act in aid of the provision. Any procedural defect (there is none in this case) in the internal mechanism of the working of E-assessment Scheme, cannot operate against the interest of the assessee. Hence, the Faceless Assessing Officer cannot be believed that the Dispute Resolution Panel direction was received by him only on August 23, 2023 despite being uploaded on the Income-tax Business Application portal on March 25, 2021. The failure on the part of Department to follow the procedure under section 144C of the Act is not merely a procedural irregularity, but is an illegality and vitiates the entire proceeding."



:: 13 ::

12. The Hon'ble Madras High Court on the very same issue before us has held (relevant portion only) in the case of M/s.Taeyang Metal India Pvt. Ltd., in WP No.12159 of 2023 and WMP No.11989 of 2023 dated 23.02.2024, wherein, the Hon'ble High Court held as under:

6. The interpretation of sub-section 13 of Section 144C takes centre stage in the adjudication of this dispute. The said sub-section is set out below:

"(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. " From the above provision, it is evident that the specified time limit is one month from the end of the month in which directions are received. It is also clear that the time limit should be computed from the date of receipt of directions issued under sub-section(5) thereof. Sub-section (5) of Section <https://www.mhc.tn.gov.in/judis> 144C deals with the issuance of directions by the DRP. The admitted position is that the DRP issued directions on 16.06.2022 and this fact is borne out by examining the proceedings of the DRP, which is contained at page Nos.122 to 130 of the typed set of papers. The said proceedings also record that the copy of the directions of the DRP is being forwarded to the assessee, the assessing officer and the TPO. The assessing officer referred to therein is the National Faceless Assessment Centre, Delhi. The petitioner has placed on record a communication from the Secretary and ACIT to the DRP. The said communication states that the assessing officer in the captioned case is the National Faceless Assessment Centre, Delhi and that a scanned copy of the proceedings was uploaded to the National Faceless Assessment Centre on 17.06.2022.

7. From the above discussion, the conclusion that emerges is that the directions of the DRP were forwarded to the assessing officer, i.e. National Faceless Assessment Centre, Delhi by uploading the same on 17.06.2022. Although learned senior standing counsel contends that the jurisdictional assessing officer received the directions only on 17.03.2023, for purposes of <https://www.mhc.tn.gov.in/judis> sub-section (13) of Section 144C, the date of receipt should be reckoned as the date of receipt by the National Faceless Assessment Centre on 17.06.2022. The internal arrangement by which the assessment proceedings relating to the petitioner were purportedly transferred so as to ensure that the proceedings are not barred by limitation is not material for this purpose. Indeed, as contended by learned counsel for the petitioner, the communication dated 12.04.2022 from the PCCIT of the National Faceless Assessment Centre seeking approval for transfer so as to complete assessment within the period of limitation underscores the fact that the income tax authorities were mindful of the fact that assessment would be barred by limitation unless such assessment is proceeded with and completed expeditiously.

8. All that remains is to examine whether the assessment proceedings would be barred by limitation if computed from the end of June 2022. If so computed, the period of one month expired on 31.07.2022, whereas the assessment order came to be issued on 25.03.2023. Hence, the assessment order was issued beyond the time limit specified in sub-section (13) of <https://www.mhc.tn.gov.in/judis> Section 144C. By taking into account not only statutory prescription but also the interpretation thereof by the Division Bench of this



**ITA No.319/Chny/2018 for AY 2013-14
M/s.Conferencecall Services India Pvt. Ltd.**

:: 14 ::

Court in Roca and that of the Division Bench of the Delhi High Court in Louis Dreyfus, I conclude that the assessment order cannot be sustained.

9. In view of the conclusion that the assessment proceedings are barred by limitation, it is unnecessary to examine as to whether the assessing officer was duly authorised to exercise jurisdiction either under the Whatsapp message issued on 13.04.2022 or upon the physical file being signed on 21.04.2022.

10. For reasons set out above, W.P.No.12159 of 2023 is allowed by quashing the impugned assessment order dated 25.03.2023. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

13. In the light of the above discussion and the judicial precedents and the binding decision of the Hon'ble Madras High Court in the case of M/s.Taeyang Metal India Pvt. Ltd., (supra) we hold that the final assessment order passed by the AO/DCIT, Corporate Circle-1(2), Chennai, dated 21.11.2017 for AY 2013-14 in the case of the assessee was barred by limitation and therefore, passed wholly without jurisdiction and therefore, null in the eyes of law and therefore, we quash the impugned assessment order dated 21.11.2017. Since, the legal issue has been allowed, we are not inclined to adjudicate the other grounds on merits being academic.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 10th day of May, 2024, in Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**



**ITA No.319/Chny/2018 for AY 2013-14
M/s.Conferencecall Services India Pvt. Ltd.**

:: 15 ::

चेन्नई/Chennai,
दिनांक/Dated: 10th May, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF