

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANJUNATHA. G, ACCOUNTANT MEMBER**

आयकर अपील सं./IT(TP)A No.59/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2011-12

**M/s. CET Power Solutions India**  
**Pvt. Ltd.,**  
2/295, DRP Revenue,  
AUDCO Nagar, Kattupakkam,  
Chennai – 600 056.  
**[PAN: AADCC-2912-P]**

**The Dy. Commissioner of**  
**Vs. Income Tax,**  
Circle-1(2),  
Chennai.

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri Karthik Sundaram, Advocate  
: Shri A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 09.08.2023

घोषणा की तारीख /Date of Pronouncement

: 16.08.2023

**आदेश / ORDER**

**Per Mahavir Singh, Vice President :**

This appeal by the assessee is arising out of the order giving effect passed by Dy. Commissioner of Income Tax, Corporate Circle I(2), Chennai u/s. 143(3) r.w.s. 92CA(3) of the Income Tax Act, 1961 (hereinafter 'the Act') vide dated 31.12.2017, on the directions of Dispute Resolution Panel-2, Bengaluru (hereinafter 'DRP') dated 28.12.2017 passed u/s. 143(3) r.w.s 144C(1) of the Act, for the

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Assessment Year 2011-12 giving effect to the order of Tribunal dated 29.07.2016. Hon'ble High Court of Madras vide judgement dated 11.09.2018 in Writ Petition Nos. 4695 & 4696 also directed tribunal to clarify the tribunal order dated 29.07.2016.

2. At the outset, the Ld. counsel for the assessee stated that he has raised the issue of limitation and assumption of jurisdiction by the A.O in passing assessment order by the A.O vide dated 31.12.2017, order giving effect to the order of DRP dated 28.12.2017, For this, the assessee has raised following four grounds:

*"1 The Impugned Order dated 31.12.2017 passed by the Respondent, refers to and relies upon the first assessment order dated 21.01.2016 passed by the Respondent, which order has already been set aside by the Hon'ble ITAT vide its order dated 29.07.2016 in ITA no. 546/ Mds/2016. The Impugned Order dated 31.12.2017 which is styled as a 'giving effect order, does not record any reasons, is not traceable to any provisions of the Income Tax Act, 1961 and on the face of it appears to be a continuation of the first assessment order dated 21.01.2016 (which stands set aside). Once the first assessment order dated 21.01.2016 stands set aside, then relying upon the same and conducting an assessment basis an order which stands set aside, is wholly without the authority of law.*

*2. When the issue stated in Ground 1 above, was taken up in writ proceedings before the Hon'ble Madras High Court in WP No. 4965 and 4696 of 2018, the Hon'ble High Court vide paragraph 7 of the order dated 11.09.2018 noted that the Hon'ble Tribunal is the appropriate authority to clarify whether the first assessment order dated 21.01.2016 passed by the Respondent, was set aside by the Hon'ble ITAT vide its order dated 29.07.2016 in ITA no. 546/Mds/2016 when the Hon'ble Tribunal remitted the matter back to the Dispute Resolution Panel (DRP). The Hon'ble Madras High Court has categorically observed that any such clarification by the Tribunal with regard to the status of the assessment order dated 21.01.2016, would certainly have a bearing on further proceedings including the present Impugned Order.*

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*The case of the present Appellant is that the first assessment order dated 21.01.2016 stands set aside vide the earlier order of the Hon'ble Tribunal dated 29.07.2016, and, if it is clarified to be so, then the present Impugned Order is wholly without the authority of law for the reasons set out in Ground 1 above.*

*3. That the Impugned Order dated 31.12.2017 passed by the Respondent, is not a valid assessment order under section 143(3) read with section 144C(13) of the Income Tax Act, 1961, does not contain any reasons and, is a non-speaking order. The Impugned Order styled as a 'giving effect' order is not traceable to any provisions of the Income Tax Act, 1961 and has been passed wholly without jurisdiction.*

*4. The entirety of the assessment proceedings should fail as no valid assessment order under section 143(3) read with section 144C(13) of the Income Tax Act, 1961, has been passed within one month from the end of the month- in which the directions of the DRP were received by the assessing officer, as mandated under section 144C(13) of the IT Act.”*

3. The brief facts of the case are that the assessee-company filed its return of income for the relevant A.Y 2011-12 on 26.08.2011. The assessee's case was selected for scrutiny assessment under CASS and accordingly, notice u/s. 143(2) of the Act dated 12.09.2012 was issued and served on the assessee. The A.O during the course of original assessment proceedings, noticed from Form No.3CEB that the assessee-company has entered into international transaction with its Associated Enterprise (hereinafter “AE”) and thereafter, the A.O made reference vide letter dated 17.04.2013 for determining the Arms Length Price (hereinafter “ALP”) to the Transfer Pricing Officer (hereinafter “TPO”). The TPO vide order dated 30.12.2014 u/s.

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92CA(3) of the Act determined the ALP of the assessee and directed an adjustment to be made at amount of Rs. 1.86 Crores. The A.O framed draft assessment order giving effect to the TPO's order u/s. 143(3) r.w.s. 92CA(3) of the Act dated 31.03.2015. The assessee raised objections before DRP against draft assessment order vide dated 23.04.2015. The DRP after considering objections of assessee passed directions vide order dated 28.12.2015 and directed the AO to confirm the adjustment of ALP made by TPO. The AO following the direction of DRP passed final assessment order dated 21.01.2016. Aggrieved, the assessee preferred appeal before the Tribunal.

4. The Tribunal in ITA No.546/Mds/2016 for A.Y 2012-12 vide order dated 29.07.2016 remanded the issue of ALP to the file of DRP by observing in para 6 to 8 as under:

*"6. We find that the DRP in this case, against the above provisions of the Act, passed a very non-speaking order, though the assessee's counsel made a voluminous submission before the DRP against the draft assessment order. It is accepted by the DRP that it has to be considered every point of dispute and pass a speaking order. Contrary to this, the order passed by the DRP very critic and there is no addressing the issues raised by the assessee mentioned herein above para Nos.4.1 to 4.1.3 and it was not properly adjudicated. Being of, we are not in a position to uphold the order of the DRP as it is not consistent with the provisions of sec.144C of the Act. We find that the Supreme Court in the case of Sahara India vs. CIT & Anr. (300 ITR 403) has held that even "an administrative order has to be consistent with the rules of natural justice". The same view has been taken by the Delhi Bench of the Tribunal in the case of GAP International Sourcing India (P) Ltd. vs. DCIT (8 ITR 0177). Further, in the case of M/s. Adobe Systems India Private Ltd. v. Addl. CIT in ITA No.5043/Del/2010 dated 21.01.2011, the Delhi*

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*Bench of the Tribunal held that when the DRP passed the order in cursory and laconic order without going into the details of the submissions, it should be decided afresh. Considering all these facts and circumstances, we are inclined to the remit the issues back to the DRP to pass a speaking order on the disputed issues.*

*7. Hence, we remit the issue back to the file of DRP to consider the objections of the assessee in proper perspective and pass a speaking order.*

*8. In the result, the appeal of the assessee is partly allowed for statistical purposes.”*

5. The DRP in the set aside assessment proceedings issued directions vide dated 28.12.2017 u/s. 144(5) of the Act and observed in Para 2.0 and para 2.2 are as under:

*“2.0 With regard to the assessment order” having been set aside-directly to the DRP by the Hon'ble ITAT, the legal situation as per the Income Tax Act 1961 (the Act hereinafter) and the Income Tax (Dispute Resolution Panel) Rules 2009(the Rules hereinafter) is as under:*

.....  
.....

*2.2. In the light of the legal position, this Panel .is of the considered view that there is no provision under the Act whereby the Hon'ble ITAT could set aside an assessment order directly to the file of the DRP. Further, the DRP is neither empowered to issue any, Direction U/s 144C(S) of the Act in a case set aside by the Hon'ble ITAT directly to the DRP, nor is there any limitation laid down by the Act for issuance of any Direction u/s 144C(5) of the Act in such circumstances.”*

6. Finally, the DRP rejected the objections of the assessee and uphold the adjustment proposed by TPO u/s. 92CA (5) of the Act. The A.O consequently passed order dated 31.12.2017 in conformity that the DRP direction and the order of ITAT by noting as under:

*“Ref: 1.Order of the ITAT D-Bench, Chennai in ITA No.546/Mds/2016 dated 29-07-2016 for the Asst. Year 2011-12*

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2. Order of the DRP-2, Bangalore in F.No.17/Set-side/DRP-2/BNGI201/-18 dated 28-12-2017

ORDER:

To give effect to the order of the DRP dated 28-12-2017 and as per the directions of the DRP, deduction u/s.10B is allowed.

COMPUTATION OF INCOME

			Rs.
	Income as per order dated 21-01-2016 (this order passed u/s. 143(3) r/w 92CA, subjected to appeal before ITAT as above, and undergone change as per DRP direction as above)		1,85,13,359
Less	Deduction u/s.10B allowed as per the directions of the DRP dated 8-12-2017 and also as claimed in the return of income at Rs.5,64,065		5,64,065
	Assessed income as per this giving effect order		1,79,49,484

7. The assessee, thereby, filed writ petition before Hon'ble Madras High Court in Writ Petition Nos.4695 & 4696 of 2018 dated 11.09.2018 and Hon'ble High Court restored the matter back to the file of the Tribunal by directing as under:

"6. Heard both sides.

7. The crux of the dispute between the parties is with regard to the order of assessment passed on 21 .01.2016, which according to the petitioner was set aside by the Tribunal, whereas, according to the respondent, it is not so. Perusal of the Order passed by the Tribunal dated 29.07.2016 would show that the Tribunal had finally observed, after making elaborate discussion on the issues involved, that it is inclined to remit the issues back to the Dispute Resolution Panel to pass a speaking order the disputed issues. However it is also stated that

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*the appeal of the Assessee is partly allowed for statistical purposes. Now the order of the Tribunal is sought to be interpreted in both ways as stated supra, with regard to status of the Order assessment dated 21.01.2016. In my considered view, it is for the petitioner to approach the Tribunal once again, by challenging the present impugned order by raising all these contentions, so that the Tribunal will be in a position to clarify the effect of the earlier order passed, while considering the appeal against the present impugned order. Needless to say that any such clarification by the Tribunal, with regard to the status of the assessment order dated 21.01.2016, would certainly have a bearing on further proceedings including the present impugned Order. Since this Court finds that it is for the Tribunal to clarify the above position, without expressing any view on the merits of the status of the assessment order passed on 21.01.2016, these writ petitions are disposed of, by granting liberty to the petitioner to file a statutory appeal against the impugned order dated 31.12.2017 before the Income Tax Appellate Tribunal, within four weeks from the date of receipt of a copy of this order. If any such appeal is filed, the Tribunal shall consider the same and pass orders on its own merits and in accordance with law, uninfluenced by any of the observations made in these Writ petitions and also without reference to the period of limitation. No costs. Consequently, connected miscellaneous petition is closed."*

In consequence to the above directions, now the assessee filed this appeal before the Tribunal on 31.10.2018.

8. Now before us, Ld. counsel for the assessee, Shri Karthik Sundaram, Advocate, argued that, the Tribunal has to clarify the order dated 29.07.2016 whether the assessment order passed u/s. 143(3) r.w.s 92CA(3) of the Act dated 21.01.2016 is set aside by the Tribunal or it is not set aside? Further, Ld. counsel for the assessee also argued, that, in the eventuality the Tribunal held that in first round the assessment is set aside, the consequences are that the order giving effect passed by A.O dated 31.12.2017, in view of the DRP directions

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vide order dated 28.12.2017, is of no consequence, because, the A.O has not followed the procedure prescribed u/s. 144C of the Act. For this, the Ld. counsel for the assessee placed reliance on the decision of Hon'ble Delhi High Court in the case of *PCIT vs. Headstrong Services India Pvt. Ltd. in ITA No.77/2019 dated 24.12.2020 (Del)* as well Hon'ble Bombay High Court in the case of *PCIT vs. Lionbridge Technologies (P) Ltd. [2019 260 taxman 273 (Bom.)* and Hon'ble Delhi High Court in the case of *JCB India Ltd. vs. DCIT [2017] 85 taxmann.com 155 (Del.)*.

9. On the other hand, the Ld. CIT-DR, Dr. A Sasikumar, stated that, now in view of the directions of Hon'ble Madras High Court, first of all, the Tribunal's order dated 29.07.2016 is to be clarified and it means that the Tribunal order dated 29.07.2016 survives and it has to be explained first and then only entire proceeding has to start afresh. According to him the proceedings have become alive from the stage of tribunal in the first round and all other orders have become of no consequence. In term of the above, the Ld. CIT-DR stated that the Tribunal cannot set aside the matter to DRP directly, it can set aside only to the A.O. Hence, he urged the Bench to decide the issue in term of the directions of Hon'ble High Court.



10. We have heard the rival contentions and gone through the facts and circumstances of the case. First of all, we have to go through the directions of Hon'ble High Court in the writ petition and we noted that the Hon'ble High Court has directed the Tribunal by observing, ***"In my considered view, it is for the petitioner to approach the Tribunal once again, by challenging the present impugned order by raising all these contentions, so that the Tribunal will be in a position to clarify the effect of the earlier order passed, while considering the appeal against the present impugned order. Needless to say that any such clarification by the Tribunal, with regard to the status of the assessment order dated 21.01.2016, would certainly have a bearing on further proceedings including the present impugned Order. Since this Court finds that it is for the Tribunal to clarify the above position, without expressing any view on the merits of the status of the assessment order passed on 21.01.2016, these writ petitions are disposed of, by granting liberty to the petitioner to file a statutory appeal against the impugned order dated 31.12.2017 before the Income Tax Appellate Tribunal, within four weeks from the date of receipt of a copy of this order"***. From the above directions, it is clear that first the Tribunal has to clarify the effect of the Tribunal order dated 29.07.2016.

11. We have gone through the order of the Tribunal dated 29.07.2016 and noted that the Tribunal held that the order of DRP is not consistent with the provisions of Section 144C of the Act as it is a non speaking order i.e, the order dated 28.12.2015. The Tribunal accordingly held that,

*“Considering all these facts and circumstances, we are inclined to the remit the issues back to the DRP to pass a speaking order on the disputed issued.*

*7. Hence, we remit the issue back to the file of DRP to consider the objections of the assessee in proper perspective and pass a speaking order.*

*8. In the result, the appeal of the assessee is partly allowed for statistical purposes.”*

12. From the above order of the Tribunal, we are of the view that before tribunal there was issue relating to determination of ALP, which was remitted back to the file of DRP and assessee's appeal is partly allowed for statistical purposes, means that the matter is restored back to the file of A.O. Once, the assessment is partly allowed for statistical purposes means the matter is restored back to the file of A.O, who will follow procedure laid down u/s. 144C of the Act. The assessee's appeal before the Tribunal in first round in ITA No.546/Mad/2016, the issue was the assessment order passed by A.o u/s. 143(3) r.w.s 92CA(3) r.w.s 144C(12) of the Act. We have gone through the

grounds raised in first round i.e., ground No.1 and 2 which reads as under:

*1. The order passed by the learned Assessing Officer (AO) under section 143(3) read with section 92CA(3) and section 144C(12) of the Income-tax Act (the Act) is contrary to law, facts and circumstances of the case.*

*2. The learned AO/Transfer Pricing Officer (TPO) erred in making additions to the extent of Rs. 1,83,00,000/- to the total income of the assessee on account of adjustment in arm's length price(ALP) of the international transactions entered by the assessee with its Associated Enterprise (AE).*

13. From the other grounds also, we ascertained that the assessee before the Tribunal challenged the order of AO/TPO/DRP for computation of ALP in regard to the adjustment made to the international transactions entered by the assessee with its AE. It means that the Tribunal has set aside the assessment which was before it and the AO failed to understand the order of the Tribunal. We noticed from the observations made by DRP that the Tribunal cannot remit back directly the issue to the DRP and we also agree that before the Tribunal under challenge is the final assessment order passed u/s 143(3) r.w.s.92CA(3) r.w.s. 144C(5) of the Act and tribunal has not set aside the solitary action of the DRP and that also in vacuum. Even by going through the findings of tribunal, we noted that the tribunal has not remitted the issue for verification of facts rather it is noted by Tribunal that the order of DRP is a non-speaking order even though, the assessee filed voluminous submissions before the DRP against the draft assessment order. The Tribunal also noted that even though

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DRP accepted that it has to consider every point of dispute and pass a speaking order but contrary to this, the order passed by DRP is cryptic and addresses no issues raised therein and not properly adjudicated.

The essence of the order of Tribunal is that it has set aside the assessment and the A.O has to restart the entire assessment process afresh in term of Section 144C of the Act. Hence, as per our understanding of this order of Tribunal and the provisions of the Act, the Tribunal in first round has set aside the assessment proceedings. We hold so.

14. As regards to the validity of the fresh directions issued by the DRP u/s. 144C(5) dated 28.12.2017 and in consequent to the same, the order passed by A.O giving effect to the order of DRP dated 28.12.2017, the order is passed without understanding the interpretation of Tribunal's order and hence, the same is a curable defect. Accordingly, the matter has to go back to the file of A.O for fresh adjudication denovo. We set aside the DRP directions passed u/s. 144C(5) of the Act dated 28.12.2017 in pursuant to order of the ITAT in ITA No.546/Mad/2016 dated 29.07.2016 and consequently, the order giving effect to the order of DRP dated 28.12.2017, passed by the A.O dated 31.12.2017 is also set aside and matter remanded to the file of the A.O to re-decide the adjustment to ALP in regard to

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international transactions entered into by the assessee with its AE. The A.O will adopt the procedure afresh as prescribed u/s. 144C of the Act. In term of the above, the matter is remanded back to the file of the A.O and the appeal of the assessee is allowed for statistical purposes.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

*Order pronounced on 16<sup>th</sup> August, 2023.*

Sd/-  
(मंजुनाथ. जी)  
(Manjunatha. G)

लेखा सदस्य /Accountant Member

Sd/-  
(महावीर सिंह)  
(Mahavir Singh)  
उपाध्यक्ष / Vice President

चेन्नई/Chennai, दिनांक/Dated: 16<sup>th</sup> August, 2023.  
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|-------------------------|--------------------------|--------------------|
| 1. अपीलार्थी/Appellant  | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त/CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF         |                    |