

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I": NEW DELHI**

**BEFORE  
SHRI M BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 1733/DEL/2022  
Asstt. Year: 2018-19

Honda R & D (India) P. Ltd. Technical Centre, Plot No. 2, Sector-3, IMT Manesar, Gurgaon Haryana 122050 PAN AABCH3071N	Vs.	ACIT, Circle-10(1) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Nageswar Rao, Advocate Ms. Viyushti Aggarwal, Advocate
Department by:	Shri Rajesh Kumar, CIT(DR)
Date of Hearing:	29.04.2024
Date of pronouncement:	22.05.2024

**ORDER**

**PER VIMAL KUMAR, JM**

The appeal is against order dated 30.06.2022 passed under section 143(3) read with section 144C(13) of the Act by the Learned Assistant Commissioner of Income Tax, (herein after referred as "Learned AO") pursuant to the directions of Hon'ble Dispute Resolution Panel (herein after referred as "Hon'ble DRP") dated 8.4.2022 and the order dated 12.05.2022 passed by the Ld. Transfer Pricing Officer (herein after referred as "Learned TPO") to give effect to the directions of Hon'ble DRP.

2. Brief facts of case are that appellant / assessee filed return of income on 26.11.2018 declaring total income of Rs. 5,99,49,450/-. The case was selected for scrutiny through CASS for complete scrutiny. The case was transferred to the Regional Assessment unit for completing the assessment under the faceless assessment scheme 2019 on 13.10.2020. The notice under section 142(1) along with questionnaire was issued on 9.1.2020, 12.02.2021, 18.08.2021, 26.08.2021, 02.09.2021. During the course of assessment proceedings, as per Form 3CEB filed by the assessee for the relevant period. The assessee has entered into international transactions with its associated enterprises. Accordingly, the matter was referred to the TPO for determination of Arm's Length Price in respect of international transaction made with its AEs with due approval of the Ld. PCIT. Draft assessment order in this case was passed on 29.09.2021 under section 144C(1) r.w.s 143(3) of the Income Tax Act, 1961. The assessee filed objections before the Ld. DRP-1, New Delhi which passed order dated 8.4.2022. Learned TPO vide its order under section 92CA(3) of the Income Tax Act, 1961 dated 28.07.2021 has proposed adjustment of Rs. 20,68,56,191/-.

3. In response to draft assessment order assessee filed appeal before Learned DRP on 8.4.2022 for assessment year 2018-19 has passed some specific directions to the Learned TPO regarding Arm's length price. The Learned TPO had passed an order on 12.05.2022 after giving effect to the directions of the Hon'ble DRP and revised the income of the assessee by Rs. 17,55,07,251/- instead of Rs. 20,68,56,191/-.

4. Learned representative for appellant / assessee submitted that several legal and factual grounds have been taken as per the grounds of appeal. He seeks to advert to Ground No.4 of the appeal at the outset which reads as under:-

*“4. That on the facts and circumstances of the case and in law, the Ld. AO/Ld. TPO have erred in making an adjustment of INR 17,55,07,251 in pursuance to the order passed under section 92CA(3) of the Act read with provisions of section 144C of the Act.”*

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. Judgment dated 19.3.2024 in case of Nikon India Private Ltd. vs. ACIT for the assessment year 2018-19 by ITAT Delhi Benches is fully applicable to present case.

5. The Hon'ble High Court of Delhi 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.

6. Hon'ble Hon'ble Supreme Court in the case of Union of India Vs. G. S. Chatha Rice Mills reported (2021) 2 Supreme court Cases 209 dated 23.09.2020 as under:-

*“The dispatch of a record occurs when it enters a computer resource outside the control of the originator. The time of receipt of the electronic record is fixed by the provisions of sub-section (2) of Section 13. When the addressee has designated a computer resource, receipt occurs when the record enters the computer resource so designated. Otherwise,*

*where no computer resource is designated, the receipt of the record is when it is retrieved by the addressee. These provisions have been incorporated in the law to enable the dispatch and receipt of a record in the electronic form to be defined with precision with reference to both time and place."*

7. So the appeal may be accepted.

8. Learned Departmental Representative submitted that the present case is not covered by the judgment of Nikon India Private Ltd. vs ACIT's case (supra). Hon'ble DRP passed order on 25.4.2022. Intimation of order was sent on 27.4.2022.

9. Learned Departmental Representative submitted that the affidavit dated 14.02.2024 by Assistant Commissioner of Income Tax mentions that –

*"1. The assessment for A.Y 2018-19 was transferred from Faceless AO to JAO u/s 144B(8) of the IT Act with the approval of CBDT on 22.04.2022 (copy of the case history notings available on ITBA is enclosed as Annexure-1).*

*II. The DRP's directions were circulated vide file no. ITBA / DRP / M / 144C(5) / 2022-23 / 1042874382(1) dated 25.04.2022 and a copy has been sent to CIT(TP)-2, New Delhi, DCIT (TP)-2(1)(1), NeAC, New Delhi, and the assessee. DRP's directions were physically received by NeAC, New Delhi on 06.05.2022 (copy of the receipt by NeAC is enclosed as Annexure-2).*

*III. The DRP's directions were uploaded manually on ITBA systems and sent on ITBA systems by DC/ACIT (NeAC)-2(1)(1), New Delhi to Circle-10(1), New Delhi on 18.05.2022 (kindly refer to page 19 of case history notings)."*

10. Intimation letter for order under section 144C(5) dated 27.4.2022 in order dated 19.3.2024 in Nikon India Private Ltd. vs ACIT ITAT Delhi Bench observed as under:-

*"the System's Report clearly say that information regarding when the DRP order was received by DC/ACIT (NeA)-2(2)(2), Delhi is not known".*

11. In Microsoft Corporation (India) Pvt. Ltd. vs DCIT order dated 28.2.2024 ITAT Delhi Bench observed that -

“We find that section 13 of the Information Technology Act, 2000 has been subject matter of consideration by the Hon'ble Supreme Court in the case of Union of India Vs. G. S. Chatha Rice Mills reported (2021) 2 Supreme court Cases 209 dated 23.09.2020 as under:-

*"The dispatch of a record occurs when it enters a computer resource outside of the control of the originator. The time of receipt of the electronic record is fixed by the provisions of sub-section (2) of Section 13. When the addressee has designated a computer resource, receipt occurs when the record enters the computer resource so designated. Otherwise, where no computer resource is designated, the receipt of the record is when it is retrieved by the addressee. These provisions have been incorporated in the law to enable the dispatch and receipt of a record in the electronic form to be defined with precision with reference to both time and place."*

On a cohesive reading of provision of section 130 and 144B of the Act read together with section 13 of the Information Technology Act, 2000, we hold that the moment document is uploaded by the originator (which in the present case Id DRP) on 07.04.2022 in ITBA portal that dispatch from the side of the Id DRP is complete and since the entire documents are uploaded through electronic mode, the same happens seamlessly and accordingly, the receipt of the said document also becomes instantaneously. Hence, the date of receipt of DRP direction also happened on 07.04.2022 itself and the due date in terms of section 144C(13) would start reckoning from that date. Merely, because the NeAC had retained the document receipt from Id DRP in the form of DRP directions for few months in its kitty and the later transfer the same to the assessment unit on 02.05.2022, the due date in terms of section

144C(13) of the Act for framing the final assessment order by the Id AO does not get automatically extended. Hence, we have no hesitation to hold that the final assessment order ought to have been passed by the Id AO on or before 31.05.2022 in the instant case. Since, the same was done on 30.06.2022 which is barred by limitation.”

12. Hon’ble Supreme Court in Civil Appeal No. 3427 of 2020 in the case of Sugandhi (dead) by Lrs. & ANR. Vs P. Rajkumar order dated 13.10.2020 held as under:-

*“It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”*

13. Hon’ble Supreme Court of India in Civil Appeal No. 1829 of 2023 in the case of the National Faceless Assessment Centre & Ors. Vs Automotive Manufacturers Private Limited order dated 21.03.2023 held as under:-

*“4. Having heard Shri Balbir Singh, learned ASG, appearing of the Revenue and Shri Dharan Gandhi, learned counsel appearing for the respondent-assessee and having gone through the impugned judgment and order passed by the High Court and considering the fact that the Assessment Order was passed without issuing a show cause notice with a draft Assessment Order, as was mandatorily required, under Section 1448 of the Act, as such, it cannot be said that the High Court has committed any error. However, at the same time, considering the fact that the Faceless Assessment Scheme has been introduced recently and therefore, the Revenue ought to have been given some leverage to correct themselves and take corrective measures and therefore the High*

*Court ought to have remanded the matter to the Assessment Officer to pass a fresh order in accordance with law, after following the due procedure, as required under the law, namely, more particularly, under Section 144B of the Act.”*

14. So appeal may be rejected.

15. From examination of record in light of aforesaid rival contentions, it is crystal clear that the appellant assessee has not pressed any of the grounds but claimed that case is squarely covered by order dated 19.03.2024 in the case of “Nikon India Private Limited vs ACIT”.

16. The comparative table of vital events and dates of Nikon and present case are:-

S. No.	Events	Nikon	Present
1.	Directors of DRP issued under section 144(c)5	17.03.2022	08.04.2022
2.	Assessment case transferred from Faceless AO to JAO under section 144B(8) of the Act	22.04.2022	Present case transferred on 25.4.2022
3.	DRP order received by JAO	02.05.2022	18.05.2022
4.	Final assessment order passed	30.06.2022	30.06.2022
5.	Limitation from April 2022 will end on	31.05.2022	31.05.2022

17. In the context of faceless assessment process time and place of dispatch and receipt of electronic document (in this case DRP order) is required to be ascertained by reference to section 13 of Information Technology Act, 2000 which is the basis prescribed under section 144B of Income Tax Act also (refer section 144 B (6)(v)). Hon'ble Supreme Court in case of GS Chatha Rice Mills [(2021)2SCC 209-J para 85), interpreted this very provision. Applying principles laid down by Hon'ble Supreme Court, only relevant fact necessary for deciding Ground No. 4 in present

appeal relating to time barred assessment, is time of uploading by DRP of DRP order onto ITBA portal. Intimation letter to DRP order unambiguously shows 27th April 2022 as date of uploading of DRP order. This fact cannot be disputed. Except this critical and relevant information everything else (like when order is visible to AO, date of uploading some document by DCIT/ACIT circle 2 (1) (1) Delhi) has been submitted by Respondents. It is fair to conclude that date of uploading DRP order on ITBA portal is 27.04.2022. As per section 144C(13) of the Act, assessment had to be completed on or before 31.05.2022. In present case the assessment is completed only on 30.6.2022 i.e., it is time barred null and void. Therefore, impugned assessment order dated 30.06.2022 is set aside being barred by limitation. Other grounds having become academic in nature are left open.

18. In the result appeal of the assessee is allowed.

**Order pronounced in the open court on 22<sup>nd</sup> May, 2024.**

**sd/-**

**(M BALAGANESH)  
ACCOUNTANT MEMBER**

**sd/-**

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

Dated: 22/05/2024

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	