

**IN THE INCOME-TAX APPELLATE TRIBUNAL “K” BENCH,
MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4831/MUM/2025
(A.Y. 2021-22)**

LTIMindtree Limited (formerly Larse & Toubro Infotech Limited) L & T Technology Center, Gate No. 5, Saki Vihar Road, Powai, Mumbai-400072.	Vs.	ACIT, Circle (2)(2)(1) Mumbai/CIT(A)-NFAC- Delhi Room no. 545, 5 th Floor , Aayakar Bhavan, M.K. Marg, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACL1681P		
Appellant	..	Respondent

Appellant by :	Shri Madhur Agrawal, Adv. & Fenil Bhatt, Adv.
Respondent by :	Shri Bhagirath Ramawat- Sr. DR

Date of Hearing	02.09.2025
Date of Pronouncement	30.09.2025

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the CIT(Appeals), National Faceless Appellate Centre, New Delhi [hereinafter referred to as “CIT(A)”] dated 17.10.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”].

2. The grounds of appeal are as follows:

“1.1. On the facts and in circumstances of the case and in law, the Learned National Faceless Appeals Centre (“Ld. NFAC”) vide order dated October 17,

2024 under section 250 of the Income tax Act, 1961 ("the Act") erred in setting aside the entire assessment order dated December 19, 2023 ("Impugned assessment order") under section 144 r.w.s 144C(3)/144B of the Act for fresh assessment to the Ld. AO("the Ld. AO") and erred in not adjudicating the grounds raised in the appeal.

1.2. The Appellant prays that the order dated October 17, 2024 passed by the Ld. NFAC under section 250 of the Act be quashed and set aside.

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not expunging the reference to section 144 of the Act in the impugned assessment order, even though it was never the case of the Ld. AO that provisions of section 144 of the Act apply to the facts of the Appellant's case. The reference to Section 144 of the Act In the assessment order passed by the Ld. NFAC appears to have been erroneously captured and incorrectly invoked.

2.1. The Appellant prays that the Ld. AO be directed to expunge the reference to section 144 of the Act in the impugned assessment order. The Appellant, even otherwise, prays that conditions of section 144 of the Act are not satisfied in the Appellant's case and, therefore, impugned assessment order cannot be passed under section 144 of the Act.

3.1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting relief to the Appellant in relation to the adjustment, amounting to Rs. 4,20,051/-, made by the Ld. Transfer Pricing Officer ("Ld. TPO") /Ld. AO to the Arm's Length Price ("ALP") determined by the Appellant with respect to the transaction of corporate guarantee entered into by the Appellant.

3.2. The Appellant prays that the adjustment made to ALP of the Appellant on the transaction of corporate guarantee be deleted.

The Appellant craves leave to amend, alter, modify and add any further grounds of appeal, if required."

3. Brief facts are that the assessee filed its return declaring income of Rs. 1738,57,16,720/- for A.Y. 2021-22 on 04.03.2022. The case was selected for complete scrutiny as the assessee had shown large value of international transactions in the nature of Technical service fees. Reference was made to the Transfer Pricing Officer(TPO) for computation of Arm's Length Price (ALP) u/s. 92CA of the Act, of commission paid on the guarantees issued in favour of its Associated Enterprises(AEs).

The ALP of Guarantee Commission was computed and Rs. 4,20,051/- adjustment was proposed vide order u/s. 92CA(3) of the Act. Vide draft assessment order, Ld. AO proposed to add Rs. 4,20,051/- on account of variation in respect of TP issue, after considering the assessee's explanation final assessment order u/s. 144 r.w.s 144C(3) and 144B was made on 19.12.2023 determining total income of Rs. 1738,61,36,771/- after making the impugned addition.

Aggrieved, the assessee preferred an appeal before Ld. CIT(A). Vide order dated 17.10.2024, Ld. CIT(A) set aside the assessment order and directed the Assessing Officer to make a fresh assessment.

Aggrieved, the assessee has filed appeal before the Tribunal.

4. At the outset, it is seen that the appeal is time barred as it has been filed after a delay of 211 days. Ld. DR has opposed the request for condonation made by the assessee. After considering the reasons explained by the assessee in its application for delay, the same is hereby condoned being purely unintentional and due to bonafide reasons.

5. Ld. AR has submitted that Ld. CIT(A) did not adjudicate the grounds raised by the assessee and instead remanded back the case to Ld. AO after observing that the assessment order is an ex-parte order u/s. 144 of the Act. It has been pointed out that the Ld. AO mentioned in the body of the order that the same is being passed u/s. 143(3) r.w.s. 144B after considering the assessee's submissions.

However, on the first page of the Assessment order, relevant section has been inadvertently recorded as 144 r.ws. 144C(3) & 144B. The error is obvious and was pointed out in the grounds of appeal taken before CIT(A).

Instead of adjudicating on the grounds raised by the assessee, Ld. CIT(A) has mechanically set aside the order treating it as ex-parte, to the Ld. Assessing Officer. Instead he should have expunged the erroneous reference to section 144 and considered the issue relating to TP adjustment on merits in the light of submissions made before him.

On the other hand, Ld. DR has relied on the order of lower authorities and submitted that since Ld. CIT(A) has restored the matter to the AO, there is no cause for grievance by the assessee.

6. We have considered the rival submissions and perused the material placed on record. It is clear that the Ld. AO had finalized the assessment after considering the assessee's submissions and made an addition of Rs. 4,20,051/- on account of ACP of corporate guarantee commission charged by the assessee to its subsidiary company @1.50% p.a after disregarding the benchmarking undertaken by the assessee @1.25%. Inadvertently on the face of the order, relevant section has been mentioned as 144 r.w.s. 144C(3) and 144B whereas in the last para of the order, Ld. AO has mentioned as under:

On the basis of material available on record, the explanation of the assessee is accepted. The assessment is completed u/s. 143(3) r.ws. 144B of the Act.

6.2 Thus, we are of the considered opinion that Ld. CIT(A) erred in restoring the matter back to Ld. AO under the mistaken view that it was an ex-parte order. Instead he should have adjudicated the issues raised by the assessee on merits.

Accordingly, we hereby set aside the order of Ld. CIT(A) and direct him consider and decide the TP issue on merits. Needless to add the assessee shall be given due opportunity of being heard.

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

Order Pronounced in Open Court on 30.09.2025

Sd/-
(PAWAN SINGH)
(JUDICIAL MEMBER)

Sd/-
(RENU JAUHRI)
(ACCOUNTANT MEMBER)

Place: Mumbai

Date 30.09.2025

Anandi. Nambi/STENO

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.