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CA. Priti Paras Savla
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CA. Abhay Chhajed
Vice Chairman, WYMEC, ICAI

Key Recent Rulings in Transfer Pricing

CA Shazia Khatri
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TP Litigations – Generally High Pitched and Prolonged

TRANSFER PRICING – KEY FOCUS DURING SCRUTINY SINCE 2001

Contributors to Aggressive Audits:

- Mounting fiscal demand on Government
- Need to Preserve tax base
- Unprecedented sharing of information between revenue authorities

Area of Litigation

- Whether AE relationship triggered / International Transaction?
- Selection of Methods
- Selection of Filters
- Selection of Comparable
- Adjustments and Margin Computation

LEGAL BATTLES CAN GO BEYOND ITATs

<p>➤ Transfer pricing mostly covers overseas transactions with related parties, like an Indian subsidiary providing back-office services to the parent co abroad</p>	<p>co abroad is disputed by authorities here</p> <p>➤ That is because a higher tax outgo is ensured by a higher margin or revenue for the Indian entity</p>
<p>➤ Pricing for such a service by the Indian arm has to be at an arm's length (that is, same rate unrelated</p>	<p>➤ SC's latest landmark ruling now ensures the litigation can go beyond the Income Tax Appellate Tribunals (ITATs)</p>



Substantial increase in transfer pricing audits and disputes across the Globe , India is no exception....



01

Quashes Final Assessment- Order holding Assessee as 'ineligible since TPO-order barred by limitation

Teleperformance Global Services Private
Limited [TS-181-ITAT-2023(Mum)-TP]

Facts

1 November 2019

- TPO passed an order u/s. 92CA(3) of the Act for AY 2016-17
- ALP adjustments in respect of provision of IT enabled services; interest on loan given to AE; and provision of guarantee.

27 December 2019

- The draft assessment order was passed by the AO under Section 143(3) r.w.s. 144C of the Act .
- Determining the total income of the Assessee at INR 259 crs which includes the addition made by the TPO; disallowance of depreciation on intangible asset; and disallowance u/s.14A of the Act.

20 March 2021

The DRP issued directions u/s.144C(5) of the Act

17 April 2021

Pursuant to the directions of the DRP, the AO passed the final assessment order under Section 143(3) r.w.s. 144C(13) of the Act

Findings in the Judgement

Section 92CA(3A) - TPO to pass order at any time before 60 days prior to the date on which period of limitation under Section 153 for making the order of assessment expires, i.e., TPO is bound to pass an order for AY 2016-17 on or before 31.10.2019

Pfizer Healthcare India (P.) Ltd 433 ITR 28 (Madras)



TPO Order barred by limitation

The very foundation for proceeding to pass the draft assessment order does not survive - The draft assessment order passed in the instant case becomes legally invalid and hence, all consequential proceedings on the basis of the said order fail.



Draft Assessment order – legally invalid

Result - Assessee not an eligible assessee



Since TPO's order is barred by limitation, then the Assessee would be outside the ambit of becoming "eligible assessee" u/s.144C(15)(b)(i) of the Act



02

Time-barring Assessments under Section 153 read with Section 144C

Shelf Drilling, [2023] 153 taxmann.com 162

Roca Bathroom Products (P.) Ltd, [2022] 445 ITR 537

Shelf Drilling, [2023] 153 taxmann.com 162 ((Bombay HC)

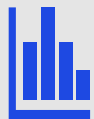
-AY 2014-15, 2018-19



AY2014-15, Tribunal remands to the AO for fresh consideration (October 4, 2019).



The AO passed draft order on September 28, 2021. Assessee on a without-prejudice basis, files an objection before DRP and simultaneously files a W.P. before the HC.



Assessee contends that draft order is time-barred (S.153) as time limit expired on September 30, 2021 (for second round).

01

The Court holds that Non obstante clause in S. 144C(4) and 144C(13) is limited.

02

Time limit prescribed in S.153 will prevail over time limit given in S.144C.

03

Assessment to be concluded within 12 months (S.153(3)) when there has been remand (to AO by Tribunal) under S 254.

Shelf Drilling, [2023] 153 taxmann.com 162 ((Bombay HC)

-AY 2014-15, 2018-19

HC while dealing with remand proceedings, observed as follows for AY 2018-19:

“Here also the same major ground of challenge arises, viz, that the final assessment order of assessment has to be passed within the period of limitation set out in Section 153 of the Act even if the provisions of Section 144C of the Act are applicable. The only difference in these two Petitions is that in these cases it was the original order of assessment which was required to be passed within the period of limitation set out in Section 153 of the Act.”

Outcome seems that all original orders passed under DRP route are time-barred. This could never have been the legislative intent. Vast differences in facts.

Supreme Court stays order *“...the impugned judgment shall not be cited as a precedent in any other subsequent matter until further orders. We also clarify that the operative portion of the judgment shall apply only insofar as the respondents herein are in question.”*



03

Quashes Assessment Order not in compliance with Section 144C

Flextronics Technologies India Pvt Ltd [TS-63-HC-2023(KAR)-TP]

APM Terminals Private Limited [TS-633-ITAT-2023(Mum)-TP]

Quashes Assessment Order not in compliance with Section 144C

Flextronics Technologies India Pvt Ltd [TS-63-HC-2023(KAR)-TP]

Hon'ble High Court had admitted Revenue's appeal to consider inter-alia following questions of law :

“(ii) Whether ITAT is right in holding final assessment order as bad on the ground that AO has not passed order as per DRP's directions;”

HC HELD:

- Under Section 144C - the Assessing Officer is bound by the directions issued by the DRP and required to pass the assessment order **in conformity with the directions** issued within one month from the end of month in which such directions are issued.
- The Assessing Officer has rightly passed the order within time. But it is relevant to note that the said order is not in conformity with Section 144C of the IT Act. Hence, no exception can be taken to the impugned order passed by the Tribunal.
- Hon'ble Tribunal in its order has quashed the final assessment order being not in conformity with the DRP's direction.

APM Terminals Private Limited [TS-633-ITAT-2023(Mum)-TP]

As per section 144C(13) of the Act, the A.O. should have passed the final assessment order, within one month from the end of the month in which such direction is received. Accordingly, as per the timelines prescribed in Section 144C of the Act, the AO order was required to be passed on 30 June 2022 in the instance case.

Hon'ble Tribunal has considered the above facts and have held the final AO order as barred by limitation and non-est in the eyes of law.

Question and Answer...




Thank You

Women & Young Members Excellence Committee

 011-30110573

 wmec@icai.in

 www.wmec.icai.org

 ICAI Bhawan,
3rd Floor, Annexe Building
Indraprastha Marg, New Delhi