



आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "C" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL MEMBER  
AND  
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.552/PUN/2025

निर्धारण वर्ष / Assessment Year: 2013-14

DCIT Circle-1, Nashik.	V s	Jyoti Paper Udyog Limited, Plot No.B-67, NICE MIDC, Satpur – 422007.
		PAN: AAACJ7288E
Appellant/ Revenue		Respondent /Assessee

Assessee by	None
Revenue by	Shri Gaurav Kr. Singh
Date of hearing	07/10/2025
Date of pronouncement	30/10/2025

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by Revenue against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] passed under section 250 of the Income Tax Act, 1961 dated 03.01.2025 emanating from the Assessment Order under section 143(3) r.w.s. 144C of the Act, 1961, dated 14.12.2016 for the A.Y.2013-14.The Revenue has raised the following grounds of appeal :

*"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in holding that the omission of Section 92BA(1) is applicable*



*retrospectively from its inception, without considering that the finance Act, 2017 specifically provides for the omission to apply prospectively from A.Y. 2017-18 onwards.*

*2. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in overlooking the saving clause in Section 40(2)(a), which preserves the applicability of Section 92B(1) for specified domestic transactions up to A.Y. 2016-17.*

*3. Whether on the facts and circumstances of the case, the Ld. CIT(A) is correct in relying on judicial precedents that did not take into account the existence of the saving clause or the legislative intent behind it, thereby arriving at the incorrect conclusion that Section 92BA(1) is inapplicable for A.Y. 2013-14.*

*4. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in concluding that the provisions of Section 92BA(1) were not applicable for A.Y. 2013-14, without properly appreciating that the provision was valid and enforceable during that assessment year.*

*5. Whether the Ld. CIT(A) erred in holding that the transaction of purchases and sales between the Appellant and its related parties were mere paper transactions?*

*6. Whether the Ld. CIT(A) erred in concluding that the transaction were undertaken solely to inflate turnover for bank finance, without any supporting evidence, and in disregarding the commercial rationale and business necessity behind these transaction?*

*7. Whether the Ld. CIT(A) erred in rejecting the findings of the TPO, who had verified the records and confirmed that the transaction*



were duly recorded, reported, and subject to statutory compliance, thereby proving their authenticity?”

**Submission of ld.DR :**

2. Ld.Departmental Representative(ld.DR) for the Revenue filed a written submission. Relevant paragraph of the written submission reproduced as under :

*“It is humbly submitted that the crux of the issue in the instant appeal pertains to the applicability of the provisions of clause (i) of section 92BA of the Act to the case of the assessee for AY 2013-14 in the given facts and circumstances of the case and in law. It is to state that, it is not in doubt that there was an amendment to section 92BA by The Finance Act, 2017 w.e.f 01.04.2017 whereby the said clause (1) is stated to be omitted by Finance Act, 2017 w.e.f 1-4-2017. The case of the assessee that are mentioned in the decisions in the table in para-14 above (except at sr no 5 therein) was that omission of the said clause (1) without a saving clause meant that it never existed on the statute from the very beginning and therefore any action initiated even during the currency of the said provision was ab initio void. Reliance in this regard has been placed mainly on the decision of M/s Texport Overseas Pvt Ltd [ITA 1772/Bang/2017] that came to be affirmed by the Karnataka High Court. The various decisions of the various tribunals have taken this decision as the base and have dealt with the issue of "repeal" & "omission" as discussed/held by the various apex court decisions which have been mentioned in the table in para-1.4 above. The decisions referred to are not mentioned here again for the sake of brevity.*

*2.1 It is also a fact that none of the decisions so far have considered the legislative intention of taking away of the said clause (i) of sec. 92BA of*



*the Act from the statute by Finance Act, 2017 and its effective date as per the legislature i.e from AY 2017-18 onwards. Also, the reason for insertion of section 92 BA in the Income-tax Act, 1961 by Finance Act, 2012 and the reason for its omission and the effective dates of operation of such amendments have not been considered at all.”*

3. At the outset of hearing, no one attended on behalf of the Assessee for hearing. This was the fifth hearing when no one appeared on behalf of the Assessee. No adjournment letter was filed. Hence, we heard the case in absence of Assessee’s Representative.

### **Findings & Analysis :**

4. We have heard ld. Departmental Representative for the Revenue and perused the records. Relevant paragraphs of the ld. CIT(A) are reproduced here as under :

#### *“4.4 Findings and Reasons*

*a I have carefully considered the facts of the case, TPO & AO's orders, submissions filed by the appellant and the various judicial decisions on this issue.*

*On perusal of the above, it is noticed that in this year, the appellant had made payments to four related parties u/s 40A(2) and the total of such payments exceeded the threshold of Rs. 5 crore u/s 92BA as per the law applicable for the relevant AY 2013-14. The details of the same as furnished in the TP Study Report, attached at page 1B & 1C of the*



*Paper Book furnished by the appellant. On verification of the Income-tax Returns (ITR") of these four related parties attached at pages 111 to 123 of the Paper Book, it is observed that all these related parties are assessed to tax under the normal provisions of the Act and they have not claimed any tax holiday/ exemption under the special provisions of section 10A, 108, 801A, 801B etc. Thus, it is observed that the payments made by the appellant to the four related parties u/s 40A(2), exceeding Rs. 5 crore fell within the scope of Specified Domestic Transactions (SDT") as defined under clause (i) of section 92BA as existing on the Statute Books during/for the relevant period. The transactions entered with the related parties u/s 40A(2) by the appellant did not fall within the definition of SDT stipulated under any other clause i.e. clause (ii) to (vi) of section 92BA of the Act. It is noticed that the AO had made a reference to the TPO u/s 92CA(1) to determine the ALP of the above SDTs falling within the scope of clause (i) of section 92BA of the Act.*

*b. It is a matter-of-fact that clause (i) to section 92BA was omitted by Legislature vide Finance Act, 2017 w.e.f. 01.04.2017 without inserting any savings clause thereto. It is observed that Hon'ble Courts & Tribunals have consistently taken a view that in the absence of any savings clause inserted by the Legislature at the time of omitting clause (i) to section 92BA, the omission of clause (i) to section 92BA vide Finance Act, 2017 shall have the effect as if the said clause (i) never existed on the Statute-book even for the period prior to 01.04.2017. I find that this view has been expressed by Hon'ble Courts in the following decisions relied upon by the appellant -*

1. *1. PCIT v. Texport Overseas Pvt. Ltd. [(2020) 313 CTR 485 (Karnataka High Court)]*



2. *Uttam Energy Ltd. v. ACIT [ITA No. 2033/PUNE/2019] dated 30.05.2024*

3. *Worship Infraprojects (P) Ltd. v. DCIT [(2023) 226 TTJ 649 (Jaipur)]*

4. *Bhatiya SMSIL (JV) v. ITO [ITA No. 117/Gau/2019] dated 17.06.2020*

5. *Raipur Steel Casting India Pvt. Ltd. v. PCIT [ITA No.895/Kol/2019] dated 10.06.2020*

6. *Swastik Coal Corporation Pvt. Ltd. v. PCIT [ITA No.486/Indore/2018] dated 26.07.2019.*

.....

*f. Thus, it is observed that the impugned legal issue in the instant case of the Appellant is squarely covered by the decision of Hon'ble Karnataka High Court as well as the decision of Hon'ble Jurisdictional Pune Tribunal and that too in his favour, I further find that there is no contrary decision rendered by any other Hon'ble High Court on this legal issue so far.*

*Therefore, being under a legal obligation to follow the above cited decisions going by the well settled rule of precedents, reiterated by Hon'ble Jurisdictional Bombay High Court in its recent decision in the case of Om Siddhakala Associates v. DCIT [W.P. No. 14178/2023] dated 28/03/2024 and respectfully following the decision of Hon'ble Jurisdictional ITAT, Pune in the case of Uttam Energy Ltd (supra), the transactions entered by the appellant for the relevant AY with its related*



*parties u/s 40A(2) cannot be said to be covered within the meaning of Specified Domestic Transactions as defined u/s 92BA of the Act. In the preceding paras, it has already been established that the impugned transactions do not fall within the scope and ambit of clauses (ii) to (vi) of section 92BA and since clause (i) to section 92BA is deemed to have never existed on the statute, the transactions entered by the appellant with its related parties u/s 40A(2) would fall outside the meaning of SDTs u/s 92BA of the Act.*

*In view of the above discussion, I hold that the adjustment made u/s 92CA of Rs.17,12,37,653/- is not sustainable in law and the AO is directed to delete the same on this legal ground.*

*Thus, Ground Nos. 4 & 5 are allowed.”*

4.1 Thus, Id.CIT(A) has followed the decision of ITAT and Hon’ble Karnataka High Court. No contrary decision of Hon’ble Jurisdictional High Court has been brought to our notice.

5. The Hon’ble Karnataka High Court in the case of PCIT Vs. Texport Overseas Pvt. Ltd., (2020) 313 CTR 485 has held as under :

*Quote “5. Having heard learned advocates appearing for parties and on perusal of records in general and order passed by Tribunal in particular it is clearly noticeable that of (i) of 92BA of the Act came to be omitted w.ef 1st April, 2017 (sic) by Finance Act, 2017 (sic). As to whether omission would save the acts is an issue which is no more res integra in the light of authoritative pronouncement of Hon’ble apex Court in the matter of Kohlapur Canesugar Works Ltd vs Union of India AIR 2000 SC 811 whereunder, apex Court has examined the effect*



*of repeal of a statute vis-a-vis deletion/addition of a provision in an enactment and as effect thereof The import of s 6 of General Clauses Act has also been examined and it came to be held*

*“37 The position is well-known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of s. 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in s. 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision”*

*6. In fact, co-ordinate Bench under similar circumstances had examined the effect of omission of sub-s. (9) to s. 10B of the Act w.e.f. 1st April, 2004 by Finance Act. 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-s. (9) of s. 108. In the matter of*



*General Finance Co. vs. Asstt. CIT, which judgment has also been taken note of by the Tribunal while repelling the contention raised by Revenue with regard to retrospectivity of s. 92BA(i) of the Act. Thus, when cl. (i) of s. 92BA having been omitted by the Finance Act, 2017, w.e.f 1st July, 2017 from the statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the AO under the effect of s. 92BA and reference made to the order of TPO under s 92CA could be invalid and bad in law.*

*7. It is for this precise reason, Tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Canesugar Works Ltd. referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of GE Thermometrias India (P) Ltd. stated supra. As such we are of the considered view that first substantial question of law raised in the appeal by the Revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res integra."Unquote.*

6. The Hon'ble Karnataka High Court in the case of PCIT-2, Bangalore Vs. M/s.TT Steel Services India Private Limited in ITA No.665/2023 vide order dated 14.10.2024 has held the issue in favour of Assessee. The relevant paragraphs of the Hon'ble High Court's Order are reproduced here as under :

Quote. "2. The learned counsel for the appellants submits that the following substantial questions of law arise for consideration:



(i) "Whether the Tribunal was right in holding that the reference made to TPO for specified domestic transaction mentioned in clause (i) of Section 92BA of the Act is not valid as the said provision has been omitted and as such addition made in respect of same needs to be deleted without appreciating that reference made to Transfer Pricing Officer was in accordance with parameters of Section 92CA of the Act and the amendment takes effect from 1/4/2017 which applies to A.Y.2017-18 and subsequent years"?

(ii) "Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse in nature in holding that omission of section 92BA(1) of the Act w.e.f 1/4/2017 would amount to nonexistence of the section from the date of insertion when it is settled position that the amendment under the Act would be applicable to the relevant assessment year in which effect is contemplated and recorded as finding contrary to scheme of the Act"?

(iii) "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in view of section 92BA (i) of the Act being omitted with effect from 1/4/2017 would amount to nonexistence of section contrary to settled position of law that the law during the relevant A.Y. has to be applied"?

(iv) "Whether the Tribunal was right in fact and in law in restricting Transfer Pricing Adjustment to International Transaction with Associated Enterprises only even when same is contrary to Section 92CA of the Act and when assessee is providing service to both AE and Non-AE's where assessee has not made any bifurcation of profit in book of accounts as overall profit



*margin is recorded in books without any data as to what would be the profits earned for non-AE"?*

.....

*5. Having noted the submissions made by the learned counsel for the parties, insofar as issues No. 1 to 3 are concerned, we find that, the Co-ordinate Bench of this Court in the case of PR. Commissioner of Income Tax-7 and another Vs. M/s. Texport overseas Pvt. Ltd. in ITA No.392/2018 along with ITA No.170/2019 decided on 12.12.2019 has in paragraphs No.3 onwards, has stated as under:*

*“3. It is the contention of learned Advocates appearing for revenue that tribunal was not justified in arriving at a conclusion that Clause (i) of Section 92BA of the Act, which had been omitted w.e.f.01.04.2017 would be applicable retrospectively by presuming the retrospectivity, particularly when the statute itself explicitly stated it to be prospective in nature. As such they have sought for formulating substantial questions of law and have sought for answering the same in favour of revenue and against the assessee.*

*4. Sri.E.I.Sanmathi, learned counsel appearing for revenue/appellant in ITA No.170/2019 would contend that even the disallowance made by the AO under Section 14A r/w Section 8(2)(iii) of Income Tax Rules for a sum of Rs.14,88,870/- by holding that there was no exempted income and as such disallowance could not have been made even though said provision was rightly invoked by AO, and as such setting aside the disallowance is erroneous. Hence, he prays for substantial question of law as formulated in the appeal memorandum*



*(ITA170/2019) be formulated, adjudicated and answered in favour of assessee.*

*5. Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (i) of Section 92BA of the Act came to be omitted w.e.f. 01.04.2019 by Finance Act, 2014. As to whether omission would save the acts is an issue which is no more res-integra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of KOHLAPUR CANESUGARWORKS LTD. v. UNION OF INDIA reported in AIR2000 SC 811 whereunder Apex Court has examined the effect of repeal of a statute visa-vis deletion/addition of a provision in an enactment and its effect thereof. The import of Section 6 of General Clauses Act has also been examined and it came to be held:*

*“37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a*



*statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision.”*

6. *In fact, Coordinate Bench under similar circumstances had examined the effect of omission of sub-section (9) to Section 10B of the Act w.e.f.01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of Section 10B. In the matter of GENERAL FINANCE CO. vs. ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of Section 92BA(i) of the Act. Thus, when clause (i) of Section 92BA having been omitted by the Finance Act, 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never existed. Hence, decision taken by the Assessing Officer under the effect of Section 92BI and reference made to the order of Transfer Pricing Officer-TOP under Section 92CA could be invalid and bad in law.*

7. *It is for this precise reason, tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Canesugar Works Ltd referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of M/s.GE Thermometrias India Private Ltd., stated supra. As such we are*



*of the considered view that first substantial question of law raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res integra.*

*8. Insofar as question No.2 is concerned, we find from the order of the Tribunal that issue relating to the deletion of disallowance made by the Assessing Officer has been remitted back to the Assessing Officer which finding is based on factual aspects which would not call for interference by us, that too, by formulating substantial question of law. The Assessing Officer has to undertake the exercise of factual determination. As such, without expressing any opinion on merits with regard to question No.2 formulated by the revenue in the respective appeals, we proceed to pass the following:*

**ORDER**

- i) Both the appeals i.e., ITA No.392/2018 and ITA No.170/2019 are dismissed.*
- ii) Order dated 22.12.2017 passed by the Income Tax Appellate Tribunal, Bangalore in IT(TP)A No.1722/Bang/2017 is affirmed.”*

.....

*8. At this stage, we may state here that the judgment of the Co-ordinate Bench in PR. Commissioner of Income Tax-7 and another Vs. M/s, Texport Overseas Private Limited was taken in appeal to the Hon'ble Supreme Court, but the tax effect being less than prescribed limit, the appeal was withdrawn. Since the issue with regard to question Nos. 1 to 3 is covered by the judgment of Co-ordinate Bench of this Court, for parity of reasons, we hold, the questions are not sustainable. Insofar as, question No.4 is concerned, though the learned Senior Counsel for the respondent*



*has also relied upon another judgment of Bombay High Court in the case of Commissioner of Income Tax-8, Mumbai Vs Phoenix Mecvano(India)(P.) Ltd. [2019] 108 taxmann.com 124 (Bombay) wherein according to him, the appeal was filed against the order of the Tribunal, wherein Tribunal has relied upon the judgment of the Bombay High Court in the case of Commissioner of Income-tax Vs Thyssen Krupp Industries India(P.) Ltd., (supra) which judgment (in the case of Commissioner of Income Tax-8, Mumbai Vs Phoenix Mecvano(India)(P.) Ltd(supra)) was taken in appeal before the Hon'ble Supreme Court the same was dismissed in SLP No.2234/2018 dated 05.02.2018.*

*9. In view of the fact that the issue relating to question No.4 is covered by the judgment of the High Court of Bombay in Commissioner of Income-tax Vs Thyssen Krupp Industries India (P.) Ltd., and also Commissioner of Income Tax-8, Mumbai Vs Phoenix Mecvano (India)(P.) Ltd., which have attained finality till the Hon'ble Supreme Court, we find no merit insofar as question No.4 is concerned. Accordingly, the appeal being without merit is dismissed. The questions of law are answered in favour of Assessee and against the Revenue.” Unquote*

7. The Hon'ble Bombay High Court in the case of Smt. Godavaridevi Saraf Vs. CIT, 113 ITR 589 (Bom) has held as under :

*Quote , “Until contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land. When the Tribunal set aside the order of penalty it did not go into the question of intra vires or ultra vires. It did not go into the question of constitutionality of section*



*140A(3). That section was already declared ultra vires by a competent High Court in the country and an authority like an Income-tax Tribunal acting anywhere in the country has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question.” Unquote*

7.1 Thus, as explained by the Hon’ble Bombay High Court(supra), the decisions of Hon’ble Karnataka High Court(supra) are binding precedents. Hence, respectfully following Hon’ble Karnataka High Court(supra), in these facts and circumstances of the case, we find no infirmity in the order of Id.CIT(A) holding that the Transactions entered by the Assessee for A.Y.2013-14 cannot be said to be covered within the meaning of specified domestic transaction as defined u/s.92BA(i) of the Act, since sub-clause (i) to Section 92BA was deemed to have never existed on the statute, once it was omitted w.e.f. 01.04.2017 without any saving clause.

7.2 Accordingly, Ground Nos.1, 2, 3 and 4 raised by the Revenue are dismissed.

8. Ld.DR for the Revenue has not argued Ground Nos.5, 6 and 7 raised by the Revenue. Therefore, Ground Nos.5, 6 and 7 become academic in nature and hence, dismissed as unadjudicated.



9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30 October, 2025.

**Sd/-**  
**MS.ASTHA CHANDRA**  
**JUDICIAL MEMBER**

**Sd/-**  
**Dr.DIPAK P. RIPOTE**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 30 Oct, 2025/ SGR

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.