

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.192/Del/2021
Assessment Year: 2012-13

M/s. Astro Offshore Pte. Ltd., 8, Temasek Boulevard, #35-03, Sunter Tower Three, Singapore, 038988	Vs.	DCIT, International Taxation, Circle-1(1)(1), New Delhi
PAN :AAJCA0983G		
(Appellant)		(Respondent)

Appellant by	Sh. Ved Jain, Advocate Sh. Ashish Goel, CA
Respondent by	Mrs. Anupama Anand, CIT(DR)

Date of hearing	02.12.2021
Date of pronouncement	09.12.2021

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee assailing the final assessment order dated 12.01.2021 passed for the assessment year 2012-13.

2. The short issue arising for consideration before us is, whether the impugned assessment order is barred by limitation prescribed under the statutory provisions.

3. Briefly the facts necessary for deciding the issue are, the assessee is a non-resident company incorporated under the laws

of Singapore. For the impugned assessment year, the assessment in the case of the assessee was reopened under Section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). However, as alleged by the Assessing Officer, in response to notice issued under Section 148 of the Act and subsequent statutory notices, the assessee repeatedly sought adjournments. Therefore, the Assessing Officer proceeded to frame draft assessment order under Section 147 read with section 144C(1) of the Act on 18.12.2019, determining the total income of the assessee at Rs.45,17,870/-.

4. Against the draft assessment order so passed, the assessee raised objections before learned Dispute Resolution Panel (DRP)-1, New Delhi, on 27.01.2020. While dealing with the objections of the assessee, learned DRP noticed that the draft assessment order was served on the assessee on 18.12.2019 through email. Of course, a copy of the draft assessment order was also dispatched to the assessee through the post. Considering the fact that the objection filed by the assessee against the draft assessment order was beyond the period of limitation prescribed under Section 144C(2) of the Act, learned DRP dismissed the objection *in limine*.

5. Drawing our attention to the final assessment order, learned counsel for the assessee submitted, the assessment order passed on 12.01.2021 is beyond the period of limitation prescribed under Section 144C(4) of the Act. He submitted, the final assessment order having been passed beyond the prescribed period of limitation is invalid. In support of his contention, learned counsel relied upon the following decisions:

1. *Yokogawa India limited vs. ACIT, 2021 (4), TMI 151-ITAT, Bangalore, dated: March 8, 2021*
2. *TDK Electronics AG Vs. ACIT, 2020 (2) TMI 1277 - ITAT, Pune, dated: 26.02.2020*
3. *M/s. Aalaya Jewel Industry Pvt. Ltd. Vs. ACIT, ITA Nos. 970 & 971/Mds./2017, dated: 05.04.2018.*
4. *M/s. Planet Online Pvt. Ltd. Vs. ACIT, 2015(10) TMI 390 -ITAT, Hyderabad, dated: September 4, 2015.*

6. The learned Departmental Representation submitted, the time limit for filing the objection before learned DRP was 17.01.2020, whereas, the assessee filed the objection on 27.01.2020. Therefore, as per section 144C(4)(b), the Assessing Officer should have passed the final assessment order within one month from the end of the month, in which period of filing of objection expires, i.e., by 28.02.2020. She submitted, before the Assessing Officer could have passed the final assessment order, the assessee filed objection before the learned DRP on 27.01.2020. She submitted, once the objection was filed before learned DRP, the Assessing Officer had no option but to wait for the directions of learned DRP before passing the final assessment order. She submitted, since the learned DRP gave directions vide order dated 11.12.2020, the final assessment order passed on 12.01.2021 is in time.

7. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Before deciding the issue at hand, the following chronological dates and events needs to be kept in mind:

18.12.2019 Draft Assessment order passed under Section 147/144/144C(1) of the Act and served on the assessee.

27.01.2020 Objections filed by the assessee before the
DRP

11.12.2020 Objections disposed of by the DRP

12.01.2021 Final assessment order passed by the
Assessing Officer.

6. Thus, from the aforesaid chronological dates and events, it is very much clear that the assessee, after receipt of the draft assessment order, did not file the objections before the learned DRP within thirty days, in terms of section 144C(2)(b) of the Act. Therefore, the learned DRP has justifiably dismissed the objections of the assessee *in limine*, since; there are no provisions under the statute empowering learned DRP to accept the objection of the assessee beyond the period of limitation. Now, the issue arising for consideration before us is, where the assessee has not complied with the provisions of Section 144C(2)(b) of the Act; what is the period of limitation available to the Assessing Officer to complete the final assessment. For better understanding, it is necessary to look into some of the provisions of Section 144C of the Act, relevant for our purpose. They are as under:

“Reference to dispute resolution panel.

144C. (1) *The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation ⁹⁵[***] which is prejudicial to the interest of such assessee.*

(2) *On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—*

(a) *file his acceptance of the variations to the Assessing Officer; or*

(b) *file his objections, if any, to such variation with,—*

(i) *the Dispute Resolution Panel; and*

(ii) *the Assessing Officer.*

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in [section 153](#) or [section 153B](#), pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires.”

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7. As could be seen on a careful reading of the aforesaid provisions, in case of an eligible assessee, the Assessing Officer, at the first instance, has to propose a draft assessment order if he intends to make any variation in the income of the assessee which is prejudicial to the interest of the assessee. As per sub-section (2) of Section 144C, on receipt of the draft assessment order, the assessee has to either file his acceptance of the variation to the Assessing Officer or file objections before the DRP, challenging such variation with due intimation to the Assessing Officer. However, such exercise has to be completed within thirty days from the date of receipt of the draft assessment order. Sub-section (3) of Section 144C empowers the Assessing Officer to complete the assessment on the basis of draft assessment order under two circumstances; firstly, if the assessee intimates acceptance of the variation to the Assessing Officer or; secondly, if no objections are received within the period specified in sub-section (2) of Section 144C of the Act. Sub-section (4) of Section 144C, which has an overriding effect over sections 153 and 153B of the Act, mandates that the Assessing Officer must pass the final assessment order under sub-section (3) of section 144C within one month from the end of

the month in which the acceptance by the assessee of the variation proposed in the draft assessment order is received or period of filing of objection under sub-section (2) of section 144C expires.

8. Thus, a reading of the aforesaid provisions as a whole, would make it clear that the assessee has thirty days time from the date of receipt of draft assessment order to file objections before the DRP. Whereas, sub-sections (3) and (4) of section 144C make it clear that in case, the Assessing Officer does not receive any objections filed before the DRP within the period prescribed under sub-section (2) of section 144C of the Act, challenging the proposed variation, he has to complete the assessment within a period of one month from the end of the month in which the period of filing of objections under sub-section (2) expires. In the facts of the present appeal, as per Revenue's own admission the time limit for filing the objections before learned DRP against the draft assessment order was till 17.01.2020.

9. Whereas, the assessee, admittedly, filed the objections on 27.01.2020, which is beyond the period of limitation. Thus, as per the mandate of sub-section (4)(b) of section 144C, the Assessing Officer was duty-bound to complete the assessment based on the draft assessment order on expiry of thirty days from the date of receipt of draft assessment order, since, by that time the assessee had not filed the objections before learned DRP. Whereas, it is a fact on record that the Assessing Officer passed the final assessment order on 12.01.2021, i.e., much beyond the period of limitation prescribed under section 144C(4)(b) of the Act.

10. The contention of learned Departmental Representative that before the Assessing Officer could have passed the final assessment order, the assessee filed objections before learned DRP, i.e., on 27.01.2020 and the Assessing Officer had no other option but to wait for the directions of the DRP, in our view, is unacceptable and has to be rejected at the threshold. A combined reading of the provisions contained under Section 144C(1), (2), (3) and (4) makes it abundantly clear that there is no compulsion on the Assessing Officer to wait beyond the period of limitation prescribed under the statute for completing the final assessment, anticipating that the assessee would be filing an objection before the DRP. The period of limitation prescribed under sub-sections (2) and (4) is sacrosanct and has to be strictly followed, both, by the assessee as well as the Revenue. Therefore, the final assessment order having been passed beyond the period of limitation prescribed under Section 144C(4)(b) of the Act, has to be declared invalid. Accordingly, we do so. The decisions relied upon by the learned counsel for the assessee are clearly in support of the view expressed hereinabove. Resultantly, the impugned assessment order dated 12.01.2021 is quashed.

9. In the result, the appeal is allowed as indicated above.

Order pronounced in the open court on 9th December, 2021

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 9th December, 2021.
RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi