

आयकर अपीलुय अधलकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA Nos.587 & 588/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)

Rapiscan Systems Inc, US C/o Ernst & Young LLP - Hyderabad [PAN : AAICR8337E]	Vs.	Asstt. Director of International Taxation (IT)-2 Hyderabad
--	-----	---

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri M P Lohia (Virtual)
& Shri Harman Singh Jolly, CAs
राजस्व द्वारा/Revenue by: Shri Kumar Pranav CIT(DR)

सुनवाई की तारीख/Date of hearing: 10/07/2024
घोषणा की तारीख/Pronouncement on: 23/07/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 29/08/2022 passed by the learned Asstt. Director of Income Tax (International Taxation)-2 Hyderabad ("Ld. ADIT"), in the case of Rapiscan Systems Inc, USA ("the assessee") for the assessment year 2018-19, the assessee preferred these appeals.

2. The common question that arises for our consideration in these two appeals is whether the final assessment orders that were passed on 29/8/2022 for the assessment years 2018-19 and 2019-20 pursuant to the directions that were issued and uploaded on 30/6/2022 by the Ld. Dispute Resolution Panel (DRP), are barred by limitation under section 144C (13) of the Income Tax Act, 1961 (for short "the Act"). Relevant facts are that the learned DRP issued directions in the case of the assessee for the assessment years 2018-19 and 2019-20 on 30/6/2022 and as is evidenced by the letter dated 30/1/2024 issued by the secretary, DRP-1, Bangalore said directions were uploaded on ITBA portal on 30/6/2022 itself and a physical copy of directions was also sent to the learned Assessing Officer on 30/6/2022 through speed post. Learned Assessing Officer, however, passed final assessment order under section 143(3) read with section 144C (13) of the Act on 29/8/2022.

3. By way of additional grounds assessee challenged the same. Learned DR placed reliance on the email dated 7/5/2022 to the effect that the directions of the learned DRP under section 144 C(5) of the Act were communicated in the month of May 2022, and submitted that from the end of the month in which the directions were communicated the impugned assessment orders are within 30 days and therefore, regardless of the date of passing of the directions, the impugned assessment orders are within time.

4. Ld. AR placed reliance on the decision of the Hon'ble Delhi in the case of Louis Dreyfus company India private Ltd vs. DCIT [2024] 159 taxmann.com 244 (Delhi) and submitted that the uploading of the learned DRP's directions on the ITBA portal would be considered as the receipt of the directions by the learned Assessing Officer, and therefore, the time limit for passing the final order should be within 30 days from the end of the month in which the directions were uploaded on the ITBA portal. Since the date of directions in these two appeals happens to be 30/6/2022, 30 days from the end of the month in which the directions for uploaded to the

ITBA portal would expire by the end of July 2022, and therefore, the assessment orders that were passed on 29/8/2022.

5. We have gone through the record in the light of the submissions made on either side. In view of the letter dated 30/1/2024 written by the Secretary, DRP-1, Bangalore to the assessee, it is established that the directions dated 30/6/2022 issued by the learned DRP are uploaded on ITBA portal on 30/6/2022 itself, and as held by the Hon'ble Delhi the date of uploading of the directions on ITBA portal should be taken as the date of receipt of such directions by the learned Assessing Officer. For the sake of completeness we extract hereunder the observations of the Hon'ble Delhi High Court in the case of Louis Dreyfus (supra) hereunder,-

20. Undisputedly, the directive of the DRP came to be uploaded on the ITBA portal on 24 June 2022. It is additionally stated to have been dispatched through Speed Post to the third respondent (TPO) and the fourth respondent (Additional/Joint/Deputy/Assistant Commissioner of Income Tax, National Faceless Assessment Centre, New Delhi) on 27 June 2022. It is thereafter that the TPO appears to have passed the order dated 25 July 2022.

21. We, however note that paragraph 4(2) of the E-as, 2019 makes the following salient provisions:-

"4(2). All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making an assessment under this Scheme shall be through the National e-assessment Centre."

22. It is thus manifest that as per the provisions of E-as, 2019, all orders, notices and decisions have to be necessarily uploaded on the ITBA portal and as part of the larger faceless assessment regime which now holds the field. The uploading of the directive of the DRP on the ITBA portal would thus constitute valid and sufficient service and the period of limitation as prescribed in Section 144C(13) of the Act would be liable to be computed bearing that crucial date in mind. Once the aforesaid position becomes clear, it is evident that the order of assessment, if at all could have been framed lastly by 31 July 2022. There has thus been an abject failure on the part of the first respondent to comply with the mandatory timelines as incorporated

in the aforementioned provisions. Accordingly, the writ petition is liable to be allowed and the impugned order of assessment and the consequential penalty proceedings are thus liable to be set aside on this short score alone.

6. This decision in the case of Louis Dreyfus (supra) was followed in the case of PCIT vs. M/s FIBERHOME India Pvt. Ltd in ITA No. 91/2024 on the file of the Hon'ble Delhi High Court. These decisions are applicable to the facts of this case on all fours, and respectfully following the same we hold that the assessment orders that were passed on 29/8/2022 are barred by limitation. Since we answered the additional ground quashing the assessment for the assessment year 2018-19 and 2019-20, all other issues have become academic. Grounds are answered accordingly.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on this the day of 23rd July, 2024.

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 23/07/2024

Pvv/SPS

Copy forwarded:

1. RAPISCAN Systems Inc C/o ERNST & YOUNG LLP, The SKYVIEW 10, 18th Floor, Zone Z, Survey No.83/1 Raidurgam, Hyderabad 500032
2. ADIT(International Taxation)-2 Aayakar Bhavan, Basheerbagh, Hyderabad
3. CIT(DRP)-1 Kendriya Sadan, 4th Floor, C Wing, Bengaluru 560034
4. Director of Income Tax (IT&TP) Hyderabad
5. DR, ITAT Benches, Hyderabad

6. GUARD FILE