

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.581/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Uber India Systems Private Limited (As successor to Uber India Research and Development Pvt. Ltd.), Hyderabad / Mumbai. PAN:AABCU6223H	<b>Vs.</b>	The Deputy Commissioner of Income, Circle 8(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Jehangir D Mistri, Sr. Advocate	
राजस्व द्वारा / Revenue by::	Ms. M.Narmada, CIT-DR	
सुनवाई की तारीख / Date of hearing:	24 / 12 / 2024	
घोषणा की तारीख / Pronouncement:	30 / 12 / 2024	

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M.:**

This appeal is filed by M/s. Uber India Systems Private Limited (As successor to Uber India Research and Development Pvt. Ltd.), (“the assessee”), feeling aggrieved by the final assessment order passed by the Learned Assessing Officer (“Ld. AO”), dated 24.08.2022 for the A.Y. 2018-19.

2. The assessee has raised the following grounds :

**“ Transfer Pricing Addition of INR 28,50,75,589 to Total Income**

1. On the facts and in circumstances of the case and in law, the learned National Faceless Assessment Centre ('NFAC') / Assessing Officer ('AO') / Transfer Pricing Officer ('TPO') erred, and the Hon'ble Dispute Resolution Panel ('DRP') further erred in making an addition of INR 28,50,75,589 to the Appellant's total income based on the provisions of Chapter X of the Income-tax Act, 1961 ('the Act').

**Final Assessment Order barred by limitation**

2. On the facts and circumstances of the case and in law, the Final Assessment Order issued / passed by the learned NFAC / AO is bad in law, in excess of jurisdiction and void ab initio being barred by limitation under provisions of Section 144C(13) read with Section 144B(1) of the Act.

The Appellant hereby prays that the Final Assessment Order therefore be set aside as null and void and accordingly the transfer pricing adjustment ought to be deleted in its entirety.

3. On the facts and circumstances of the case and in law, the learned NFAC / AO failed to appreciate that Hon'ble DRP's direction passed on 13 June 2022 and received by him on 14 June 2022, requires Final Assessment Order to be passed by 31 July 2022.

**Reference to the learned TPO for FY 2017-18 is uncalled for and not in accordance with Instruction no. 3 of 2016**

4. On the facts and circumstances of the case and in law, the reference made to the learned TPO by the learned NFAC / AO is bad in law and in excess of jurisdiction being not in accordance with Instruction 3 of 2016 dated 10th March 2016.

The Appellant hereby prays that the TP adjustment made in the Final Assessment Order therefore be deleted in its entirety as null and void.

**Error in rejecting transfer pricing study**

5. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in upholding / confirming the action of the learned TPO in rejecting the transfer pricing study maintained as per Section 92D of the Act read with read with Rule 10D of the Income Tax Rules, 1962 ('the Rules').

**Erroneous and unwarranted fresh search**

6. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in upholding / confirming the action of

the learned TPO in carrying out "non-contemporaneous" fresh search using databases as on 12 July 2021 which is in clear contravention to what is envisaged in law per Rule 10D(4) and Rule 10B(5) of the Income-tax Rules, 1962 ('the Rules') and hence not permissible.

Your Appellant prays that the said fresh search should be rejected.

**Incorrect selection of comparables by the learned TPO**

7. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in upholding/confirming action of the learned TPO in selecting following companies which are functionally not comparable:

- e-Clerx Services Limited ('eClerx')
- MPS Limited ('MPS')
- Domex E-Data Private Limited ('Domex')
- CES Limited (Segmental) (\*CES')
- Infosys B P M Limited ('Infosys BPM')
- Motif India Infotech Private Limited (Now known as Ttech India Customer Solutions Private Limited) ('Motif India')
- Inteq BPO Services Private Limited ('Inteq')
- Vitae International Accounting Services Private Limited ('Vitae')
- Microland Limited ('Microland')
- Datamatics Business Solutions Limited ('Datamatics')

The Appellant submits that such companies ought not to be taken as comparable.

**Additional filters are unwarranted in the comparability analysis**

8. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in applying additional filter of rejecting companies with less than 75 percent earnings from exports, which is unwarranted in the comparability analysis.

9. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in rejecting certain comparable companies citing non availability of data / Not in TPO's search when relevant financial statements of comparable companies were submitted by the Appellant during the TP Assessment proceedings and such companies were forming part of contemporaneous search undertaken by the Appellant.

10. On the facts and in the circumstances of the case and in law, the learned TPO erred, and the Hon'ble DRP further erred in upholding / confirming the action of the learned TPO in rejecting companies merely on the basis of different accounting period, despite the same being functionally comparable. Without prejudice, the Appellant submits that, if the data for the period April to March can be extrapolated / computed basis the information available in public domain then the same ought to be given due consideration.

**Incorrect rejection of Appellant's benchmarking analysis and comparables**

11. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in upholding/confirming the action of the learned TPO of disregarding following comparable companies selected by the Appellant based on the contemporaneous data in the transfer pricing study report maintained as per Section 92D of the Act read with Rule 10D of the Rules and various submissions made by the Appellant:O

- Silgate Solutions Limited ('Silgate')
- Digicall Global Private Limited ('Digicall')
- R Systems International Limited (Seg) ('R Systems')
- iSN Global Solutions Private Limited ('ISN')
- Airan Limited ('Airan');
- Allsec Technologies Limited ('Allsec').
- Athena BPO Private Limited ('Athena BPO')
- Cameo Corporate Services Limited ('Cameo')
- Cosmic Global Limited ('Cosmic')
- Intelenet Global services Private Limited (now known as Teleperformance - - Global Services Private Limited) ('Intelenet')
- Jindal Intellicom Limited (Seg) ('Jindal')
- One Point One Solutions Limited (One Point One')
- Softage Information Technology Limited ('Softage')

Your Appellant prays that such companies be included as comparables.

**Non-allowability of appropriate economic adjustments**

**Working Capital Adjustment Disallowed**

12. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in upholding/confirming the action of the learned TPO in not allowing working capital adjustment in accordance with under Rule 10B(1)(e)(iii) to account for difference between the working capital

position of the Appellant and that of alleged comparable companies selected by the learned TPO.

**Risk Adjustment Disallowed**

13. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in upholding/ confirming the action of the learned TPO in not allowing the risk adjustment in accordance with the Rules to account for difference between the risk profile of the Appellant and that of alleged comparable companies selected by the learned TPO.

**Error in margin computation of the Appellant**

14. On the facts and in circumstances of the case and in law, the learned TPO erred, and Hon'ble DRP further erred in upholding/ confirming the action of the learned TPO in considering total cost base as INR 172.5 Crs, which also included expenses in relation to income received from third party, while computing the alleged arm's length price resulting in additional transfer pricing adjustment of INR 7.5 Crs.

The Appellant prays that for computing arm's length price, only operating cost for the international transaction i.e., 133.6 Crs should be considered in cost base.

15. Without prejudice, the Appellant prays that transfer pricing adjustment be reduced proportionately, to the extent the income received from third party forms part of total operating income considered by the learned TPO.

**Error margin of comparable / alleged comparable companies**

16. On the facts and in the circumstances of the case and in law, the learned TPO / AO erred in computing the net cost plus margin of comparable / alleged comparable companies from the annual report available in the public domain.

**Transfer Pricing Order passed without application of mind**

17. On the facts and in the circumstances of the case and in law, the learned TPO erred in passing the transfer pricing order without application of mind inasmuch as the learned TPO have mixed the Appellant's functions and the contentions with another taxpayer.

**Levy of interest under Section 234D of the Act**

18. On the facts and in circumstances of the case and in law, the learned NFAC / AO erred in levying interest under Section 234D of the Act.

**Initiation of penalty proceedings**

*19. On the facts and in circumstances of the case and in law, the learned NFAC / AO erred in initiating penalty proceedings under Section 274 read with Section 271(1)(c) of the Act.*

*The Appellant therefore prays that the aforesaid additions to the returned income of the Appellant be deleted.*

*The Appellant craves leave to add, alter, amend, or withdraw all or any of the Grounds of Appeal herein above and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per the law.”*

3. The brief facts of the case are that the assessee is a company, engaged in the business of providing support and related services to affiliates of the company and also provides infrastructural facility / services to third parties. The assessee filed its Return of Income (“ROI”) for the A.Y. 2018-19 on 28.11.2018 declaring a total income of Rs.17,87,05,690/-. The case of the assessee was selected for scrutiny and during the course of assessment proceedings, a reference u/s.92CA of the Income Tax Act, 1961 (“the Act”) was made to the Learned Transfer Pricing Officer (“Ld. TPO”) to determine the Arm’s Length Price (“ALP”) of the international transactions of the assessee with its associates. The Ld. TPO vide his order dated 31.07.2021 suggested total transfer pricing adjustment of Rs.29,56,00,291/-. Thereafter, the Ld. AO passed a draft assessment order u/s.143(3) r.w.s. 144B r.w.s. 144C(1) of the Act on 24.09.2021. Aggrieved, the assessee preferred objection

before the Learned Dispute Resolution Panel (“Ld. DRP”). The Ld. DRP issued directions u/s.144C(5) of the Act on 13.06.2022 upholding the transfer pricing adjustment proposed by the Ld. TPO. The directions of the Ld. DRP was uploaded on ITBA portal on 14.06.2022 and the same was received by the Ld. AO by e-mail on 24.06.2022. Thereafter, the Ld. DRP issued a corrigendum on 12.07.2022 with regard to his directions dated 13.06.2022. Thereafter, the Ld. AO passed the final assessment order u/s.143(3) r.w.s. 144B r.w.s. 144C(13) of the Act on 24.08.2022 and determined the total income at Rs.46,37,81,279/-.

4. Aggrieved by the final assessment order passed by the Ld. AO, the assessee is in appeal before us. The Learned Authorised Representative (“Ld. AR”) submitted that, the ground nos.2 & 3 of the appeal of the assessee are on legal grounds, which is on the issue of time barring of final assessment order by limitation. The Ld. AR further submitted that, if the bench is convinced on the legal ground, the other grounds of the appeal will become infructuous and not pressed by the assessee. With the permission of the bench, the Ld. AR made his submissions on the legal grounds.

5. The Ld. AR submitted that, the Ld. DRP issued its directions u/s.144C(13) of the Act on 13.06.2022, which was uploaded on the ITBA portal on 14.06.2022 and received by the Ld. AO via e-mail on 24.06.2022. Subsequently, the Ld. AO issued a corrigendum on 12.07.2022 with respect to his directions dated 14.06.2022. On the basis of the directions of the Ld. DRP, the Ld. AO passed final assessment order u/s.143(3) r.w.s. 144B r.w.s. 144C(13) of the Act on 24.08.2022. The Ld. AR further submitted that, as per the provisions contained u/s.144C(13) of the Act, the Ld. AO is required to pass the final assessment order within one month from the end of the month in which the directions of the Ld. DRP is received by the Ld. AO. In the present case, the directions of the Ld. DRP is received by the Ld. AO in June, 2022 and the corrigendum with respect to Ld. DRP directions dated 13.06.2022 is received in July, 2022. Therefore, the main issue in the present appeal was to decide, whether for the calculation of limitation u/s.144C(13) of the Act, the date of receipt of original directions to be considered or the date of receipt of corrigendum to be considered. The Ld. AR further submitted that the said issue was referred by the Hyderabad Bench of ITAT to the Special Bench for adjudication and the

Special Bench vide their order dated 26.11.2024, held that, the limitation period for the purpose of section 144C(13) is to be calculated on the basis of receipt of original directions by the Ld. AO and not on the basis of date of receipt of corrigendum by the Ld. AO. Finally, the Special Bench of ITAT held that, the final assessment order was to be passed by the Ld. AO on or before 31.07.2022. As the Ld. AO passed the order on 24.08.2022, which is after the limitation period of 31.07.2022, therefore, the final assessment order passed by the Ld. AO is barred by limitation. Finally, the Ld. AR prayed before the bench to follow the decision of Special Bench of ITAT and quash the final assessment order passed by the Ld. AO.

6. Per contra, the Learned Department Representative (“Ld. DR”) accepted that, the case of the assessee is squarely covered by the order of the Special Bench of ITAT, which has been decided in favour of the assessee.

7. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have also gone through the order of Special Bench of ITAT dated 26.11.2024, wherein, the present issue had been referred to the Special Bench for adjudication and the Special

Bench of ITAT has held that, the final assessment order passed by the Ld. AO u/s.143(3) r.w.s. 144B r.w.s. 144C(13) of the Act dated 24.08.2022 is barred by limitation. The relevant paras of the order of Special Bench of ITAT are reproduced as under :

*“ 21. To sum up, on the facts and in the circumstances of the present case, in our considered view, the final assessment order passed by the AO under Section 143(3) read with Section 144B and 144C(13) of the Act, dated 24.08.2022 is barred by limitation 144C(13), because, as per the provisions of Section 144C (13), the AO ought to have passed final assessment order on or before 31-07-2022, whereas in the present case, the final assessment order was passed on 24-08-2022 and thus, is barred by limitation.*

*22. Thus, we answer the question referred to for the Special Bench and decision as under:*

<p><i>Q. Q. On the facts and circumstances of the case, whether the time limit prescribed for the Assessing Officer to complete the assessment order u/s.144C(13) of the Act shall be reckoned from the date of original directions passed by the Dispute Resolution Panel under Section 144C(13) of the Act or the subsequent corrigendum dt.12.07.2022 ?</i></p>	<p><i>Ans: The time limit prescribed for the final AO the to pass assessment order under Section 144C(13) of the Act, shall be reckoned from the date of original directions issued by the DRP under Section 144C(5) of the Act, but not from the subsequent corrigendum to the directions issued by the DRP, and if original directions of ld. DRP is considered in the present case, the final assessment order passed by the Assessing Officer on 24.08.2022 is barred by limitation in terms of section 144C(13) of the Income Tax Act, 1961.”</i></p>
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In view of specific findings given by the Special Bench of ITAT on the issue of validity of final assessment order, we hold that the final assessment order passed by the Ld. AO u/s.143(3) r.w.s. 144B r.w.s. 144C(13) of the Act dated 24.08.2022 is barred by limitation. Accordingly, the final assessment order passed by the Ld. AO is quashed. Since final assessment order itself is quashed, therefore, the other grounds raised by the assessee become infructuous and stand dismissed being not pressed.

8. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 30th Dec., 2024.**

Sd/-

**(VIJAY PAL RAO)  
VICE PRESIDENT**

Sd/-

**(MADHUSUDAN SAWDIA)  
ACCOUNTANT MEMBER**

Hyderabad.  
Dated: 30.12.2024.

*\* Reddy gp*

**Copy of the Order forwarded to :**

1. M/s. Uber India Systems Private Limited (As successor to Uber India Research and Development Pvt. Ltd.), Regus Business Platinum Centre Pvt. Ltd., Level 13 Platinum Techno Park, Plot No.17/18, Sec-30A, Vashi, Thane, Navi Mumbai, Maharashtra-400 705
2. DCIT, Circle 8(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,