

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI KULDIP SINGH, JM

ITA No. 3488/Mum/2016

(Assessment Year: 2011-12)

ITA No. 1977/Mum/2017

(Assessment Year: 2012-13)

ITA No. 75/Mum/2018

(Assessment Year: 2013-14)

Colgate-Palmolive (India) Limited
Colgate Research Centre,
Main Street,
Hiranandani Street, Powai
Mumbai-400 076

Vs.

The Asst. Commissioner of
Income Tax,
Circle 15(1)(2),
Room No.459,
Aaykar Bhavan
New Marine Lines,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AAACC4309B

ITA No. 2799/Mum/2016

(Assessment Year: 2011-12)

The Asst. Commissioner of
Income Tax,
Circle 15(1)(2),
Room No.459,
Aaykar Bhavan
New Marine Lines,
Mumbai-400 020

Vs.

Colgate-Palmolive (India) Limited
Colgate Research Centre,
Main Street,
Hiranandani Street, Powai
Mumbai-400 076

(Appellant)

(Respondent)

Assessee by

:

Shri Madhur Agrawal,
Shri Vasishth Dave, ARs

Revenue by

:

Dr. Yogesh Kamat, CIT DR

Date of hearing:

14.03.2023

Date of pronouncement :

11.04.2023



ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.3488/Mum/2016 is filed by Colgate Palmolive (India) Ltd. (assessee / appellant) for A.Y. 2011-12 against the assessment order passed under Section 143(3) read with section 144C (13) of the Income-tax Act, 1961 (the Act) on 15th February, 2016 and ITA No.2799/Mum/2016 is filed by the Dy. Commissioner of Income Tax, Circle-15(1) (1), Mumbai (the learned Assessing Officer) against direction of the Id Dispute Resolution Panel.
02. The brief facts of the case shows that the
 - i. Assessee is a company engaged in the business of manufacturing, trading, marketing and distribution of dental products, cosmetics, toiletries, leather products.
 - ii. It filed its return of income on 29th January, 2011, **declaring total income of ₹339,35,33,267/-**, as per normal computation and the book profit under Section 115JB of the Income-tax Act, 1961 (the Act) **at ₹518,37,38,685/-**. The return of the income was picked up for scrutiny.
 - iii. As the assessee has entered into international transactions, on reference to the Joint Commissioner

of Income Tax, Transfer Pricing 2(3), Mumbai (the learned Transfer Pricing Officer) an order was passed under Section 92CA (3) of the Act, on 30th January, 2015, proposing an **adjustment of ₹152,77,55,935/- to the Arm's Length Price of the international transaction.**

- iv. This adjustment was challenged by filing an objection before the Dispute Resolution Panel -1, Mumbai (learned DRP), wherein certain directions were given and according to that the total adjustment was made on account of transfer pricing issues of **₹23,48,70,000/-**.
- v. The learned Assessing Officer further made disallowance under Section 14A read with Rule 8D of **the Rule of ₹25,21,108/-**. The assessee claimed deduction under Section 80IC of the Act amounting to **₹83,40,16,776/-** which was restricted to **₹83,06,69,500/-**.
- vi. Consequently, the assessment order was passed, determining the total income as per normal **computation of ₹363,42,71,650/-** and book profit under Section 115JB of the Act, was computed at **₹518,62,59,793/-** increased by disallowance under **Section 14A of the Act of ₹25,21,108/-**.

03. The assessee preferred vide letter dated 18th November, 2022 an additional ground of appeal stating that the order passed by the learned Transfer Pricing Officer dated 30th

January, 2015 is barred by limitation. Assessee submitted that this is a jurisdictional ground, which can be raised at any time during the pendency of the appeal and therefore, should be admitted.

04. The learned Departmental Representative vehemently objected to the same.
05. We have carefully perused the application of the assessee for admission of the additional ground. The additional ground raised by the assessee are as under: -

"7. Transfer pricing order passed by the Learned TPO dated 30 January 2015 is barred by limitation

a. On the facts and in the circumstances of the case and in law, the order dated 30 January 2015 passed by the Learned Joint Commissioner of Income Tax - Transfer Pricing 2(3) under section 92CA of the Income-tax Act, 1961 ('Act) is beyond the time limit prescribed under section 92CA (3A) r.w.s 153 of the Act, thus making the TP order illegal, bad in law, null and void and liable to be quashed.

b. On the facts and in the circumstances of the case and in law, the TP order being illegal and void on account of being barred by limitation in terms of section 92CA (3A) r.w.s 153 of the Act, the action of the AO in passing the draft assessment order by invoking section 144C of the Act is without jurisdiction and thus all

proceedings consequent to the draft assessment order are also illegal and bad in law and liable to be quashed.

c. On the facts and in the circumstances of the case and in law, the TP order being illegal and void on account of being barred by limitation in terms of section 92CA (3A) r.w.s. 153 of the Act, consequently, the final assessment order dated 15 February 2016 is also barred by limitation as prescribed under section 153 of the Act, thus making the final assessment order illegal, bad in law, null and void and liable to be quashed. The Appellant prays that the TP order, draft assessment order and the final assessment order are bad in law, null and void and liable to be quashed."

06. We find that the ground raised by the assessee is jurisdictional, which can be raised by assessee at any time during the year, does not require any further investigation of facts, hence, we admit the same.
07. Adverting to the additional ground of appeal, the learned Authorized Representative submitted that
- i. The learned Transfer Pricing Officer has passed an order under Section 92CA (3) of the Act on 30 January 2015.



- ii. The same order is beyond the time limit prescribed under Section 92CA (3A) read with section 153 of the Act.
 - iii. As the order of the learned Transfer Pricing Officer is passed beyond the prescribed time limit, subsequent assessment order dated 15th February, 2016, is also barred by limitation for the reason that if the transfer pricing orders are found to be beyond prescribed time, the assessee is not an 'eligible assessee' in terms of section 144C (15) (b) of the Act.
 - iv. Therefore, even the corporate additions made in assessment order passed by the learned Assessing Officer are not sustainable.
 - v. For this proposition, reliance placed upon the decision of Hon'ble Madras High Court in case of Pfizer Healthcare India (P.) Ltd. vs. Joint Commissioner of Income-tax [2021] 433 ITR 28 (Madras), and also the co-ordinate Bench decision of ATOS India Pvt. Ltd. vs. DCIT dated 23rd February, 2023 [TS-116-itat-2023 (Mum)-tp].
 - vi. Therefore, it was submitted that the order of the learned Transfer Pricing Officer and the learned Assessing Officer are not sustainable.
08. The learned Departmental Representative vehemently submitted that as this issue has not been raised before the lower authority, now the assessee could not raise it. The

learned departmental representative also filed a letter dated 3/2/2023 wherein it is submitted that revenue has not accepted the verdict of the writ in case of Pfizer healthcare India private limited and has filed writ petition before the division bench of the Madras High Court against the same. Without prejudice it was also submitted that even if the limitation is to be accounted for passing the order under section 92CA (3) then also the learned assessing officer was left with 60 days to complete the assessment even if the TPO order was passed on 30/1/2015 as there would be one day left in January, 28 days available in February and 31 days are available in March, thus a period of 60 days was available to the AO.

09. We have carefully considered the rival contentions and perused the orders of the lower authorities. Provisions of section 92 CA (3A) prescribes the date for passing an order u/s 92 CA (3) as "any time before 60 days prior to the date on which the period of limitation referred to in section 153, expires." According to the provisions of section 153 (1) read with section 153 (4), the time limit for passing of the order under section 153 is available up to 31/3/2015. Thus the time limit for passing order under section 92CA (3) expires on or before 29/1/2015.
010. In the present case, the learned Transfer Pricing Officer for A.Y. 2011-12 has passed the order under Section 92CA(3) of the Act on 30th January, 2015. Admittedly, in this case, the time limit for passing the order under section 153 was to expire on 31 March 2015. The time limit for passing of

the order under Section 92CA (3) of the Act expires before 30 January 2015. Therefore, naturally the order passed by the learned Transfer Pricing Officer is passed beyond the time limit. Therefore, respectfully following the decision of Hon'ble Madras High Court in Pfizer Healthcare India (P.) Ltd. [ts-271-XC-2022 (mad)] dated 13 April 2022, we hold that the order passed by the learned Transfer Pricing Officer under Section 92CA (3) of the Act is passed beyond the prescribed time limit. Therefore, such order of Transfer Pricing Officer is not sustainable. Mere pendency of writ petition before the honourable Supreme Court does not help the case of the revenue. In ITA number 2381/del/2014 for assessment year 2009 – 10 dated 11/3/2021 was relied upon by the learned departmental representative citing paragraph number 27 holding that the assessment order under section 143 (3) passed by the AO is in time. In that, decision the issue whether the assessee remains an eligible assessee or not was not at all considered when the order of the Id TPO is barred by limitation. Therefore, it does not help the case of the revenue. Further, the order of Id TPO should have been passed 60 days prior to the date on which the time limit for passing the order is available, thus the argument of the assessee about 60 days available to the Id AO for passing the order is unfounded.

011. Now, the issue that arises, if the order passed by the learned Transfer Pricing Officer is held to be passed beyond prescribed time limit, the assessee does not

remain an 'eligible assessee' as per section 144C(15) (b) of The Act and hence the extended time of 12 months is also not available. Therefore, even the regular assessment order passed by the learned Assessing Officer u/s 143(3) under challenge in this appeal also becomes barred by limitation. This is held by the decision of the co-ordinate bench in ATOS India Pvt. Ltd. (I.T.A. No. 1795/Mum/2017 (Assessment Year: 2012-13) dated 23/2/2023, accordingly, respectfully following the decision of the co-ordinate Bench, we hold that the assessment order passed by the learned Assessing Officer under Section 143(3) read with section 144C (13) of the Act dated 15th February, 2016 is also not sustainable.

012. In view of the above facts, without adjudicating on the other grounds of appeal of the assessee and the learned Assessing Officer, we quash the assessment order. Thus, the appeal of the learned Assessing Officer is dismissed and the appeal of the assessee is allowed on the additional grounds filed.

013. Accordingly, appeals of the parties for A.Y. 2011-12 are disposed off.

014. For assessment year 2012 - 13, in ITA number 1977/M/2017 filed by the assessee against the assessment order passed under section 143 (3) read with section 144C (13) of the income tax act 1961 dated 16/1/2017.

015. The fact in this case shows that return of income was filed **by the assessee on 29/11/2012 at a total income of ₹ 3,945,111,900/-**. For determination of the arm's-length price of international transaction, the learned transfer pricing officer passed the order under section 92CA (3) of the act on 31/1/2016. The draft assessment order was passed on 31/3/2016. On objections before the learned dispute resolution panel, the directions were passed on 13/12/2016, final assessment order on 16/1/2017.
016. In the present case for assessment year 2012 – 13 the period of limitation for making an order of assessment under section 153 of the income tax act was expiring on 24 months from the assessment year i.e. on 31/3/2015. The extension of 12 months is granted as a reference is made under section 92CA of the act and therefore the limitation period was further extended from 31/3/2015 to 31/3/2016. The period of limitation expires a day prior to the date on which the limitation expires falls on 30/3/2016. The 60-day period counting the one day in the month of January 29 days of February being leap year and 31 days of March 2016, expires on 31/1/2016. Therefore, the outer time limit for passing the order of the learned transfer-pricing officer is up to 30/1/2016. In this case, the order of the learned transfer-pricing officer is passed on 31/1/2016. Therefore, it is barred by limitation as per the decision of the honourable madras High Court in case of Pfizer healthcare India private limited 433 ITR 28. Accordingly, the order of the learned transfer-pricing

officer is passed beyond the limitation prescribed under the act and hence is liable to be quashed. If, the transfer pricing assessment is quashed, the natural corollary would be that assessee would not be an eligible assessee prescribed under section 144C (15) (b) of the act. Thus, the time limit for passing of the order cannot be further extended by one year because of reference to the learned transfer-pricing officer. Thus, even the regular assessment order passed under section 143 (3) read with section 144C of the act also become is barred by limitation and hence it is also liable to be quashed. Therefore, respectfully following the decision of the honourable madras High Court in case of Pfizer healthcare India private limited versus joint Commissioner of income tax (supra) and the decision of the coordinate bench in case of Atos India private limited (supra), allowing the additional ground filed by the assessee, we quash the assessment order passed under section 143 (3) of the act read with section 144C (13) of the act dated 16/1/2017. As we have decided the issue on the additional ground raised by the assessee, not all other grounds of the appeal are required to be adjudicated.

017. Accordingly, appeal of the assessee for assessment year 2012 – 13 is allowed.
018. Now we come to appeal of the assessee in ITA number 75/M/2018 for assessment year 2013 – 14 filed against the assessment order passed under section 143 (3) read with section 144C (13) of the income tax act 1961 on

31/10/2017 by the learned assistant Commissioner of income tax – 15 (1) (2), Mumbai (the learned AO) on return of income filed by the assessee on 29/11/2013 **declaring a total income of ₹ 4,672,811,070/-.**

019. For this year, assessee has filed an additional ground raising identical issue raised in assessment year 2011 – 12 and 2012 – 13 stating that the assessment order passed by the learned assessing officer is barred by limitation as the transfer pricing officer has not passed the order within the time limit prescribed and therefore assessee is not an eligible assessee. Therefore, the whole assessment is time barred.

020. In this case, as assessee has entered into international transaction, the reference was made to the learned transfer-pricing officer to determine the arm's-length price. The learned transfer pricing officer passed an order under section 92CA (3) of the act on 1/11/2016. Based on this the draft assessment order under section 143 (3) read with section 144C (1) of the act was passed on 31/12/2016. The assessee filed objection before the learned dispute resolution panel and directions were issued on 27/9/2017. Based on this the final assessment order under section 143 (3) was passed on 31/10/2017.

021. In this case, according to section 153 (1) the assessment order should have been passed within 21 months from the end of the assessment year in which the income was first assessable. Therefore, the time limit for passing the

assessment order was expiring on 31/12/2015. However as there was a reference made to the learned transfer-pricing officer for passing an order under section 92CA a further period available for completion of the assessment was to be extended by 12 months. Thus, the time limit for passing order under section 143 (3) was available up to 31/12/2016. According to the provisions of section 92CA (3A) the transfer pricing officer should have passed the order at any time before 60 days prior to the date on which the time-limit for making the order of the assessment expires. Therefore, apparently in this case 60 days time was available till 31st of October 2016. The order of the learned transfer-pricing officer is passed on 1/11/2016. Therefore, we respectfully following the decision of the honourable madras High Court in case of Pfizer healthcare services private limited, (supra) hold that the order of the learned transfer pricing officer is passed beyond the time limit available under section 92CA (3A) of the act and therefore consequently the assessee does not remain an eligible assessee in terms of provisions of section 144C (15) (b) of the act and therefore respectfully following the decision of the coordinate bench in case of Atos India private limited (supra), the extended time limit in terms of provisions of section 153 (4) of 12 months is also not available and thus making the assessment order passed under section 143 (3) of the act also barred by the limitation. Hence, we quash the assessment order passed under section 143 (3) of the act and allow the additional ground of appeal filed by the



assessee. In view of our decision allowing the additional ground of the assessee and quashing the assessment order itself, other grounds of appeal are not required to be adjudicated.

022. Accordingly, number 75/M/2018 filed by the assessee for assessment year 2013 – 14 is allowed.

Order pronounced in the open court on 11.04.2023.

Sd/-
(KULDIP SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 11.04.2023

Sudip Sarkar, Sr.PS and Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai