

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.2027/Del/2022
(ASSESSMENT YEAR 2018-19)**

Hyundai Rotem Company Indian Project Offices Unit No. 705, 706, 707 & 708 (07 th floor), DLF Tower-A, Jasola District Centre Near Apollo Hospital, Mathura Road, New Delhi PAN:AABCK6367L (Appellant)	Vs.	ACIT International Taxation, Circle2(1)(1), Room No. 310, E-2 Block, Pratyakash Kar Bhawan, Civic Centre, JL Nehru Marg, New Delhi (Respondent)
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Assessee by	Ms Ananya Kapoor, Adv
Respondent by	Shri Z H Tanweer, CIT DR

Date of Hearing	17/09/2024
Date of Pronouncement	18 /11/2024

ORDER

PER VIMAL KUMAR, JM:

The appeal is against order dated 01/07/2022 passed u/s 143 read with Section 144C(13) of the Income Tax Act (hereinafter referred as 'Act') by the Ld. Assistant Commissioner of Income Tax (hereinafter referred as Ld. A.O.) pursuant to the directions of Hon'ble Dispute Resolution Panel (hereinafter referred as "Hon'ble DRP") dated 24/05/2022 and the order

dated 25/07/2021 passed by Ld. Transfer Pricing Officer (hereinafter referred to 'Ld. TPO') to give effect to the directions of Hon'ble DRP.

2. Brief facts of the case are that, the appellant /assessee is a Company incorporated in Korea engaged in producing all kinds of railway vehicles such as electric multiple units, high speed trains, light rail vehicle, locomotives and passenger coaches, car manufacturing systems and environment plants. The assessee e-filed return of income on 26/03/2019 declaring total income of Rs. 13,64,92,120/-. The case was selected for scrutiny through CASS. Notice u/s 143(2) of the Income Tax Act was issued on 22/09/2019. The case was referred to Learned TPO on 24/06/2021 for the TP risk parameters after obtaining approval u/s 92CA of the Act from CIT (International Taxation)-2, New Delhi vide order dated 24/06/2021. The order of TPO u/s 92CA(3) dated 25/07/2021 was received in which TPO determination of Arms Length Price was provided. Draft order dated 27/09/2021 proposed assessed income of Rs. 21,01,26,630/-. The assessee filed objections before the Ld. DRP, New Delhi against the draft assessment order dated 27/09/2021, which were decided vide order dated 24.05.2022. In pursuant to directions dated 24.05.2022 of Hon'ble DRP, Learned A.O. passed final assessment order dated 01.07.2022.

3. Appellant/assessee preferred present appeal.

4. Learned Authorized Representative for appellant/Assessee referred to additional grounds as under:-

“That the Final Assessment Order passed u/s 143(3) r.w.s. 144C(13) on 1st July 2022 is illegal, bad in law barred by time limitation and without jurisdiction. Hence, the same is liable to be quashed.

2. That the order passed by the Hon’ble DRP dated 24th May 2022 is invalid and non est as the same has been passed without DIN number and also in violation of the circular of CBDT which is binding in nature.”

5. At the time of hearing, the Additional Grounds raised regarding DIN Number was not pressed. Learned authorized representative for appellant/assessee submitted that final Assessment Order dated 01/07/2022 was illegal, bad in law barred by time limitation and without jurisdiction.

6. Learned authorized representative for appellant/assessee submitted that final assessment order so passed on the pivotal issue that such order is vitiated in law owing to bar of limitation and thus non est in law at the threshold. Hon'ble High Court of Delhi in case of PCIT vs. Fiberhome India P. Ltd. (ITA 91/2025 judgment dated 05.02.2024) has held that the time lines as provided under section 144C(13) are mandatory in character. Hon'ble Delhi High Court in the case of Louis Drefus company India Private Limited vs. DCIT judgment dated 30.01.2024 in similar facts have also taken a view adverse to the Revenue.

7. Hon’ble Supreme Court in the case of *Union of India Vs. G. S. Chatha Rice Mills reported (2021) 2 Supreme court Cases 209 dated 23.09.2020* as under:-

“The dispatch of a record occurs when it enters a computer resource outside the control of the originator. The time of receipt of the electronic record is fixed by the provisions of sub-section (2) of Section 13. When

the addressee has designated a computer resource, receipt occurs when the record enters the computer resource so designated. Otherwise, where no computer resource is designated, the receipt of the record is when it is retrieved by the addressee. These provisions have been incorporated in the law to enable the dispatch and receipt of a record in the electronic form to be defined with precision with reference to both time and place."

8. Judgment dated 19.3.2024 in case of Nikon India Private Ltd. vs. ACIT for the assessment year 2018-19 by ITAT Delhi Benches is fully applicable to present case. Similar is position in ITA No.1733/Del/2022 for A.Y 2018-19 in Honda R & D (India) P. Ltd. Vs. ACIT vide order dated 22.05.2024 and in ITA No. 391/Del/2022 for A.Y 2017-18 in Syniverse Technologies Services (India) Pvt. Ltd. Vs. ACIT vide order dated 21.08.2024 of Hon'ble ITAT, Delhi. So the appeal may be accepted.

9. Learned Representative for the Department of Revenue submitted that the Assistant Commissioner of Income Tax(International Taxation). New Delhi in letter dated 23/08/2024 mentions that:-

"This office has received communication physically through DAK of DRP order dated 24.05.2022 having DIN number ITBA/DRP/S/91/2022-23/1043184418(1) dated 26.05.2022 on 01 June, 2022 vide Diary No.123(copy attached).

There was no communication regarding DRP Order dated 24.05.2022 having DIN number ITBA/DRP/S/91/2022-23/1043184418(1) dated 26.05.2022 on the Email from Hon'ble DRP.

It is also stated that manual orders uploaded by the DRP are not visible in the assessment worklist of the AO and hence the AO is

not notified about the same in the ITBA portal. The case reflected in AOs worklist on 30.06.2022. This is also evident from the “Order Sheet Details” downloaded from ITBA in the case of the assessee for AY 2018-19 (copy enclosed).

Hence the AO did not receive any communication of the said DRP order either through mail or on ITBA worklist until 30.06.2022. It was received in DAK physically on 01.06.2022.

As per the Act, that there is one month from the end of the month in which directions are received from DRP for passing the Final Assessment Order. In the instant case final assessment order was passed on 01 July, 2022, which was well within time as per time limit prescribed in the Act.”

10. Intimation letter for order under section 144C(5) dated 27.4.2022 in order dated 19.3.2024 in Nikon India Private Ltd. vs ACIT ITAT Delhi Bench observed as under:-

“the System’s Report clearly say that information regarding when the DRP order was received by DC/ACIT (NeA)-2(2)(2), Delhi is not known”.

11. In Microsoft Corporation (India) Pvt. Ltd. vs DCIT order dated 28.2.2024 ITAT Delhi Bench observed that –

“We find that section 13 of the Information Technology Act, 2000 has been subject matter of consideration by the Hon'ble Supreme Court in the case of Union of India Vs. G. S. Chatha Rice Mills reported (2021) 2 Supreme court Cases 209 dated 23.09.2020 as under:-

“The dispatch of a record occurs when it enters a computer resource outside g the control of the originator. The time of receipt of the electronic record is fixed by the provisions of sub-section (2) of Section

13. When the addressee has designated a computer resource, receipt occurs when the record enters the computer resource so designated. Otherwise, where no computer resource is designated, the receipt of the record is when it is retrieved by the addressee. These provisions have been incorporated in the law to enable the dispatch and receipt of a record in the electronic form to be defined with precision with reference to both time and place."

On a cohesive reading of provision of section 130 and 144B of the Act read together with section 13 of the Information Technology Act, 2000, we hold that the moment document is uploaded by the originator (which in the present case Id DRP) on 07.04.2022 in ITBA portal that dispatch from the side of the Id DRP is complete and since the entire documents are uploaded through electronic mode, the same happens seamlessly and accordingly, the receipt of the said document also becomes instantaneously. Hence, the date of receipt of DRP direction also happened on 07.04.2022 itself and the due date in terms of section 144C(13) would start reckoning from that date. Merely, because the NeAC had retained the document receipt from Id DRP in the form of DRP directions for few months in its kitty and the later transfer the same to the assessment unit on 02.05.2022, the due date in terms of section 144C(13) of the Act for framing the final assessment order by the Id AO does not get automatically extended. Hence, we have no hesitation to hold that the final assessment order ought to have been passed by the Id AO on or before 31.05.2022 in the instant case. Since, the same was done on 30.06.2022 which is barred by limitation."

12. Hon'ble Supreme Court in Civil Appeal No. 3427 of 2020 in the case of Sugandhi (dead) by Lrs. & ANR. Vs P. Rajkumar order dated 13.10.2020 held as under:-

“It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

13. Hon'ble Supreme Court of India in Civil Appeal No. 1829 of 2023 in the case of the National Faceless Assessment Centre & Ors. Vs Automotive Manufacturers Private Limited order dated 21.03.2023 held as under:-

“4. Having heard Shri Balbir Singh, learned ASG, appearing of the Revenue and Shri Dharan Gandhi, learned counsel appearing for the respondent-assessee and having gone through the impugned judgment and order passed by the High Court and considering the fact that the Assessment Order was passed without issuing a show cause notice with a draft Assessment Order, as was mandatorily required, under Section 144B of the Act, as such, it cannot be said that the High Court has committed any error. However, at the same time, considering the fact that the Faceless Assessment Scheme has been introduced recently and therefore, the Revenue ought to have been given some leverage to correct themselves and take corrective measures and therefore the High Court ought to have remanded the matter to the Assessment Officer to pass a fresh order in accordance with law, after following the due procedure, as required under the law, namely, more particularly, under Section 144B of the Act.”

14. So appeal may be rejected.

15. From examination of record in light of aforesaid rival contentions, it is crystal clear that the appellant/assessee has

pressed additional ground claiming that case is squarely covered by order dated 19.03.2024 in the case of “Nikon India Private Limited vs ACIT”.

16. The comparative table of vital events and dates of Nikon and present case are:-

S. No.	Events	Nikon	Present
1.	Directions of DRP issued under section 144(c)5	17.03.2022	24.05.2022
2.	Assessment case transferred from Faceless AO to JAO under section 144B(8) of the Act	22.04.2022	DRP order received by 26/05/2022
3.	DRP order received by JAO (final Assessment Order)	02.05.2022	11.07.2022
4.	Final assessment order passed	30.06.2022	01.07.2024
5.	Limitation from month of receiving order will end on	31.05.2022	30.06.2024

17. In the context of faceless assessment process time and place of dispatch and receipt of electronic document (in this case DRP order) is required to be ascertained by reference to section 13 of Information Technology Act, 2000 which is the basis prescribed under section 144B of Income Tax Act also (refer section 144 B (6)(v)). Hon'ble Supreme Court in case of GS Chatha Rice Mills [(2021)2SCC 209-J para 85), interpreted this very provision. Applying principles laid down by Hon'ble Supreme Court, only relevant fact necessary for deciding additional ground in present appeal relating to time barred assessment, is time of uploading by DRP of DRP order onto ITBA portal. Intimation letter to DRP order unambiguously shows 26.05.2022 as date of uploading of DRP order. This fact cannot be disputed. Except this critical and relevant information everything else (like when order is visible to AO, date of uploading some document by DCIT/ACIT circle 2 (1)

(1) Delhi) has been submitted by Respondents. It is fair to conclude that date of uploading DRP order on ITBA portal is 26.05.2022. As per section 144C(13) of the Act, assessment had to be completed on or before 30.06.2022. In present case the assessment is completed only on 01.07.2022 i.e., it is time barred null and void. Therefore, impugned assessment order dated 30.06.2022 is set aside being barred by limitation.

18. Other grounds having become academic in nature are left open.

19. In the result appeal of the assessee is allowed.

Order pronounced on 18th November, 2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 18/11/2024
DP/ SPS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI