

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 3246/Mum/2019

(Assessment Year: 2013-14)

KKR India Advisors Private
Limited
2nd Floor, Piramal Tower,
Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel,
Mumbai-400 013

(Appellant)

Vs.

Pr. Commissioner of Income
Tax, Circle 6
515, Aaykar Bhavan,
Maharshi Karve Road,
Mumbai-400 020

(Respondent)

PAN No. AADCK5826G

Assessee by : Gunjan Kakkad, AR
Revenue by : Vachaspati Tripathi, CIT (DR)

Date of hearing: 07.09.2023

Date of pronouncement 13.09.2023

:

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 3246/Mum/2019 is filed by the assessee for A.Y. 2013-14 against the revision order passed under Section 263 of the Income-tax Act, 1961 (the Act) on 29th March, 2019, by the Pr. Commissioner of Income Tax-6, Mumbai (learned PCIT), holding that the assessment order passed under Section 143(3) dated 13th December, 2016 is erroneous and prejudicial to the interest of the Revenue and therefore, the assessment order is



set aside holding that the transfer pricing order passed by the learned Transfer Pricing Officer did not consider or examine the fact submitted by the assessee and therefore, as the transfer pricing officer's order was erroneous and prejudicial to the interest of the Revenue and therefore, the assessment order passed under Section 143(3) of the Act is also erroneous and prejudicial to the interest of the Revenue.

02. Briefly stated facts shows that assessee filed its return of income on 29th November, 2013, declaring total income of **₹10,24,36,022/-**, the return was picked up for scrutiny for verification of large outward remittances and loss from currency fluctuations.
03. The learned Assessing Officer made reference to the learned Transfer Pricing Officer u/s 92CA which culminated into the transfer pricing order under Section 92CA(3) of the Income-tax Act, 1961 (the Act) on 31st October, 2016 without any adjustment. Therefore, the assessment order under Section 143(3) of the Act dated 13 December 2016 was also passed without any T P Adjustments on ALP of International Transactions.
04. The learned PCIT on examination of the record found that assessee was involved in charging lower advisory fees from the related parties. Further, the employees of the assessee were involved in operational activities of other group entities. The assessee claimed employee benefit reimbursement expenditure **of ₹8.07 crores to parent company, however, the learned Transfer Pricing Officer did not make any adjustment and therefore, the learned Transfer Pricing Officer order dated 31 October 2016 not making any adjustment was erroneous and prejudicial to the interest of the Revenue. The learned PCIT**



also found that for A.Y. 2012-13 and 2013-14, the learned Transfer Pricing Officer has passed orders making an adjustment on this count. Despite, similar transaction reported in Form no. 3CEB, no adjustment is made.

05. After considering the explanation of the assessee, the learned PCIT held that the learned Transfer Pricing Officer order is erroneous to the extent of verification of information on employee benefit expenditure claimed by the assessee. Accordingly, he set aside the assessment order along with **Transfer Pricing Officer's order** directing Ld Transfer Pricing Officer to verify the veracity of claim of employee benefit expenditure and pass an order afresh. He further held that adjustment with respect to the lower amount of management fees, be examined afresh, which has resulted into revenue loss. As the assessment order did not contain any T P adjustment because of the no adjustment made by LD TPO, he held that assessment order is also erroneous so far as prejudicial to the interest of revenue. Accordingly, he passed an order under Section 263 of the Act on 29 March 2019, setting aside the **assessment order along with Transfer Pricing Officer's order** with above direction.
06. Assessee aggrieved with the above order is in appeal before us.
07. At the time of hearing, assessee submitted a letter dated 6 September 2023, stating that as per Section 153 of the Act, the time limit to pass the final assessment order pursuant to direction issued under Section 263 of the Act expired on 31 December 2020. Further, as per the decision of the Hon'ble Supreme Court in Writ Petition no.3 of 2020, the period from 15 March 2020 till 20 February 2022, shall be excluded for the purpose of limitation. Therefore, the limitation period of 90



days as per that order, the consequential assessment order becomes time barred by 15 December 2022. It was further submitted that even till this date, no final assessment order under Section 143(3) read with section 263 of the Act has been passed by the learned Assessing Officer, failure on part of the Id AO to pass order u/s 143(3) rws 263 of the Act has made this appeal merely academic. The assessee submitted that till date no such order is either served on the assessee or even uploaded on the portal.

08. The assessee also submitted that pursuant to the order under Section 263 of the Act, the learned Assessing Officer on 26 June 2019 referred the international transaction to the learned Transfer Pricing Officer with direction of the learned PCIT. Consequent to that, the learned Transfer Pricing Officer passed an order under Section 92CA (3) read with section 263 of the Act on 24 January **2020, making an adjustment of ₹11.63** crores. However, no final assessment order under Section 143(3) read with section 153 of the Act incorporating the above adjustment made by the LD TPO has been passed.
09. The learned CIT Departmental Representative was asked to intimate that whether any assessment order under Section 143(3) read with section 263 of the Act pursuant to the order of learned Transfer Pricing Officer under Section 92CA(3) of the Act dated 24th January, 2020, has been passed or not. The learned CIT Departmental Representative submitted that his office has had two communications to the learned Assessing Officer to show whether any assessment order has been passed or not. He submitted that no reply has been received.
010. We have carefully considered the rival contentions and perused the orders of the learned PCIT, the learned Transfer Pricing



Officer and the original assessment order. We find that Assessment order under Section 143 (3) rws 92CA (3) rws 263 of the Act considering the direction of the learned PCIT should have been passed on or before 30th December, 2020, as per provisions of Section 153(3) of the Act. Subsequently time limits were extended by the decision of the Hon'ble Supreme Court till 28 February 2022 and further a period of 90 days was available. According to that direction and the various notifications a period of 9.5 months is further added to the time limit available from 1st March, 2022 and therefore, any order under Section 143(3) read with section 263 read with section 153 of the Act should have been passed on or before 15th December, 2022 i.e. outer time limit for the learned Assessing Officer to pass such an order. We have also noted that the transfer pricing officer has passed order under Section 92CA of the Act read with section 263 of the Act on 24th January, 2020 and despite this the learned Assessing Officer as per version of the assessee and because of non-communication by the learned Assessing Officer to the learned CIT Departmental Representative seems not to have passed such order within the above time limit. Therefore, apparently time limit for passing assessment order pursuant to direction of learned PCIT has already expired. In view of the above facts, the appeal of the assessee has become merely academic and infructuous. Accordingly, failure on the part of the learned Assessing Officer to pass the order under Section 143(3) read with section 263 of the Act despite transfer pricing order passing the order in time, we allow the appeal of the assessee on this issue itself.

011. However, if it is found later that the learned Assessing Officer has passed an assessment order pursuant to the order under Section 263 of the Act within the time limit allowed, the



appellant is given a liberty to make an application for recall of this order. In the end, we also make it a point to inform the learned PCIT that even the revisionary orders are not being given effect to by the learned Assessing Officer within time. Further, as stated by the learned CIT Departmental Representative, communications made to the learned Assessing Officer to effectively represent the case of the Revenue were not even replied to. The learned PCIT may consider the above facts.

012. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13.09.2023.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 13.09. 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