

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri N.V.Vasudevan, V.P. & Shri Laxmi Prasad Sahu, AM

IT(TP)A No.214/Bang/2022 : Asst.Year 2017-2018

M/s.Kontoor Brands India Private Limited, (Formerly known as VF Brands India Private Limited) Awfis, 1 st Floor, Shabari Complex Field Marshal Cariappa Road Ashok Nagar, Bangalore North Richmond Town S.O. Bangalore – 560 025. PAN : AACCV2727L.	v.	The Assistant Commissioner of Income-tax, Circle 4(3)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Nageswar Rao, Advocate
Respondent by : Sri.K.Sankar Ganesh, JCIT-DR

Date of Hearing : 28.11.2022	Date of Pronouncement : 05.12.2022
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ORDER

Per LAXMI PRASAD SAHU , AM :

This is an appeal filed by the assessee against the final assessment order passed by the Assessing Officer on 02.02.2022 u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the I.T.Act. for the relevant assessment year 2017-2018.

2. The assessee has raised as many as 34 grounds, but during the course of hearing, the learned AR confined his argument only to ground No.1, challenging the legal issue, which is as under:-

“1. The final assessment order issued by the ld.AO dated 2 February 2022 pursuant to the DRP directions under section 144C is barred by limitation and liable to be quashed.”

3. The brief facts of the case are that the assessee has filed its return of income on 28.11.2017 electronically declaring total income of Rs.75,22,56,620 under the normal provisions of the I.T.Act after claiming deduction under Chapter VI-A of Rs.60,00,000. The case was selected for scrutiny and notice u/s 143(2) of the Act and other statutory notices were issued to the assessee. In response to which, the assessee has filed details / documents. From the documents filed by the assessee, it was noticed that the assessee had undertaken international transactions. Therefore, after obtaining approval from the competent authority, the case was referred to the Transfer Pricing Officer (TPO) as per section 92CA(1) of the Act. The learned TPO passed his order u/s 92CA(3) on 25.01.2021 proposing addition of Rs.25,73,90,940 for international transactions . Thereafter, the A.O.(Assessing Officer) passed draft assessment order u/s 144C(1) on 31.03.2021.

4. Aggrieved by the draft assessment order passed by the AO on 31.03.2021, the assessee filed objections before the Dispute Resolution Panel (DRP). The learned DRP gave directions on 20.12.2021. After the receipt of the directions from the learned DRP, the A.O. passed final assessment

order on 02.02.2022 by assessing the net income of Rs.102,52,39,241.

5. Aggrieved by the final assessment order passed by the AO, the assessee has filed the present appeal before the Tribunal. The learned AR at the very outset, submitted that the final assessment order passed by the A.O. u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act dated 02.02.2022 is barred by limitation, as the A.O. should have passed his order within one month from the date of receipt of the directions of the DRP u/s 144C(13) of the Act. The directions were given by the learned DRP on 20.12.2021, and which was received by the A.O. on 30.12.2021. In support of his contention, the learned AR placed on record a paper book, inter alia, enclosing therein the judgment of the Hon'ble Supreme Court in the case of Union of India and Others v. G.S.Chatha Rice Mills and Another reported in (2021) 2 Supreme Court Cases 209. The relevant portion of the judgment reads as under:-

“85. Section 13 of the Information Technology Act, 2000 contains provisions for the time and place of the dispatch and receipt of electronic records. It reads as follows:-

13. Time and place of dispatch and receipt of electronic record. – (1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely –

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records, -

(i) receipt occurs at the time when the electronic record enters the designated computer resources; or

(ii) if the electronic record is sent to a computer resource of the address that is not the designated computer resource, receipt occurs at the time when the electronic record enters the computer resources of the addressee.” (emphasis supplied)

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.”

6. The learned Departmental Representative, on the other hand, relied on the orders of the authorities below, apart from placing on record the copy of the order sheet.

7. We have heard both the parties and perused the entire material available on record and the orders of the authorities below. On perusal of the directions of the learned DRP, it is clear that the DRP's directions is dated 20.12.2021. The A.O. has passed the final assessment order on 02.02.2022., As per section 144C(13) of the Act, the A.O. should have passed the final assessment order, notwithstanding anything to the contrary contained in section 153 [or section 153B], within one month from the end of the month in which such direction

is received The learned DR has placed on record the copy of the order sheet, which is reproduced as under:-

Signature:				
30/12/2021	Document/Response received from 'Uploading of document based on DIN/ PAN-AY' screen	CIT(DRP-2) BANGALORE 3	AO - Assessment Unit	kontoor brands AY2017-18_202112301127.pdf
Notings/Remarks:DRP Directions u/s 144C(5)				
Signature:				
30/12/2021	Document/Response received from 'Uploading of document based on DIN/ PAN-AY' screen	CIT(DRP-2) BANGALORE 3	AO - Assessment Unit	Kontoor Intimation Letter 2017-18.pdf
Notings/Remarks:DRP Directions u/s 144C(5)				
Signature:				
13/01/2022	Document/Response received from 'Uploading of document based on DIN/ PAN-AY' screen	CIRCLE 4(1)(1), BANGALORE	AO - Assessment Unit	kontoor brands india pvt ltd ay 2017-18.pdf
Notings/Remarks:DRP order				
Signature:				
13/01/2022	Document/Response received from 'Uploading of document based on DIN/ PAN-	DC/ACIT(NeAC)-3(2)(2)DEL	AO - Assessment Unit	KONTOOR BRANDS.pdf

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	AY' screen			
Notings/Remarks:DRP order u/s 144C(5) dated 30.12.2021				
Signature:				
25/01/2022	Response to Letter	CIRCLE 4(3) (1), BANGALORE	AO - Regional e-Assessment Unit	Response to Letter_1039076324(1)_25012022.pdf
Notings/Remarks:..				
Signature:				
26/01/2022	Document/Response received from 'Uploading of document based on DIN/ PAN-AY' screen	CIRCLE 4(1) (1), BANGALORE	AO - Assessment Unit	Issue Letter_1038993782(1)_22012022.pdf
Notings/Remarks:OGE TO DRP ORDER				
Signature:				
27/01/2022	Document/Response received from 'Uploading of document based on DIN/ PAN-AY' screen	CIRCLE 4(3) (1), BANGALORE	AO - Assessment Unit	Issue Letter_1038993782(1)_22012022.pdf
Notings/Remarks:Give Effect to Directions u/s 144C by TPO				
Signature:				
01/02/2022	Response on Draft Order Submitted.	AO - Assessment Unit	AO - Assessment Unit	
Notings/Remarks:Objection filled by Assessee. Order giving effect received on 22.01.2022.				
Signature:				
01/02/2022	Approve Assessment Order	AO - Assessment Unit	RANGE - Assessment Unit	

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Notings/Remarks:Submitted for final approval				
Signature:				
02/02/2022	Approved for Order Generation	RANGE - Assessment Unit	AO - Assessment Unit	
Notings/Remarks:approved				
Signature:				
02/02/2022	Order generated u/s 143(3) of Income Tax Act 1961.	National Facless Assessment Centre	KONTOOR BRANDS INDIA PRIVATE LIMITED	AACCV2727L_Order u/s 143(3)_1039334006(1)_02022022.pdf
Notings/Remarks:..				
Signature:				
02/02/2022	Action Taken	AO - Assessment Unit	-	
Notings/Remarks:Ok				
Signature:				
02/02/2022	Demand Notice generated u/s 156 of Income Tax Act 1961	National Facless Assessment Centre	KONTOOR BRANDS INDIA PRIVATE LIMITED	AACCV2727L_Demand Notice us 156_1039334037(1)_02022022.pdf
Notings/Remarks:..				
Signature:				
02/02/2022	Issued Computation Sheet.	National Facless Assessment Centre	KONTOOR BRANDS INDIA PRIVATE LIMITED	AACCV2727L_Computation Sheet_1039334036(1)_02022022.pdf
Notings/Remarks:..				

8. It is clear from the copy of the order sheet that the A.O. received the documents on 30.12.2021. As per section 144C(13) of the Act, the order should have been passed on or before 31.01.2022, whereas the A.O. has passed final assessment order on 02.02.2022, which is beyond the time limit. Hence, the order passed by the A.O. is barred by limitation as per section 144C(13). Therefore, we find substance on the submission of the learned AR and the final assessment order passed is nonest in the eyes of law. Accordingly, ground No.1 is allowed.

9. Since the learned AR did not argue other grounds on merits, the same are left open and not adjudicated.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 05th day of December, 2022.

Sd/-
(N.V.Vasudevan)
VICE-PRESIDENT

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Bangalore; Dated : 05th December, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP - 2, Bangalore.
4. The DCIT TP-2 , Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore