

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

ITA No. 192/Ahd/2022
Assessment Year 2018-19

Dilipkumar Jashbai Patel, C/o. Amin Arunbhai Raojibhai, 8, Parishram Society, Subhanpura Road, Vadodara-390023 PAN: AKTPP3981C (Appellant)	Vs	The ACIT, Circle International Taxation, Vadodara (Respondent)
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**Assessee by: Shri Tushar Hemani, Sr. A.R. &
Shri Parimalsinh B. Parmar, A.R.**

Revenue by: Shri Ashok Kumar Suthar, Sr. D.R.

Date of hearing : 19-07-2023

Date of pronouncement : 16-10-2023

आदेश/ORDER

PER : WASEEM AHMED, ACCOUNTANT MEMBER:-

This assessee's appeal for AY 2018-19, arises from order of the ACIT, Vadodara dated 23-03-2022, in the proceedings under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961, in short "the Act".

2. The assessee has raised following grounds of appeal:-

<i>Grounds of Appeal</i>	
1.	<i>Order passed u/s 143(3) r.w.s. 144c(13) of the act is bad-in-law</i>
2.	<i>The Hon'ble Dispute Resolution Panel, Mumbai not justified in rejecting the objections filed on a plea that your appellant has not filed the objections within prescribed time.</i>
3.	<i>Reference to Department Valuation Officer is not in accordance with law.</i>
4.	<i>Addition of Rs. 1, 06,67, 520/- as long term capital gain on account of adopting imaginary value instead of fair market value of the property as on 01.04.2001</i>

2. The first issue raised by the assessee is that the assessment order passed under section 143(3) r.w.s. 144C of the Act is invalid as the same was passed beyond the prescribed time limit specified under the Act.

3. The facts in brief are that the assessee is an individual and non-resident for the purpose of the provisions of the Act. The assessee during the year under consideration sold an ancestral immovable property for consideration of Rs. 2.3 crores against which the assessee claimed cost of acquisition as on 1st April 2001 at Rs. 86.38 Lacs in accordance with the valuation report. Accordingly, the assessee claimed long term capital loss of Rs. 8,49,360/- on the sale of the property. The AO during the year assessment proceedings referred the valuation of the property to the Government valuation officer under section 55A of the Act who valued the

property as on 1st April 2001 at Rs. 45.34 Lacs only. Accordingly, the AO worked out the long-term capital gain of Rs. 1,06,67,520/- only. Thus, the AO in the draft assessment order dated 14th June 2021 purposes to make addition of Rs. 1,06,67,520/- on account of capital gain to the total income of the assessee.

4. The assessee filed objection against the draft assessment order before the learned DRP as on 1st September 2021. The learned DRP vide order 22nd March 2022 dismissed the objection of the assessee by holding that the last date to file the objection against the draft order was 31st August 2021 whereas the assessee filed objection on 1st September 2021 which got delayed by one day only. Thus, the AO after dismissal of objection of the assessee by the learned DRP passed final assessment order as on 23rd March 2022.

5. Now the assessee is in appeal before us challenging the validity of the assessment framed under section 143(3) r.w.s. 144C of the Act.

6. The learned AR of the assessee before us contended that the order passed by the AO is time barred. As per the learned AR of the assessee, once the objection against the draft order was not filed within the prescribed limit or the time limit to file objection expires, the AO was under the obligation to complete the assessment within a month from the end of month in which period of filing of objection expires. Thus, the AO was required to complete the assessment under section 143(3) r.w.s. 144C of the Act on or before 30th

September 2021 whereas the AO completed the assessment vide order dated 23rd March 2022 which is invalid and the same needs to be quashed.

7. On the other hand, the learned DR vehemently supported the assessment order passed under section 143(3) r.w.s. 144C of the Act.

8. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the AO has passed draft assessment order under section 143(3) r.w.s. 144C of the Act as on 26th June 2021 and the assessee, as per the provision of section 144C(2) of the Act, was required to file the objection against draft order before the DRP on or before 31st August 2021. However, the assessee filed an objection before DRP as on 1st September 2021 i.e. delayed by 1 day. In other words, the assessee has not filed an objection till the expiry of the period to file such objection. The provisions of section 144C(3)r.w.s. 144C(4) of the Act provide that the AO will complete the assessment as per draft assessment order within a month if the assessee intimates the AO about acceptance of draft order or the assessee fails to file the objection within the period as per subsection 2 to section 144C of the Act. Thus, in our considered view, the AO as per the provisions of section 144C(3) r.w.s 144C(4) of the Act was required to complete the assessment on or before 30th September 2021 as the assessee failed to file an objection on before 31st August 2021. In the identical facts and circumstances, the identical view was also taken by the coordinate bench of Pune Tribunal in the case of TDK Electronics AG vs. ACIT reported in 116 taxmann.com 986. In the case of TDK Electronics AG also the objection before the DRP was delayed by 1 day and accordingly

objection was disposed-off by the learned DRP as time barred. The coordinate bench held that in such circumstances, the AO was required to complete the assessment as per subsection 3 & 4 to section 144C of the Act. The relevant finding of the Pune bench reads as under:

14. There is another facet of the case. Once it is held that filing of objections by the assessee beyond the period of thirty days is barred by limitation and hence inconsequential, it must also meet the resultant effects as well.

15. The scheme of the relevant provisions in this regard is that when the AO makes a reference to the TPO, the latter passes an order under section 92CA(3) of the Act. On receipt of the order from the TPO, the AO passes a draft order under section 144C(1). If dissatisfied with the draft order, the assessee has an option to either approach the DRP route by filing objections before the DRP or choose the appellate recourse by filing an appeal before the CIT(A). If an assessee opts to be governed by the procedure enshrined for the DRP reference, then the DRP is supposed to issue directions within nine months from the end of the month in which the draft order is forwarded to the eligible assessee as per sub-section (12) of section 144C. Sub-section (13) provides that upon a receipt of the direction in sub-section (5), the AO shall complete assessment within one month from the end of the month in which such a direction is received. At this juncture, it is significant to have a glance at the mandate of sub-section (3) of section 144C, which runs as under :-

'The Assessing Officer shall complete the assessment on the basis of the draft order, if—

<i>(a)</i>	<i>the assessee intimates to the Assessing Officer the acceptance of the variation; or</i>
<i>(b)</i>	<i>no objections are received within the period specified in sub-section (2).'</i>

16. The crux of section 144C(3) in so far as clause (a) is concerned is that if an assessee accepts the variation as per the draft order, then there is no need to sail through the DRP or the appellate route. In that scenario, the AO, in terms of section 144C(4)(a), will be required to complete the assessment on the basis of the draft order within a period of one month from the end of the month in which the acceptance is received. Clause (b) of section 144C(3) deals with a situation of completing the assessment on the basis of the draft order in a case in which no objections are received within the period specified in sub-section (2). In the latter situation, clause (b) of section 144C(4) provides that the AO will pass the assessment order within one month from the end of the month in which the period of filing the objections under sub-section (2), expires. It means that if an assessee does not file objections against the draft order before the DRP within a period of thirty days as per sub-section (2), the AO, without waiting for anything else, will

have to complete the assessment within one month from the end of the month in which the period of filing of objections under sub-section (2) expires. The DRP dismissed the objections of the assessee in limine by opining that the assessee could not have filed objections outside the time limit provided under sub-section (2) of section 144C. The net effect of the order of the DRP is that the objections filed by the assessee were time barred and hence no cognizance could have been taken of them. Once the objections filed by the assessee are time barred, the natural corollary is that no valid objections were filed by the assessee. One cannot contemplate a situation that the objections are invalid for the DRP so as not to issue any direction under section 144C(5) and valid for the AO so as to pass order under section 144C(13) of the Act. If the objections are invalid as time barred having not been filed within the time prescribed under sub-section (2) of section 144C, the AO will have to act in terms of section 144C(3)(b) and complete the assessment within the time prescribed under section 144C(4)(b) of the Act, namely, within one month from the end of the month in which the period of filing of objections under sub-section (2) expires.

17. Adverting to the facts of the instant case, it is found that, the period of 30 days for filing objections within sub-section (2) of section 144C expired on 23-1-2019. Going by the mandate of sub-section (3) of section 144C(3)/144C(4), the AO was supposed to complete the assessment on the basis of the draft order by February, 2019. As against this, the AO actually completed the assessment under section 144C(13) on 24-10-2019. Such a completion of assessment not only under the wrong provision but also beyond the limitation period is ultra vires and hence cannot stand. We declare the assessment order to be time barred and ex consequenti null and void, with the effect that the returned income will automatically get accepted as finally assessed income.

7.1 In view of the above detailed discussion, we hereby hold that the order passed by the AO under section 143(3) r.w.s 144C(13) of the Act on 23rd March 2022 instead of 30th September 2021 was ultra vires and we accordingly quash the same. Hence the ground of appeal of the assessee is hereby allowed.

8. Coming to grounds of appeal raised by the assessee on merit, in this connection we note that once the assessment order framed by the AO has been held by us as non-est, we do not find any reason to give any finding on

the merit of the case. As such the issues raised by the assessee on merit become infructuous. Accordingly, we dismiss the same.

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

Order pronounced in the open court on 16-10-2023

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER
Ahmedabad : Dated 16/10/2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद