

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA Nos. 772 & 2126/Mum/2022

(Assessment Years: 2017-18 & 2018-19)

Emerson Process Management
(India) Private Limited
(Successor-in-Interest for Pentair
Valves and Controls India Private
Limited)

Vs.

ACIT, Circle 15(1)(1),
Room No.470, 4th Floor,
Aaykar Bhavan, M.K. Marg,
Churchgate,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AAACK8809L

Assessee by : Shri Dhanesh Bafna,
Ms. Chandhi Shah,
Ms. Kinjal Patel, ARs
Revenue by : Shri Pravin Salunkhe, Add. CIT

Date of hearing: 25.07.2023
Date of pronouncement : 31.07.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the two appeals filed by the Emerson Process Management (India) Pvt. Ltd. (Successor-in-Interest for Pentair Valves and Controls India Private Limited) for A.Y. 2017-18 and 2018-19.
02. ITA No.772/Mum/2022 is filed by the assessee for A.Y. 2017-18 against the assessment order passed by the National Faceless Appeal Centre, Delhi (the learned Assessing Officer) dated 24th February, 2022, wherein the total income of the assessee is assessed at ₹33,64,46,601/-, as per normal computation of income



and book profit under Section 115JB of the Income-tax Act, 1961 (the Act), is assessed at ₹11,43,53,603/-. The return of income filed by the assessee on 30th November, 2017, is at ₹9,26,57,190/-.

03. The ground no.1 raised by the assessee is despite intimation to Id AO, Ld. TPO, LD DRP, assessment has been made by the learned Assessing Officer in the name of Emerson Process Management (India) Pvt. Ltd under Section 143(3) read with section 144C (13) of the Act, however, the draft assessment order, Transfer pricing Assessment order and Direction of Dispute Resolution Panel were passed in the name of Pentair Valves and Controls India Private Limited. It was submitted that

- i The order under Section 92CA (3) of the Act was also framed on 31st January, 2021 in the name of Pentair Valves and Controls India Private Limited and
- ii Draft Assessment orders dated 13/04/2021 is also passed in the name of Pentair Valves and Controls India Private Limited
- iii The direction of the Dispute Resolution Panel under Section 144C (5) of the Act dated 18th January, 2022, is also issued in the name of Pentair Valves and Controls India Private Limited.

The grounds says that the order under Section 92CA(3) of the Act, draft assessment order and



direction of the learned Dispute Resolution Panel have been passed in the name of Pentair Valves and Controls India Private Limited, which is a non-existing company and therefore, all the above three orders are invalid. Consequently, the final assessment order passed on invalid orders is also invalid.

04. The brief fact of the case shows that

- i National Law Company Tribunal, Ahmadabad, has passed order on 5th December, 2019, by which Pentair Valves and Controls India Private Limited by scheme of amalgamation is amalgamated with M/s Emerson Process Management (India) Pvt. Ltd.
- ii Further, NCLT Mumbai order dated 14th November, 2019, scheme of merger by absorption has also been passed thereby Pentair Valves and Controls India Private Limited emerged with Emerson Process Management (India) Pvt. Ltd.
- iii Form No. INC28 [The Companies Act 2013 and Rules there under] in this regard was also filed completing the process of merger of Pentair Valves and Controls India Private Limited with Emerson Process Management (India) Pvt. Ltd.
- iv On 31st January, 2020, the Addl. Commissioner of Income Tax, Transfer Pricing Officer, Ahmadabad, was intimated about this merger vide Para no.7 of the letter stating that Pentair Valves and Controls

India Private Limited has been amalgamated with Emerson Process Management (India) Pvt. Ltd with effect from 1st April, 2019.

- v On 18th December, 2020, the learned Transfer Pricing Officer was once again intimated about the fact of the merger.
- vi Despite above facts available on record, on 31st January, 2021, the learned Transfer Pricing Officer passed an order under Section 92CA(3) of the Act in the name of Pentair Valves and Controls India Private Limited.
- vii On 11th February, 2021, in response to notice under Section 142 (1) of the Act dated 5th February, 2021, assessee has also categorically stated the fact of the above merger.
- viii Similarly, on 1st March, 2021 and on 12th April, 2021, the fact of merger was also intimated to the learned Assessing Officer.
- ix Despite this fact, draft order under Section 144C of the Act was passed on 13th April, 2021, in the name of Pentair Valves and Controls India Private Limited.
- x Assessee filed objections before the learned Dispute Resolution Panel in the name of Emerson Process Management (India) Pvt. Ltd., wherein in Para no.2 of the objection, the assessee stated that Pentair Valves and Controls India Private Limited is a non-

existing company and despite intimation to the lower authorities i.e. learned Transfer Pricing Officer as well as the learned Assessing Officer, the learned Transfer Pricing Officer order under Section 92CA(3) of the Act as well as, the draft assessment order is passed in the name of a non-existing entity. The fact of merger by filing the documents was once again reiterated.

- xi The learned Dispute Resolution Panel on 18th January, 2022, passed the direction in the name of Pentair Valves and Controls India Private Limited.
- xii Based on this, the final assessment order was passed by the learned Assessing Officer in the name of Emerson Process Management (India) Pvt. Ltd on 24th February, 2022.

05. Challenging the above order, the learned Authorized Representative submitted that the draft assessment order, order of the learned Transfer Pricing Officer and the direction of the learned Dispute Resolution Panel were all passed in the name of a non-existing entity and therefore, the final assessment order though passed in the name of correct entity does not survive. The learned Authorized Representative referred to his paper book containing 86 pages on this issue.

06. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer and submitted that it is only the final assessment order which

is relevant. Same is passed in the name of the correct entity. Therefore, there is no infirmity in the order of the learned Assessing Officer.

07. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact clearly shows that with effect from 1st April, 2019, Pentair Valves and Controls India Private Limited, was amalgamated with Emerson Process Management (India) Pvt. Ltd. as per the orders of the National Company Law Tribunal, Mumbai and Ahmadabad benches. Thus after that date Assessee has intimated the fact of amalgamation to the learned Transfer Pricing Officer and learned Assessing Officer. Despite this, LD TPO passed T P Order U/s 92CA 93) and LD AO passed draft assessment order U/s 144C (1) of the Act in the name of a non existing entity. It is not the case of the Revenue that assessee has not intimated the fact of the merger. Despite this, the above two authorities passed the order under Section 92CA (3) of the Act and draft assessment order under Section 144C (1) of the Act in the name of non-existing entity. Before the learned Dispute Resolution Panel assessee filed objection by the Emerson Process Management (India) Pvt. Ltd. In objection no.1 itself, in statement of facts, the fact of merger was intimated. The assessee also submitted that despite this, the transfer pricing order and draft assessment order are passed in the name of non-existing entity. Despite above facts available, before the learned Dispute Resolution Panel on 18th January, 2022, the learned Dispute Resolution Panel also

passed its direction in the name of Pentair Valves and Controls India Private Limited. Undisputedly, the learned Assessing Officer passed the final assessment order on 24th February, 2022, in the name of Emerson Process Management (India) Pvt. Ltd. Therefore, the final assessment order is passed in the name of an existing entity. But the final assessment order was based on invalid Transfer pricing order, Draft assessment order and Direction of Dispute Resolution panel all passed in the name of non-existing entity. Therefore, as all the additions etc. are made on the basis of invalid orders, the final assessment order also cannot be sustained.

08. In view of this, without going into the merit of the case, we quash the assessment order and allow the appeal of the assessee.
09. Thus, ITA No.772/Mum/2022, for A.Y. 2017-18 is allowed.
010. Now we come to the appeal of the assessee for A.Y. 2018-19 in ITA No.2126/Mum/2022. In this case on 3rd July, 2021, the learned Transfer Pricing Officer was informed about the above fact of merger. Even the representation before the learned Transfer Pricing Officer was also made by Emerson Process Management (India) Pvt. Ltd. Similar communication is also available in response to notice under Section 142(1) of the Act dated 14th December, 2020. Despite this, the learned Transfer Pricing Officer passed order under Section 92CA (3) on 30th July, 2021 in the name of Pentair Valves and Controls India Private Limited. It is interesting to note that in the 1st Paragraph

of order under Section 92CA (3) of the Act, the learned Transfer Pricing Officer has mentioned the fact of amalgamation. Therefore, there is no dispute that fact of amalgamation is in the knowledge of tax authorities for impugned assessment year. The draft order under Section 144C of the Act was passed on 29th August, 2021, wherein the intimation of merger was already available in the transfer pricing order and by letter dated 31st December, 2020, and further letter dated 23rd August, 2021, the fact of merger was reiterate. The last paragraph of this letter categorically states this fact. Despite this fact available with the National Faceless Assessment Centre, the draft order under Section 144C of the Act was passed on Pentair Valves and Controls India Private Limited.

011. Though direction of the learned Dispute Resolution Panel dated 30/5/2022 is passed in the name of Emerson Process Management (India) Pvt. Ltd. Consequently, the final assessment order under Section 144C (13) of the Act was dated 28/6/2022 also passed in the name of Emerson Process Management (India) Pvt. Ltd. but same are based on an invalid transfer pricing assessment order as well as invalid draft assessment order. The transfer pricing additions are made in the transfer pricing assessment order and in the draft assessment order, the transfer pricing assessment additions are incorporated and corporate additions are made. Therefore all these additions are made on the basis of invalid orders being passed on a nonexisting entity.



012. As soon as the transfer pricing assessment order becomes invalid, the assessee fails to qualify as an eligible assessee under section 144C (15) of the act and the time limit for passing of the final assessment order also get reduced. On this ground also final assessment order passed by the learned assessing officer on 28/06/2022 becomes time barred as well as invalid.

013. Therefore, the final order passed under section 144C (13) **of the act assessing the total income of the assessee at ₹ 81,843,687/-** is also invalid. Therefore, the final assessment order is not sustainable in law and hence quashed.

014. In view of above finding, without going on the merits of the case, the final assessment order passed by the learned assessing officer dated 28/6/2022 is quashed.

015. In the result, ITA number 2126/M/2022 filed by the assessee is allowed

Order pronounced in the open court on 31.07. 2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.07. 2023

Sudip Sarkar, Sr.PS

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