

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 2471/MUM/2021  
Assessment Year: 2016-17  
&**

**ITA No. 642/MUM/2022  
Assessment Year: 2017-18**

Marsh India Insurance Brokers  
Private Limited,  
1201-02, Tower, One India  
Bulls Centre, Jupiter Mills  
Compound, Senapati Bapat  
Marg, Elphinstone Road (West),  
Mumbai-400013.

**PAN NO. AADCM 4220 G  
Appellant**

**Vs.**

Additional/Joint/Deputy/Assistant  
Commissioner of Income  
Tax/Income-tax Officer, National  
E-Assessment Centre, Delhi.

**Respondent**

Assessee by : Mr. Madhur Agrawal  
Revenue by : Mr. Manoj Kumar, CIT-DR

Date of Hearing : 08/05/2024  
Date of pronouncement : 13/05/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

These two appeals by the assessee are directed against two separate final assessment orders dated 03.04.2021 and 09.02.2022, passed by the Ld. Assessing Officer, National E-



Assessment Centre, Delhi (in short 'the Assessing Officer') for assessment year 2016-17 and 2017-18 respectively.

2. The grounds raised in both these appeals being common, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

3. First we take up the appeal of the assessee for assessment year 2016-17. The grounds raised by the assessee are reproduced as under:

***Ground No. 1: Determining the arm's length price of the international transaction of payment for services rendered to the Appellant by its associated enterprise as NIL.***

*On the facts and circumstances of the case, the learned AO, based on the directions of the Hon'ble DRP, erred in law and on facts, in determining the arm's length price of the international transaction of payment for services rendered to the Appellant by its associated enterprises as NIL and in making an upward adjustment of Rs. 35,37,72,368.*

***Ground No.2 - Non-grant of deduction under Chapter VI-A of Rs 4,73,850***

*On facts and circumstances of the case, the learned AO erred in not granting deduction under Chapter VI-A to the extent of INR 4,73,850.*

***Ground No. 3: Levying interest under section 234A of the Act amounting to INR 24,96,100***

*On the facts and circumstances of the case, the learned AO erred in levying interest of Rs 24,96,100 under section 234A of the Act although the Appellant had filed its return of income within the due date.*

***Ground No. 4: Levying consequential interest under section 234B of the Act amounting to INR 7,61,31,050***

*On the facts and circumstances of the case, the learned AO erred in levying consequential interest of Rs 7,61,31,050 under section 234B of the Act.*



**Ground No. 5: Error in initiating penalty proceedings u/s 271(1)(c) of the Act**

*On the facts and circumstances of the case, the learned AO erred in initiating penalty proceedings under section 271(1)(c) of the Act for the above adjustments.*

*The Appellant craves leave to add, alter, vary, omit, substitute, or amend any or all of the above grounds of appeal, at any time or at, the time of appeal, so as to enable the Honourable Income-tax Appellant Tribunal to decide this appeal according to the law.*

4. At the outset, the Ld. counsel for the assessee submitted that Registry has pointed out a delay of 209 days in filing the appeal. The Ld. counsel submitted that the impugned assessment order has been passed by the, the Ld. Assessing Officer on 03.04.2021 and therefore, in normal circumstances, the appeal was due before the Tribunal within 60 days from the date of impugned final assessment order. But this appeal has been filed on 28.12.2021. The Ld. counsel submitted that delay in filing this appeal is covered by the decision of Hon'ble Supreme Court in Civil Appeal No. Civil appeal no. 21 of 2022 in Miscellaneous Application No. 655 of 2021 in *suo-motu* writ petition (C) No. 3 of 2020, in view of Covid Pandemic period. Accordingly, he submitted that appeal might be treated as within the limitation period in view of the decision of the Hon'ble Supreme Court (supra). The Ld. Departmental Representative (DR) did not object for admitting the appeal for adjudication. In view of the above, we are admitting the appeal for adjudication being within the limitation period in view of the decision of the Hon'ble Supreme Court (supra).



5. In the case, the assessee filed an additional ground challenging the limitation in passing the final assessment order following the decision of the Hon'ble Bombay High Court in the case of ACIT (IT) v. Shelf Drilling Ron Tappmeyer Ltd. [2023] 153 taxmann.com 162 (Bombay) wherein the Hon'ble Bombay High Court has relied on the decision passed by the Hon'ble Madras High Court in the case of **Roca Bathroom Products Pvt. Ltd. (W.A. Nos. 1517 and 1519 of 2021)**. However, at the time of the arguments, the Ld. counsel for the assessee did not press additional ground and submitted to withdraw the said ground. Accordingly, the additional ground of the assessee is dismissed as withdrawn.

6. Regarding the ground No. 1 of the appeal, the Ld. counsel for the assessee submitted that assessee had applied for a unilateral advance pricing agreement (APA) in respect of international transaction of the intra group support services. The Ld. counsel for the assessee submitted that issue in dispute has been settled under the advance pricing agreement, therefore, the assessee wished to withdraw said ground of the transfer pricing. Accordingly, the ground No. 1 of the appeal of the assessee is dismissed as withdrawn.

7. The ground No. 2 of the appeal relates to deduction of Rs.4,73,850/- . This ground was not pressed by the Ld. counsel on behalf of the assessee. Therefore, same is dismissed as infructuous.



8. The ground No. 3 of the appeal is related to levy of interest u/s 234A of the Act amounting to Rs.24,96,100/-. The Ld. counsel for the assessee submitted that the assessee filed return of income within limitation prescribed under law and therefore, not liable for interest u/s 234A of the Income-tax Act ( in short the 'Act'). We find that a detailed computation of the interest u/s 234A of the Act which is part of notice of demand u/s 156 of the Act has not been filed before us and therefore, we restore this matter to the file of the Assessing Officer for deciding in accordance with law after verifying the claim of the assessee of filing return of income within the due date u/s 139(1) of the Act. The ground No. 3 of the appeal is accordingly allowed for statistical purposes.

9. The ground No. 4 of the appeal relates to levy of interest u/s 234B of the Act. Since, the levy of interest u/s 234B is consequential to change of assessed income and therefore, this ground of appeal is restored back to the file of the Assessing Officer for determination in accordance with law after verification of the assessed income consequent to this order of the Tribunal.

10. The ground No. 5 of the appeal relates to initiating penalty proceedings u/s 271(1)(c) of the Act. Since, the penalty u/s 271(1)(c) of the Act has not been levied by way of this order and therefore, the issue being premature at this stage , the ground No. 5 of the appeal is dismissed as infructuous.



11. Now, we take up the appeal of the assessee for assessment year 2017-18. The grounds raised by the assessee are reproduced as under:

**Ground No. 1: Determining the arm's length price of the international transaction of payment for services rendered to the Appellant by its associated enterprise as NIL.**

*On the facts and circumstances of the case, the learned AO, based on the directions of the Hon'ble DRP, erred in law and on facts, in determining the arm's length price of the international transaction of payment for services rendered to the Appellant by its associated enterprises as NIL and in making an upward adjustment of Rs. 43,55,05,536.*

**Ground No. 2: Levying interest under section 234A of the Act amounting to INR 12,59,749**

*On the facts and circumstances of the case, the learned AO erred in levying interest of Rs 12,59,749 under section 234A of the Act without appreciating the fact that the Appellant had filed its return of income within the due date i.e. 30 November 2017 as it is required to furnish report under section 92E of the Act.*

**Ground No. 3: Levying interest under section 234C of the Act**

*On the facts and circumstances of the case, the learned AO erred in computing and levying interest under section 234C of the Act amounting to INR 41,28,779 instead of Rs 28,08,234 without considering the fact that interest under section 234C of the Act should be restricted to returned income.*

**Ground No. 4: Erroneous computation of book profit/loss under section 115JB of the Act**

*On facts and circumstances of the case, the learned AO erred in computing the deemed total income under section 115JB of the Act as INR 1,59,47,87,345 as against Rs 1,56, 13,87,345.*

**Ground No. 5: Error in initiating penalty proceedings under section 270A of the Act**

*On the facts and circumstances of the case, the learned AO erred in initiating penalty proceedings under section 270A of the Act for under reporting of income.*

*The Appellant craves leave to add, alter, vary, omit, substitute, or amend any or all of the above grounds of appeal, at any time or at, the time of*



*appeal, so as to enable the Honourable Income-tax Appellant Tribunal to decide this appeal according to the law.*

11.1 The additional ground raised is also reproduced as under:

*The Assessment Order passed under section 143(3) read with section 144C of the Act is barred by limitation since the entire assessment proceedings ought to have been completed on or before 31 December 2020 with issuance of final order since the provision section 153 of the Act provides for outer time limit to pass the final order and necessitates completion of the entire proceedings including proceedings before the Dispute Resolution Panel under section 144C of the Act within such time limit.*

*The Appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable your Honours to decide this appeal according to law.*

12. The additional ground raised by the assessee was withdrawn by the Ld. counsel on behalf of the assessee and therefore, same is dismissed as infructuous.

13. The ground No. 1 relates to the transfer pricing adjustment. The said ground has also been withdrawn by the assessee in view of advance pricing agreement entered into by the assessee with the tax authorities of India and therefore, same is dismissed as infructuous.

14. The ground Nos. 2 and 3 of the appeal of the assessee relate to levy of interest u/s 234A and 234C of the Act respectively. The Ld. counsel for the assessee submitted that the Assessing Officer has wrongly presumed that return of income was not filed by the assessee on or before the due date prescribed and similarly he has not taken into consideration the advance tax paid by the assessee



for computation of interest u/s 234C of the Act. Since, detailed computation of the interest u/s 234A and 234C of the Act has not been filed before us ,therefore, we restore this matter of computing interest u/s 234A and 234C of the Act to the file of the Assessing Officer for deciding in accordance with law after verification of date of filing of return of income and advance tax payments made by the assessee. The ground Nos. 2 and 3 of the appeal are allowed for statistical purposes.

15. In ground No. 4, the assessee has raised that Assessing Officer has erroneously taken the figure of book profit u/s 115JB of the Act at Rs.1,59,47,87,345/- as against Rs.1,56,13,87,345/-. Before us, the Ld. counsel for the assessee submitted that in the body of the assessment order the Assessing Officer has not made any adjustment to the book profit ,but erroneously in the computation to the assessment order, has taken figure of the book profit u/s 115JB of the Act at Rs.1,59,47,87,345/- as against Rs.1,56,13,87,345/- shown by the assessee ,therefore, same might be rectified. The Ld. counsel submitted that rectification application filed by the assessee has not been disposed off by the Assessing Officer.

15.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The ground raised is mere a matter of verification by the Assessing Officer



keeping in view his finding in the body of the assessment order. Therefore, we direct the Assessing Officer to carry out the rectification if he has not already disposed off the rectification application of the assessee in this regard. The ground of appeal of the assessee is accordingly allowed for statistical purposes.

16. The ground No. 5 of the appeal being related to initiation of penalty proceedings. Since, no penalty has been levied in the impugned final assessment order, therefore, this ground of appeal is premature at this stage, and hence, same is dismissed as infructuous.

17. In the result, both the appeals are partly allowed for statistical purposes.

**Order pronounced in the open Court on 13/05/2024.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 13/05/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**