

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.641/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s.Pfizer Healthcare India Pvt. Limited (Formerly known as Hospira Healthcare India Private Limited) 237, Emerald Building, Anna Salai, Chennai-600 006.	बनम/ Vs.	DCIT Corporate Circle-5(2)-LTU, Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AABCO-2190-F		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Ashik Shah (CA)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	09-05-2024
घोषणा की तारीख / Date of Pronouncement	:	03-06-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-16, Chennai [CIT(A)] dated 23-03-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 144C(3) of the Act on 28-02-2020. The assessee is aggrieved by disallowance u/s 14A; disallowance u/s 35(2AB) and disallowance u/s 2(24) r.w.s. 36(1)(va).

2. From the facts, it emerges that the assessee filed its return of income for this year on 30-11-2016. A reference u/s 92CA of Income Tax Act was made to Ld. Transfer Pricing Officer 2(2), Chennai wherein Ld. TPO, vide order dated 01-11-2019, proposed certain transfer pricing (TP) adjustment. Pursuant to the same, Ld. AO framed an assessment u/s 143(3) r.w.s. 144C(3) on 28-02-2020. Upon further appeal, Ld. CIT(A) partly allowed the appeal of the assessee against which the assessee is in further appeal before us.

3. The Ld. AR, at the outset, tabulated the sequence of assessment proceedings to demonstrate that the assessment order is time barred and accordingly null and void. The submissions made by Ld. AR read as under: -

Particulars	Date
End of the Assessment Year	31/03/2017
Time limit for completion of assessment as per Section 153(1) of the Income Tax Act, 1961 ('the Act') - 21 months from the end of the Assessment year	31/12/2018
Time limit for completion of assessment as per Section 153(4) of the Act in case of the Appellant since transfer pricing reference was made additional 12 months	31/12/2019
Time limit for issuance of Transfer Pricing Order as per Section 92CA(3A) of the Act - as upheld by the Hon'ble Madras High Court in the case of the Appellant in WA No. 1148 and 1149 of 2021	31/10/2019
Date of issuance of Transfer Pricing Order in the case of the Appellant	01/11/2019
Date of issuance of Draft Assessment Order in the case of the Appellant	31/12/2019
Date of issuance of Final Assessment Order in the case of the Appellant	28/02/2020

Since the transfer pricing proceedings were barred by limitation of time, the order dated November 01, 2019 is void-ab-initio and accordingly, the transfer pricing adjustment is non-est. Consequently, the Appellant cease to be an eligible assessee as defined under section 144C(15)(b) of the Act and therefore, the machinery provisions of Section 144C of the Act would not get triggered in the Appellant's case.

Accordingly, the assessment in the case of the Appellant ought to have been completed within 33 months from the end of the Assessment year as per Section 153(1) read with Section 153(4) of the Act, i.e., on or before December 31, 2019.

However, since the assessment was concluded vide the final assessment order dated February 28, 2020, the impugned assessment is clearly barred by statutory limitation. Accordingly, the impugned assessment for the subject year is null and void-ab-initio.

In this regard, the Appellant relies upon the following rulings of this Hon'ble Tribunal, wherein the above position was upheld for the same assessment year:

M/s Verizon Data Services India Pvt Ltd ((TS-825-ITAT-2022(CHNY)-TP))

M/s.Eaton Power Quality (P.) Ltd. (152 taxmann.com 258)

M/s.Durr India Pvt. Ltd. (2023 (8) TMI 714)

It is also pertinent to note that the above position has been upheld by the Coordinate Tribunals in the following cases:

Shell India Markets Pvt. Ltd. (Mumbai ITAT- ITANo.2933 and 3016/Mum/2016

Atos India Pvt. Ltd., (Mumbai ITAT - ITA No. 1795/Mum/2017)

Colgate-Palmolive (India) Limited (Mumbai ITAT- ITA No. 3488/Mum/2016)

Tata AIA Life Insurance Company Limited (Mumbai ITAT - ITA No. 2860/Mum/2015)

Based on the above, the Appellant humbly prays that the assessment concluded vide order dated February 28, 2020 is barred by limitation and accordingly, null and void-ab-initio.

4. The Ld. CIT-DR, on the other hand, countered the arguments by way of written submissions which read as under: -

Jurisdictional Grounds:

2.1 The impugned Order passed by the Ld AO and upheld by the Ld CIT(A) is invalid, without jurisdiction, barred by limitation, illegal, contrary to provisions of the Act, and is therefore, liable to be quashed.

2.2: The Impugned order is liable to be quashed as invalid and without jurisdiction, on account of being barred by limitation under section 153(1) read with section 153(4) of the Act, since the Appellant is not an eligible Assessee under section 144C (1) of the Act as the transfer pricing proceedings have become void ab-initio subsequent to the order of the Madras High Court in WP No 32699 of 2019 upheld by WA No 1148 of 2021.

2. Reply: With reference to the above grounds of appeal, it is humbly submitted at the outset that the above two grounds of appeal are based on an imaginary scenario as if no transfer pricing reference was made and no order was passed by the Ld Transfer Pricing Officer so that the time limit of passing the assessment order can be traced back to an earlier period.

2.1. That the above grounds are specious and illogical can be appreciated by considering the following arguments:

i) The Assessing Officer had made a reference to TPO u/s 92CA of the Income -tax Act which is a matter of record and which is not disputed by the assessee. It was incumbent upon the Assessing Officer to wait for the determination of the Arm's Length Price (ALP) of the transaction under reference.

- ii) At that point of time, it was not possible for the AO to foresee and predict that the TPO order would be challenged by the assessee on a writ petition and to foreclose any such eventuality, pass an assessment order without incorporating the transfer pricing adjustments.
- iii) Having taken up such grounds, the assessee is putting up an expectation on part of the Assessing Officer to perform the impossible.
- iv) In this context, reference is made to the following case laws:
 - (a) Shyamal Sarkar vs Commissioner of Income-tax, Siliguri reported in 250 Taxman 18(SC)
 - (b) VLS Finance Ltd vs Commissioner of Income-tax, reported in 239 Taxman 404(SC)

2.2. In the first case under reference, the Hon'ble Supreme Court observed as follows:

"7. We have not been impressed by this submission. The fact that the audit was in fact made is ample proof of the fact that an order for audit was also passed without which the audit could not have taken place. There is a presumption in law that all official and judicial acts were regularly performed. The presumption is reinforced by the fact that it is an admitted position that the assessee had paid the fees of the auditor. The defect, if any, in the proceeding which culminated into the order for audit and the submission of the audit report are mere irregularities which shall not invalidate the proceeding. Reference in this regard may be made to section 292B of the Income-Tax which provides as follows:

"292B. Return of income, etc., not to be invalid on certain grounds. No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

2.3. Following is the relevant extract from the ruling in the second ruling of the Hon'ble Apex Court which is being relied on:

"**23.** We, therefore, agree with the High Court that the special audit was an integral step towards assessment proceedings. The argument of the appellants that the writ petition of the appellant was ultimately allowed and the Court had quashed the order directing special audit would mean that no special audit was needed and, therefore, it was not open to the respondent to wait for special audit, may not be a valid argument to the issue that is being dealt with. The assessing officer had, after going through the matter, formed an opinion that there was a need for special audit and the report of special audit was necessary for carrying out the assessment. Once such an opinion was formed, naturally, the assessing officer would not proceed with the assessment till the time the special audit report is received, inasmuch as in his opinion, report of the special audit was necessary. Take a situation where the order of special audit is not challenged. The assessing officer would naturally wait for this report before proceeding further. Order of special audit followed by conducting special audit and report thereof, thus, become part of assessment proceedings. If the order directing special audit is challenged and an interim order is granted staying the making of a special report, the assessing officer would not proceed with the assessment in the absence of the audit as he thought, in his wisdom, that special audit report is needed. That would be the normal and natural approach of the assessing officer at that time. It is stated at the cost of repetition that in the

estimation of the assessing officer special audit was essential for passing proper assessment order. If the court, while undertaking judicial review of such an order of the assessing officer directing special audit ultimately holds that such an order is wrong (for whatever reason) that event happens at a later date and would not mean that the benefit of exclusion of the period during which there was a stay order is not to be given to the Revenue. Explanation 1 which permits exclusion of such a time is not dependent upon the final outcome of the proceedings in which interim stay was granted.

24. We, therefore, answer this question in favour of Revenue."

3. In the instant case, having made a reference u/s 92CA, the AO could not be expected to pass an order at an earlier date as raised by the appellant in its grounds of appeal.

Prayer: It is earnestly requested that the above submissions be considered and the grounds of the assessee that the assessment is barred by limitation, be dismissed.

However, the sequence of events as narrated by Ld. AR remains undisputed before us. In the light of above submissions, the appeal is disposed-off as under.

5. The Ld. AR has submitted that the assessment proceedings would be nullity in terms of decision of Hon'ble High Court of Madras in bunch of appeals titled as **M/s Pfizer Healthcare India Pvt. Ltd. & ors. (WP Nos. 32688 of 2019 & ors. order dated 07.09.2020)** as confirmed by Division Bench in revenue's Writ Appeals (WA) Nos. 1120 of 2021 & ors. in its order dated 31.03.2022. The copies of the decisions have been placed on record.

6. The undisputed fact that emerges is that for AY 2016-17, the order has been passed by Ld. TPO u/s 92CA (3) on 01.11.2019. As per the decision of Hon'ble Single Judge in cited decision of **M/s Pfizer Healthcare India Pvt. Ltd. & ors. (supra)**, this order would be barred by limitation. In this decision, bunch of assessee invoked writ jurisdiction of Hon'ble Court on the ground that the order passed u/s 92CA(3) was barred by limitation by one day. It was noted that in terms of Sec.92CA(3A), an order has to be passed by TPO before 60 days prior to the last day on which the period of limitation referred to in Sec.153 for

making assessment expires. The assessment is to be completed within 21 months from end of assessment year in which the income was first assessable. Therefore, counting from 31.03.2017, the assessment was to be framed on or before 31.12.2019. The period of 60 days prior thereto would run till 01.11.2019 and *any date prior* thereto would mean 31st of October or before. Since the order was passed on 01.11.2019, the same would be barred by limitation.

7. The revenue's writ appeals against this decision came up for hearing before Division Bench of Hon'ble Court which was disposed-off on 31.03.2022 wherein the writ appeals were dismissed and the adjudication of learned Judge was confirmed.

8. The assessee preferred first appeal against assessment order dated 28-02-2020 on 29-12-2021. In the meanwhile, Ld. AO gave effect to the order of Hon'ble Single Judge of High Court dated 07-09-2020 vide order dated 31-01-2022 and deleted the Transfer Pricing Adjustments as made in original assessment order. Accordingly, the TP adjustments were not assailed by the assessee. On corporate issues, Ld. CIT(A) confirmed the action of Ld. AO vide impugned order dated 23-03-2023 against which the assessee is in further appeal before us.

9. From the tabulation of Ld. AR, it is quite clear that since Transfer Pricing proceedings were barred by limitation of time, the transfer pricing adjustment would be non-est. Consequently, the assessee would cease to be an eligible assessee as defined u/s 144C(15)(b) of the Act and therefore, the machinery provisions of Section 144C of the Act would not get triggered in the assessee's case. In such a scenario, the assessment in the case of the assessee ought to have been completed within 33 months from the end of the Assessment

year as per Sec. 153(1) read with Section 153(4) of the Act, i.e., on or before 31-12-2019. As a matter of fact, assessment has been concluded on 28-02-2020 which is clearly barred by statutory limitation. Therefore, we have no hesitation to hold that the impugned assessment for the subject year would be null and void-ab-initio. The argument of Ld. CIT-DRP that it was not possible for Ld. AO to predict that fate of Ld. TPO's order do not appeal to us since any order passed beyond prescribed statutory time limit, for whatever reasons, could not be held to be a valid order. In the result, the corporate additions made in the assessment order would not survive. The appeal stand allowed on legal grounds. Delving into the merits of additions has been rendered academic in nature.

10. The appeal stand allowed in terms of our above order.

Order pronounced on 3rd June, 2024

Sd/-	Sd/-
(MANU KUMAR GIRI)	(MANOJ KUMAR AGGARWAL)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 03-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF