

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI ANIKESH BENERJEE, HON'BLE JUDICIAL MEMBER**

**ITA NO. 2396/MUM/2024 (A.Y: 2016-17)**

<b>DCIT-14(1)(1)</b> Room No. 432, 4 <sup>th</sup> Floor Aayakar Bhavan, M K Road Mumbai 400020	v.	<b>M/s. HUHTAMAKI INDIA LTD</b> 12A-06, B Wing, 13 <sup>th</sup> Floor Parinee Crescenzo C-38/39, Bandra Kurla Complex Road Bandra (E), Mumbai 400051  <b>PAN: AACT0086E</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**CO No. 105/MUM/2024**

**[ARISING OUT OF ITA NO. 2396/MUM/2024 (A.Y: 2016-17)]**

<b>M/s. HUHTAMAKI INDIA LTD</b> 7 <sup>th</sup> Floor, Bellona, The Walk Hiranandani Estate, Ghodbunder Road Thane (W), Mumbai -400607  <b>PAN: AACT0086E</b>	v.	<b>DCIT-14(1)(1)</b> Room No. 432, 4 <sup>th</sup> Floor Aayakar Bhavan, M K Road Mumbai 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Nikhil Tiwari &amp; Ms. Palak Mehta</b>
<b>Department Represented by</b>	<b>:</b>	<b>Ms. Dhivya Ruth J.</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>26.06.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>28.06.2024</b>

## **ORDER**

### **PER NARENDRA KUMAR BILLAIYA (AM)**

1. ITA No. 2396/MUM/2024 is the appeal by the revenue and CO.No.105/MUM/2024 is the cross objection by the assessee preferred against order of the learned Commissioner of Income-Tax (Appeals)-56, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 06.03.2024 pertaining to A.Y. 2016-17.

2. The grievance of the revenue read as under: -

*"1) Whether on the facts and circumstances of the case and the question of law involved in this case, whether the Ld.CIT(A) has rightly interpreted the section 92CB(3A) of the IT Act with regard to the wording "may be made at any time before 60 days prior to the date on which the period of limitation referred to in section 153 or section 153B for making the order of assessment expires?"*

*2) Whether on the facts and circumstances of the case, the Ld.CIT(A) is justified in deleting the adjustment on technical grounds rather than on merit?*

*3) Whether on the facts and circumstances, the Ld.CIT(A) erred in ignoring the Sec 9 of the General Clause Act, 1897 and settled principle of interpretation of Laws ?*

*4) Whether on the facts and circumstances of the case, the Ld.CIT(A) is justified in ignoring Sec. 92CA(3A) which expressly provides for counting the last day i.e., 31.12.2019 and therefore for counting the 60 days the last day should have been taken into account and thus the order passed by the TPO dated 01.11.2019 is well within the time?*

*5) Whether on the facts and circumstances of the case, the Ld.CIT(A) is justified in interpreting the word 'may' u/s.92CA(3A) as 'shall' when sub sections 3A and 4 were introduced in Sec. 92CA by the very same Finance Act, 2007 and the Legislature has consciously*

*used the word "may" in Sec. 92CA(3A) while using the word "shall" in Sec. 92CA(4)?*

*6) Whether on the facts and circumstances of the case, the Ld.CIT(A) is justified in ignoring the finding Of TPO and not adjudicating the Transfer Pricing issues on merit by merely deciding the issue of limitation of date which is contrary to provision of the Income Tax Act?*

*7) Whether on the facts and circumstances of case & in law, the Ld.CIT(A) erred in holding that since TP order is held barred by limitation the assessment order is also barred by limitation ignoring the fact that as per the provision of section 153(4) & 144C of the Act the limitation to pass draft assessment order & final assessment order respectively is extended automatically?*

*8) The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

*9) The appellant craves leave to amend, or alter any grounds or add a new grounds, which may be necessary. ”.*

**3.** Cross objection is in support of the order of the Ld. CIT(A).

Assessee is also aggrieved that the Ld. CIT(A) has not decided the appeal on merits of the case.

**4.** The entire quarrel revolves around the interpretation of section 92CA(3A) of the Income-tax Act, 1961 (in short "Act") read with section 153/153B of the Act. The bone of contention is the date of the order of the Transfer Pricing Officer framed under section 92CA(3A) of the Act which is 01.11.2019. The case of the assessee is that this order of the Transfer Pricing Officer is barred by limitation as it is not passed within 60 days from the date of the final assessment order which is 26.02.2020. Whereas the case of the revenue is that as per Section 9 of

the General Clauses Act in computation of the time limit, the day referred to as "from" has to be excluded and the day referred to as "to" has to be included. Accordingly, the revenue's point is that the date of order is dated 01.11.2019 has to be taken as starting point of limitation and 60 days was computed from 01.11.2019 and rightly the same has to be excluded and the last day becomes 31.12.2019 has to be included and thus the order dated 01.11.2019 is rightly passed as per section 92CA(3A) of the Act. The sum and substance of the contention of the revenue is that as per the provisions of Section 9 of the General Clauses Act, 1897, the first day is excluded and the last day is included.

**5.** We have given thoughtful consideration to the rival contentions.

The dispute can be understood by the following chart: -

**Timelines for AY 2016-17 as per Income Tax Act 1961 -**

<b><i>Particulars</i></b>	<b><i>Section Reference</i></b>	<b><i>Due Date</i></b>
<i>Timeline for completion of assessment proceedings when a reference is made to u/s.92CA for AY2016-17</i>	<i>Section 153(1) read with 153(4) - 33 months from the end of the relevant AY</i>	<i>31 December 2019</i>
<i>Timeline for passing order u/s.92CA(3A) i.e. TP order</i>	<i>Section 92CA(3A) - 60 days prior to the above</i>	<i>31 October 2019</i>
<i>Appellant's case</i>		
<i>Date of TP Order passed u/s 92CA(3A)</i>		<i>1 November 2019</i>
<i>Draft assessment order passed u/s 144C</i>		<i>26 December 2019</i>
<i>Final assessment order passed u/s 144(3) r.w.s 144C(3)</i>		<i>26 February 2020</i>

6. In the light of the aforementioned factual chart, the Transfer Pricing Officer was required to pass order on or before 31.10.2019 i.e., 60 days prior to the date of limitation, therefore the order dated 01.11.2019 is barred by limitation and since the order of the Transfer Pricing Officer is non-est and since this foundation has been removed the final order passed by the Assessing Officer without the order of the Transfer Pricing Officer dated 26.02.2020 becomes barred by limitation.

7. On identical set-of facts, the Hon'ble Madras High Court in the case of Pfizer Healthcare India (P.) Ltd., v. JCIT [433 ITR 28] has held as under: -

*"30. Now, coming to the question of how the 60 day period is to be computed, the critical question would be whether the period of 60 days would be computed including the 31st of December or excluding it. Section 153 states that no order of assessment shall be made at any time after the expiry of 21 months from the end of the assessment year in which the income was first assessable. The submission of the revenue is to the effect that limitation expires only on 12 am of 01.01.2020. However, this would mean that an order of assessment can be passed at 12 a m on 01.01.2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31.12.2019. The period of 21 months therefore, expires on 31.12.2019 that must stand excluded since Section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to Section 153 expires'. Excluding 31.12.2019, the period of 60 days would expire on 01.11.2019 and the transfer pricing orders thus ought to have been passed on*

*31.10.2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31.10.2019. The impugned orders are thus, held to be barred by limitation."*

**8.** Since the First Appellate Authority has followed the aforementioned decision of the Hon'ble Madras High Court which is on identical set-of facts, we do not find any reason to interfere with the findings of the Ld. CIT(A). Appeal of the revenue is dismissed.

**9.** Since the appeal of the revenue is dismissed on the point of law, we do not find it necessary to dwell into the merits of the case. Therefore, the cross objection is also dismissed.

**10.** To sum-up, appeal of the revenue as well the cross objection of the assessee are dismissed.

Order pronounced in the open court on 28<sup>th</sup> June, 2024.

**Sd/-**  
**(ANIKESH BENERJEE)**  
**JUDICIAL MEMBER**

Mumbai / Dated 28.06.2024  
Giridhar, Sr.PS

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**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

(Asstt. Registrar)  
**ITAT, Mum**