

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Vimal Kumar, Judicial Member**

ITA No. 391/Del/2022 : Asstt. Year: 2017-18

Syniverse Technologies Services (India) Pvt. Ltd., DLF Building No. 5, Tower-A, 15 th Floor, DLF Phase-III, Gurgaon, Haryana-122002 (APPELLANT)	Vs	ACIT, TP-1(3)(2), New Delhi (RESPONDENT)
PAN No. AANCS1158H		

**Assessee by : Ms. Ananya Kapoor, Adv. &
Sh. Shivam Yadav, Adv.
Revenue by : Sh. Rajesh Kumar, CIT-DR**

Date of Hearing: 03.07.2024

Date of Pronouncement: 21.08.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 27.12.2021 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Heard the arguments of both the parties and perused the material available on record.

3. The chronological events are as under:

Dates	Particulars
21.01.2021	TPO order passed by the Transfer Pricing Officer (Pg. 283 of the appeal set)
17.04.2021	Draft assessment order passed by the NFAC (Pg. 199 of the appeal set)
04.10.2021	DRP Directions issued by the Dispute Resolution Panel(Pg. 88 of the appeal set)
11.10.2021	Intimation letter(Pg. 87 of the appeal set)
29.11.2021	TPO passes the consequential appeal effect order(Pg. 83 of the appeal set)
27.12.2021	Final assessment order is passed by NFAC (Pg. 1 of the appeal set)- barred by time limitation

4. From the above, it is beyond doubt that the final Assessment Order has been barred by limitation.

5. On this issue, it is also relevant to rely on the order of the Hon'ble jurisdictional High Court of Delhi dated 05.02.2024 in the case of PCIT Vs. Fiber Home India Pvt. Ltd. in ITA No. 91/2024. For the sake of ready reference, the said order is reproduced as under:

ITA 91/2024

1. The appellant seeks to question the validity of the order of the Income Tax Appellate Tribunal ["ITAT"] dated 13 March 2023. The ITAT has essentially upheld the view taken by the Authority below i.e., Dispute Resolution Panel ["DRP"] which found that the assessment made in terms of Section 144C of

the Income Tax Act, 1961 ["Act"] would fall foul of the statutory limitation period as prescribed therein.

2. Undisputedly, the DRP had framed its directions in terms of the order dated 16 December 2021. A final order of assessment ultimately came to be framed on 26 March 2022 and thus evidently beyond the 30 day period as prescribed.

3. We note that an identical question has been answered by us in W.P.(C) 15381 of 2022 titled as "Louis Dreyfus Company India Private Limited vs. Deputy Commissioner of Income Tax Circle 13(1), Delhi & Ors." in favour of the assessee / petitioner. While dealing with this question, we had observed as follows:

"14. The determination which the AO makes in the first instance is recognized to be a draft of the proposed order of assessment by virtue of section 144C(1) of the Act. If the assessee be aggrieved by the proposed order of assessment, it is entitled to file objections before the DRP in accordance with Section 144C(2) of the Act. The power of the AO to complete the assessment on the basis of the draft order stands interdicted in case objections have come to be preferred within the 30 day period as contemplated in Section 144C(2) of the Act. It is the DRP which thereafter proceeds to decide the objections and frame directions to enable the AO to complete the assessment in accordance with Section 144C(5) of the Act.

15. In terms of sub-section (13) of Section 144C of the Act, the AO is mandated to complete the assessment "in conformity with the directions" as framed by the DRP. That very provision commands the AO to complete the assessment within one month from the end of the month in which such a direction is received.

16. *This is evident from Section 144C of the Act which is extracted herein below:-*

.....

17. *As is manifest from a reading of sub-section (13) of Section 144C of the Act, the AO is not accorded any discretion in the framing of an order of assessment once directions have come to be framed by the DRP. In fact, the provision requires the AO to frame an order of assessment in conformity with those directions and without providing any further opportunity of hearing to the assessee. This principle of law has been affirmed by the Bombay High Court in the aforementioned paragraphs of Vodafone Idea and in Shell India Markets Private Limited v. Additional Commissioner of Income Tax Officer, National Faceless Assessment Centre & Ors. The relevant paragraph of the decision in Shell India are extracted herein below:*

"10. Sub-section (13) of Section 144C. therefore, is very clear inasmuch as the Assessing Officer shall, upon receipt of the directions issued under sub-section (5). in conformity with the directions, complete the assessment within one month from the end of the month in which such direction is received. Sub-section (13) also provides that the Assessing Officer can complete the assessment without providing any further opportunity of being heard to the assessee. This means that the moment the Assessing Officer receives the directions under sub-section (5). he has to straightaway complete the assessment and he does not even have to hear the assessee. The Assessing Officer shall simply comply with the directions received from the DRP within one month from the end of the month in which such direction is received."

18. *In this backdrop, we note that both the judgments of the Bombay High X Court in Shell India and Vodafone Idea construe the time lines as provided in Section 144C to be*

mandatory in character. In our considered opinion, this interpretation is in accord with the intent behind insertion of that provision and the bare text and spirit of that section. Thus, we accord our approval to the interpretation as set out in the aforementioned decisions of the Bombay High Court.

19. Further, the procedure of assessment as provided under Section 144C does not envisage or contemplate the interdiction or involvement of the TPO once a directive has been framed by the DRP. The role of the TPO comes to an end once an order as contemplated under Section 92 CA(4) of the Act has come to be framed and remitted to the AO. There was thus no occasion for the TPO having resumed proceedings post the passing of the direction by the DRP on 20 June 2022.

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.

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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(T3) 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."

4. *We, consequently, find no merit in the instant appeal and the same shall stand dismissed."*

6. Hence, keeping in view the factual position, we hold that the Assessment Order is barred by limitation.

7. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 21/08/2024.

Sd/-

**(Vimal Kumar)
Judicial Member**

Dated: 21/08/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

ASSISTANT REGISTRAR