

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

IT(TP)A No. 295/Bang/2024
Assessment Years: 2010-11

IHS Global Private Limited, SRJ Park, Tower 1, 3 rd Floor, Plot No.13, 14, 15, Industrial Area, Hoodi Village, Krishnarajapuram, Hobli. PAN – AABCI 4372 D	Vs.	The Asst. Commissioner of Income Tax, Circle - 3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Aliasgar Rampurwala, CA
Revenue by	:	Shri DK Mishra, CIT (DR)

Date of hearing	:	30.08.2024
Date of Pronouncement	:	04.09.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the AO/TPO dated 25-12-2023 vide DIN No. ITBA/AST/S/143(3)/2023-24/1059039111(1) for the assessment year 2010-11.

2. The assessee by letter dated 21st of May 2024 has requested to admit the additional ground of appeal challenging the validity of the order passed under section 143(3) read with section 254 read with section

144B of the Act on account of barred by time. The relevant additional ground of appeal reads as under:

"5. On the facts and in the circumstances of the case and in law , the draft assessment order dated February 17, 2023, passed under section 143(3) read with section 254 read with section 144B of the Income tax Act, 1961 ('the Act') by the Assessment Unit, Income Tax Department is passed beyond the time limit prescribed under section 153(5) of the Act and hence all proceedings consequent to such draft assessment order including final assessment order dated December 25, 2023 are void-ab- initio, illegal and bad in law and deserves to be quashed."

2.1 As per the learned AR, all the necessary facts relating to the additional ground of appeal are arising from the order of the authorities below and therefore the same needs to be admitted by virtue of the judgement of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. versus CIT reported in 229 ITR 383.

2.2 On the other hand, the learned DR did not raise any objections to the admission of the additional ground of appeal raised by the assessee.

2.3 After hearing both the sides regarding the admission of the additional ground of appeal, we note that the additional ground raised by the assessee is legal in nature and therefore we admit the same in view of the principles laid down in the judgement of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd versus CIT reported in 229 ITR 383 and accordingly proceed to adjudicate the same.

3. A brief history of the facts of the case is like this that it is the 2nd round of litigation before us. The ITAT on the earlier occasion has set aside the issue to the file of the TPO/AO for fresh decision with respect to the claim of exclusion of certain comparable in ITA No.

1921/Bang/2018 vide order dated 15th February 2019. The relevant extract of the order is reproduced as under:

"5. We have considered the rival submissions. In view of this submission of Id.DR of revenue, it is seen that letter filed by the assessee on 17.01.2014 by addressing to DCIT(TP)-V might not have reached to the file of TPO because the TPO in the present case is DCIT(TP)-IV and not DCIT(TP)-V, Bangalore to whom the said letter was addressed by the assessee. But still this is true that the submissions were made by the assessee before the passing of the order by the TPO and although it could not reach to the file of TPO because of certain clerical mistakes on the part of the assessee, we feel it proper that in the interest of justice, the matter should go back to the file of TPO for fresh decision after considering the written submissions filed by the assessee on 17.01.2014 or any further submissions which the assessee may make in course of set aside proceedings. Hence, we set aside the order of CIT (A) and restore the matter back to the file of AO/TPO for fresh decision with regard to assessee's claim for exclusion of five comparables i.e.

- a) Accentia Technologies Ltd.*
- b) Acropetal Technologies Ltd. (Segment)*
- c) E-clerx Services Ltd.*
- d) ICRA Online Ltd. (Segment)*
- e) Infosys BPO Ltd.*

3.1 Subsequently, the AO referred the TPO under section 92CA of the Act vide letter dated 22nd January 2020 for deciding the issue on the exclusion of specified comparable while computing arms-length price of the international transaction in pursuance to the direction issued by the ITAT discussed above. Thus, from this fact it can be inferred that the order of the ITAT under section 254 of the Act must have been received to office of the PCIT or CIT before 22nd January 2020 i.e. financial year ending 31-03-2020.

4. Finally, the TPO passed order under section 92CA r.w.s. 254 of the Act on 21st January 2022 and based on TPO order, the AO subsequently passed the draft assessment order under section 144C(1) r.w.s. 254 of the Act dated 17th February 2023.

5. The issue in the case on hand relates whether the assessment order passed by the AO in consequence to the direction of the ITAT is barred by time and therefore the same is not sustainable. In this connection, we refer the relevant provisions of section 153 (3) of the Act which reads as under:

Time limit for completion of assessment, reassessment and recomputation.

153. (1) *****

(2) *****

(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

⁹²*[Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.]*

6. From the above provisions, it is transpired that the fresh assessment order in pursuance to the direction of the ITAT should have been made by the AO in the set-aside proceedings within the period of 12 months from the end of the financial year in which the order was received by the office of the Id. Commissioner of Income Tax. Thus, considering the fact that the order of the ITAT was received by the office of PCIT or CIT during the financial year 2019-20, the time limit for passing fresh assessment order was expiring on 31st March 2021. However, in the case on hand a reference under section 92CA of the Act was made, therefore in accordance with provision of sub-section (4) of section 153 of the Act, such period of 12 months shall be further

extended by another 12 months. The relevant extract of the provisions of subsection (4) of section 153 of the Act reads as under:

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.

7. Undeniably, there was made reference to the TPO in the given case, therefore we are of the view that the assessment order should have been made by 31st March 2022 whereas the assessment order has been made as on 17th February 2023 which apparently appears barred by time.

8. Without prejudice to the above, we note that Hon'ble Delhi High Court in the case of New Delhi Television Ltd. v. Dispute Resolution Panel reported in 162 taxmann.com 692 has directed to frame the assessment within the time specified under section 153(3) of the Act in the similar set of facts and circumstances. The relevant finding is extracted as under:

72. We, additionally, find that the prescription of nine months would also be applicable to a fresh order which is liable to be made in accordance with Section 92CA of the Act. This since Section 153 of the Act speaks not merely of assessments but also orders that are liable to be framed under Section 92CA. The order which is spoken of in Section 92CA of the Act, as explained above, is the one which the TPO may come to make in accordance with sub-section (3) thereof. It is thus manifest that the assessment exercise was liable to be concluded within a period of nine months when computed from 14 July 2017.

73. The only aspect which could not have been conclusively determined on or before 31 December 2018 was the issue pertaining to corporate guarantee and this since although the Special Bench had answered the reference on 23 August 2017, the appeal of the assessee came to be disposed of by the Bench of the ITAT only on 16 June 2020.

9. In view of the above, we hold that the assessment framed by the AO in the given set of facts is barred by time and therefore, the same is

not sustainable. Hence, additional ground of appeal filed by the assessee is allowed.

10. Regarding the other issues raised by the assessee on merit, we note that these do not require any separate adjudication as we have already held that the order in appeal is barred by time and therefore the same is not maintainable. As such, these issues become infructuous and thus we dismiss the same as infructuous.

11. In the result, appeal of the assessee is hereby partly allowed.

Order pronounced in court virtually on 04th day of September, 2024

Sd/-

(BEENA PILLAI)
Judicial Member
Bangalore
Dated, 04th September, 2024
/ vms /

Sd/-

(WASEEM AHMED)
Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore