

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2370, 2371& 2372/Del/2023
Assessment Year: 2013-14, 2014-15 & 2015-16

Ares Diversified C/o Advocate Ravi Gupta, B-41, Kailash Colony, New Delhi-110048 PAN No.AAHCA2144B	Vs.	ACIT Central Intl. Taxation 1 (1)(1), New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Ishita Farsaiya, Advocate Sh. Ravi Gupta, Advocate
Respondent by	Sh. Vizay B. Vasanta, CIT DR

Date of hearing:	04/04/2024
Date of Pronouncement:	24/06/2024

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has filed the present appeals against the orders dated 29.06.2023 u/s 147 r.w.s 144C(13) of the Income Tax Act 1961 (here in after referred as 'the Act') passed by DCIT Circle Int Tax 1(1)(1) Delhi (here in after referred as 'AO').

2. Heard and perused the record.

2.1 The Ld. Counsel has argued on the additional ground which is raised as follows:-

“That the Final Assessment Order dated 29.06.2023 passed by the Ld. AO is barred by limitation being in contravention of the provisions of Section 144C(4) of the Act to mandatorily pass the assessment order within one month from the end of the month in which the statutory period of filing the objections expired.”

2.2 In this context it can be seen that case of assessee was flagged on Non-filers Management System of the Income Tax Department. The assessee had not filed the return of income for the relevant A.Y. Thus the AO formed reasons to believe that income had escaped assessment, and the case was reopened by issuing notice u/s 148 of the Act, after recording satisfaction of such reason to believe and after obtaining necessary sanctions u/s 151 of Income Tax Act, 1961 from the competent authorities. After seeking statutory approvals, notice u/s 148 was issued and was duly served upon the assessee. In response to the said notice assessee company filed its return of income. In respect of the income alleged to have escaped assessment, the assessee company filed its detailed reply as to why such income was not offered by them for taxation in India. Additions were made on account of short term capital gains by rejecting benefit of DTAA by holding that assessee was into treaty shopping and there was fiscal evasion.

2.3 The DRP, examined the objections of assessee and observed as follows;

“4. DRP's Directions: The Panel has carefully considered the paperbook attached with Form 35A filed on 28.10.2022, the AO's draft order dated 23.09.2022 the AO's report dated 21.04.2023 and the assessee's e-mail dated 13.03.2023 along with the snapshot.

4.1 The Panel has observed that the assessee filed the objections before the Panel on 28.10.2022 against the AO's draft order dated 23.09.2022, after 5 days from the due date for filing of objections i.e. within 30 days from the date of receipts of the draft order by the assessee. The Panel has further observed that the assessee merely intimated the AO about filing of objections before the Panel on 20.10.2022, no documents/evidence/acknowledgement in this regard, was enclosed. The assessee further intimated the AO on 01.11.2022 about filing of objections before the Panel by enclosing copies of Form 35A filed dated 28.10.2022 before the Panel. The assessee has filed copy of snapshot which shows that some correspondence was made some Dhvani Poladia to ZADN audit on 20.10.2022 in respect of AY 2013-14. The assessee has filed a copy of some postal dispatch to Aman Aggarwal-JC Bhalla & company, CA, Noida along with copy of consignment through Parcel Express.

4.2 The assessing officer vide his letter dated 21.04.2023 reported that no final assessment has been made by his office till the date.

4.3 The provisions of section 144C(2) of 1.T. Act are mentioned as under :

(2) On receipt of the draft order, the eligible assessee, within 30 days of the receipt by him of the draft order-

(a) file his acceptance of the variations to the Assessing Officer, or

(b) file his objections, if any, to such variation with, -

(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer."

4.3.1 In view of the above provisions, in case of non-acceptance of the variations to the AO, the eligible assessee must simultaneously within the stipulated time, file the objections before the Panel and also to intimate the assessing officer. The Panel is of the view that the assessee must fulfill two conditions to be heard before the Panel being as an eligible assessee as under:

i) The assessee must file objections within 30 days of the receipt of the draft order.

ii) The assessee must file an intimation about of objections (before the Panel) in the Olo AO.

In view of the above, the assessee must fulfill both the conditions as envisaged above before the Income tax

Authorities- 1. Dispute Resolution Panel and 2. The Assessing Officer.

4.4 The Panel further takes a note of provision of sub-section 3 of section 144C as under.

"....(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if-

a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in sub-section (2)."

4.4.1 The above are the enabling provisions of the Income Tax Act for AO to handle the circumstance that arises as stated at sub-para (b) above.

4.5 The Panel further takes a note of provision of sub-section 4 of section 144C as under:

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which, -

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires

*4.5.1 The above two are the enabling provisions of Income Tax Act for AO as to how to handle the situation arises as stated at sub-para (b) above. **Accordingly, the AO in case does not receive the intimation for filing of objections before the panel as per the Income Tax Act, he must pass the final assessment order within one month from the end of the month/the period of filing of objections under sub-section (2) expires.** It means that the AO in case does not receive a proper intimation for filing of objections before the Panel within 30 days from the date of receipt of draft order by the assessee, he must pass the final order within one month from the date, which was due for filing of objections as per sub-section (2) of the section 144C of the IT Act.*

4.6 In the instant case, the AO has stated that he had received a simple intimation (without any acknowledgement) for filing of objections on 20.10.2022, 3 days before the due date for filing of objections before the Panel i.e. 23.10.2022. The AO has admitted that he had received an intimation (with acknowledgement dated 28.10.2022) on 01.11.2022 for the objections filed on 28.10.2022, 5 days after the due date for filing of objections before the Panel i.e., 23.10.2022. The AO has

reported that no final assessment has been ordered till the date. **The AO as per the provisions of the IT Act, should have passed the final assessment order after 01.11.2022**, the date he received an intimation for filing of objections on 28.10.2022, 5 days after the due date for filing of objections before the Panel i.e. 23.10.2022 within one month from end of the month in which the period of filing of objections under sub-section (2) expired. The AO never approached the Secretariat of the Panel or the Panel's members for seeking out or requesting any guidance/clarification in this regard. The copy of acknowledgment/intimation filed by the assessee, itself is a speaking document indicating the late filing of objections. **This is a lapse part at end of the AO as per the IT provisions.**

4.7 Under the facts and circumstances discussed above, the Panel is of the view that the objections filed by the assessee do not qualify to be the valid objections as per Income Tax Act as these do not pass the test parameters as prescribed in section 144C(2) of the Act. Accordingly, the Panel does not find it fit for issuing directions for the guidance of the assessing officer for enabling him to complete the assessment. The Revenue is advised to take further course of action as per the law and precedents in

interest of revenue. The objections in this regard, are disposed of accordingly.”

3. Ld. Counsel has submitted that the final assessment order has not been passed in the statutory period of 30 days of the draft assessment order. Reliance was placed on the a co-ordinate bench decision in case of **Mavenir UK Holdings Vs ACIT, New Delhi, ITA No. 185/DEL/2023 order dated 05/01/2024 to submit that such an order is void.**

3.1 Ld. DR has however, countered the submissions with proposition, that as assessee had informed the AO, of filing the objections before DRP, and same were not filed in time, then matter may be restored to the files of AO, to decided afresh.

4. Now, a perusal of Section 144C(2) of the Act would show that the assessee, on receipt of the draft order, shall file his objections within 30 days of the receipt of the draft order with Dispute resolution Panel and the Assessing officer. Only when no objections are received within the period specified under Sub- Section 2, the Assessing Officer shall complete the assessment on the basis of the draft order, as contemplated under Section 144(C)(3) of the said Act. What is contemplated under Section 144C(2) is the filing of the objections by the assessee with the Dispute Resolution Panel, if he is not accepting the draft assessment order. The said provision also contemplates filing of such objection before the Assessing Officer as

well. If such objection is filed in time, then the Dispute Resolution Panel alone shall proceed to decide the matter as provided under Section 144C(5) & 6 of the said Act. Therefore, the Assessing Officer cannot proceed to pass the final order till the Dispute Resolution Panel passes an order as stated supra. Once the objection is filed within the period of limitation, consideration of the same is vested only with the Dispute Resolution Panel as provided under Section 144C(5), (6), (7) & (8) of the said Act and as such the Assessing Officer cannot decide such objection. Therefore, filing of such objection before the Assessing Officer within time itself will not get over the period of limitation, if such filing before the Dispute Resolution Panel was after such period. At the same time, if objections are filed before the DRP, and AO is merely informed of filing of the objections before the DRP, and no objections as filed before DRP, are provided to the AO, then AO is supposed to pass the final assessment order. Same has been the observations of DRP in the present case and DRP specifically concluded that *“The AO as per the provisions of the IT Act, should have passed the final assessment order after 01.11.2022,”*.

5. Then as we appreciate the order of DRP, in case in hand, it comes up that as such, the order passed by DRP does not contain any directions to the AO, so the final order passed by the AO cannot be treated as the one passed in accordance with Section 144C(13) of the said Act. In this context we find that sub-section 8 of Section 144C which reads as follows:

“(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order (Explanation For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee)”

6. A perusal of the above said provision of law would undoubtedly make it clear that the DRP may confirm, reduce or enhance the variation proposed in the draft order. It is not in dispute that the DRP rejected the objection filed by the assessee on the ground that it is barred by limitation. Though, it is an order rejecting the objections but the Panel concluded that it *“does not find it fit for issuing directions for the guidance of the assessing officer for enabling him to complete the assessment.”* Once, the DRP has chosen to reject the objections on the ground of delay, it goes without saying that resultant position of such rejection is nothing but confirming the merits of draft order passed by the AO but in no way extends the limitation of passing the order under sub-section (4) of Section 144 of the Act. The final order should have been passed under sub-

section (3)(b) of Section 144 read with sub-section (4)(b) of Section 144 of the Act. of the Act. There is nothing in the DRP order stating that the directions are communication to the assessee and the departmental authorities as per the provision of Section 144C(5) of the said Act. Rather, being aware of the lapse at end of the AO, ordered that *“The Revenue is advised to take further course of action as per the law and precedents in interest of revenue.”*

7. Consequently, we are inclined to hold that the final order passed of AO under Section 144C(13) of the Act, is devoid of jurisdiction. The additional ground is sustained. The appeals are allowed.

Order pronounced in the open court on 24.06.2024.

Sd/-

(B.R.R KUMAR)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

NEHA

Date:- .06.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI