

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "T" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI NARINDER KUMAR, JUDICIAL MEMBER**

I.T.A. No.1037/DEL/2022
Assessment Year 2018-19

Assotech Moonshine Urban Developers Pvt. Ltd. 148-F, Pocket-IV, Mayur Vihar Phase-I, New Delhi	Vs.	DC/ACIT TP 1(1)(1) Delhi
TAN/PAN: AAECM8184A		
(Appellant)		(Respondent)

Appellant by:	Shri Mansi Jain, Chartered Accountant		
Respondent by:	Shri Rajesh Kumar, CIT-DR		
Date of hearing:	07	08	2024
Date of pronouncement:	07	08	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed at the instance of the assessee against the final assessment order dated 20.03.2022 passed under Section 143(3) r.w. Section 144C passed in pursuance of directions issued by Dispute Resolution Panel-I, New Delhi (DRP) dated 09.02.2022 relevant to Assessment Year 2018-19

2. As per the grounds of appeal, the assessee has challenged the final assessment order dated 20.03.2022 passed under Section 143(3) r.w. Section 144C(5) of the Act.

3. When the matter was called for hearing, the Id. counsel for the assessee straightaway adverted to paragraph 3.3.2 of the directions of the Dispute Resolution Panel dated 09.02.2022 passed under

Section 144C(5) of the Act and submitted that as per the DRP directions, the TPO was directed to verify the factual contentions on the issues relating to interest on accumulated interest accrued.

4. The TPO, in turn, passed order dated 16.03.2022 giving effect to the DRP directions passed in exercise of powers conferred under Section 144C but however confirmed earlier action on the premise that assessee has failed to prove his factual contentions on the issue.

5. In the matter, the ld. counsel pointed out that a solitary opportunity dated 18.02.2022 was given to the assessee which could not be attended. This has resulted in *ex-parte* decision in the matter. The ld. counsel thus sought restoration of the issue to the Transfer Pricing Officer to give effect to the directions under Section 144C after hearing the assessee to enable him to pass a speaking order.

6. The ld. DR for the Revenue did not contest the submissions of the assessee seriously.

7. The relevant paragraph of the order passed by the TPO giving effect to the directions under Section 144C is reproduced hereunder:

“3. Addition on A/c of interest on the accumulated interest accrued:-

Ld. DRP directed on page 4 as under:

“The panel has considered the submission. The panel directs the TPO to verify this factual contention and if interest accruing on a yearly basis have already been subjected to transfer pricing audit in the respecting years, there is no need to again make an addition on that count. The TPO shall a speaking order in this regard after due verification of facts.”

In this regard, it is mentioned that a letter dated 18.02.2022 (Vide DIN No. ITBA/COM/F/17/2021-22/1039902658(1) was sent to the assessee for providing the submission with regard to the directions of the Ld. DRP. But the assessee did not file any response in this regard. It is mentioned the assessee was provided numerous

opportunities during TP proceedings also but the assessee never submitted any Transfer pricing documents or any other documents as required u/s 92D of the IT Act, 1961. Further, the assessee did not submit any reply to the questionnaire issued to it.

Therefore, despite multiple opportunities, the assessee could not prove his contention that it was accumulated balance comprises of a part of the total interest accrued on the debentures year after year and was subject to transfer pricing audit in the respective years. Therefore, following directions of Ld. DRP, after verification, in absence of any supporting documents, contention of the assessee cannot be accepted as such and adjustment of Rs. 2,68,27,699/- on a/c of interest on accumulated interest accrued is proposed.”

8. As submitted on behalf of the assessee, a solitary opportunity was given by the TPO and reference to multiple opportunities is untrue. The directions of the DRP for determination of the issue after taking into account the factual contentions of the assessee on the subject matter, thus, has went in vain. Hence, in order to prevent the miscarriage of natural justice, we consider it expedient to restore the matter to the file of the TPO for fresh implementation of the DRP directions dated 09.02.2022. The TPO shall pass a speaking order on the issue in accordance with law after giving proper opportunity to the assessee as directed in DRP directions. The consequential action shall follow as provided in the statutory framework for assessment purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 07/08/2024

Sd/-

**[NARINDER KUMAR]
JUDICIAL MEMBER**

DATED: /08/2024

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**