

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'K' BENCH, MUMBAI**

**[Coram: Pramod Kumar, Vice President
and, Pavan Kumar Gadale, Judicial Member]**

ITA No.: 7597/Mum/2019
Assessment year: 2015-16

DSV Solutions Pvt Ltd **Appellant**
(formerly known as UT Worldwide India Pvt Ltd)
A 203, The Cube CTS No. 1489, A/2 MV Road
Marol, Andheri (East), Mumbai 400 020
[PAN: AAACU5306L]

Vs.

Deputy Commissioner of Income Tax
Circle 11(1)(2), Mumbai **Respondent**

Appearances:

J D Mistry, Sr Advocate, along with Paras Savla and Harsh Shah for the appellant
Dr Yogesh Kamat and Soumendu Kumar Dash for the respondent

Date of concluding the hearing : 26/08/2022
Date of pronouncing the order : 09/11/2022

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged the correctness of the order dated 29th October 2019, passed by the Assessing Officer under section 143(3) read with section 144C(13) of the Income Tax Act, 1961, for the assessment 2015-16.
2. In the first ground of appeal, the assessee has raised the grievance that “**on the facts and in the circumstances of the case and in law, the draft assessment order passed by the learned Assessing Officer under section 144C(1) is bad in law and is liable to be quashed in limine, as the same is passed beyond the limitation period prescribed under section 153 of the Income Tax Act, 1961.**”
3. The issue in appeal lies in a very narrow compass of material facts. The assessee before us is engaged in the business of air and ocean and freight forwarding, warehousing and clearing agent, the assessee has entered into a number of international transactions with its associated enterprises abroad, and that, as a consequence of the order passed under section

92CA(3), the returned income of the assessee was proposed to be, by the Assessing Officer, subjected to variations prejudicial to the interests of the assessee. There is no dispute that the assessee was an 'eligible assessee' in terms of the provisions of Section 144C, and that the Assessing Officer was under an obligation to "**forward a draft order of proposed assessment (hereafter in this section referred to as 'draft assessment order) to the eligible assessee**", i.e. the assessee before us. There is also no dispute that in terms of the provisions of Section 153 read with Section 144C, such a draft order was required to be forwarded to the assessee on or before 31st December 2018. The short case of the assessee was that since the Assessing Officer did not "forward" the draft assessment order on or before that date, the impugned assessment order is time-barred. There was a change of address in this case, and the assessee, vide letter dated 25th May 2018, intimated the new address to the Assessing Officer. A copy of this intimation was also placed before us at page 755 of the paper-book. As evident from the notice dated 25th October 2018, issued under section 142(1), the assessee even acted upon the said intimation, as the notice was sent at the new address. A copy of this notice is also placed before us at pages 736 and 737 of the paper-book. It appears that the Assessing Officer passed two draft assessment orders, both dated 10th December 2018, but both of these draft assessment orders contained the old address of the assessee, and, to this extent, the intimation regarding change of address was not given effect. The first draft assessment order, containing two additions to the returned income, is said to have been served upon the assessee on 16th January 2019 through the speed post. The second draft assessment order, containing three additions to the returned income, is said to have been served upon the assessee, in its office, on 12th February 2019. None of these draft assessment orders was, according to the assessee, forwarded by the Assessing Officer to the assessee within the permissible time limits. These orders were thus claimed to be time barred. Aggrieved by these two different draft assessment orders, the assessee had filed a writ petition before the Hon'ble Bombay High Court on certain legal aspects, and had also filed objections before the Dispute Resolution Panel on certain factual aspects. When the matter came up for consideration before the Hon'ble High Court, Their Lordships held that the assessee should pursue its remedy before the Dispute Resolution Panel and dismissed the writ petition. Thereupon, some additional issues were also raised before the DRP. The DRP, however, dismissed the objections raised before them and held that (i) the second draft assessment order was void ab initio and, as such, there was no need to deal with the matter on merits vis-à-vis the second draft assessment order; (ii) the date of service of the first draft assessment order was 4 January 2019, and not 16 January 2019, and, as a corollary thereto, the objections filed by the assessee, before the DRP, on 15 February 2019 were time-barred; (iii) the DRP had no powers to condone the delay in filing of objections before the DRP; and (iv) the Assessing Officer is to go ahead with the passing of assessment order in terms of the provisions of Section 144C(15) of the Act. The finding # (ii) is essentially based on the claim of the Assessing Officer, which is denied by the assessee, that the draft assessment order was served personally on the assessee's employee on 4th January 2019. To the limited extent above, this stand of the Assessing Officer has been accepted by the DRP on the ground that the acknowledgement shows the signatures of one G R Apte, Manager Taxation of the

company, and Mr Apte has not filed, despite having been given the opportunity for the same, any affidavit to deny the same. The Assessing Officer thus proceeded to pass the final assessment order based on the first draft assessment order. The assessee is aggrieved and is in appeal before us.

4. This matter is heard on the short ground of limitation, but the hearing has been spread over several sessions, and the Assessing Officer has been given ample opportunities to demonstrate how the requirements of the time limit for forwarding the draft assessment order have been complied with. The reports from field officers have also been called on more than one occasion. We have taken into account all these inputs, as also submissions of the parties. We have heard the rival submissions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

5. In our considered view, the short and specific question which requires our consideration is whether, on the facts and in the circumstances of the case, the Assessing Officer can be said to have “forwarded” the draft assessment order within the prescribed time limit, i.e. on or before 31st December 2018. The stand of the Assessing Officer is that as the Assessing Officer had sent the draft assessment order to the assessee on 10th December 2018, even though at the old address, the Assessing Officer had “forwarded” the draft assessment order within the prescribed time limit. As for the draft order being sent to the old address, the stand of the Assessing Officer, in reports dated 10th February 2022 is that the address was taken as in the PAN database as on the date of order, and the assessee could not be aggrieved of the old address being used as the assessee had updated the PAN database only on 2nd January 2019. In the report dated 10th March 2022, the Assessing Officer, however, takes the stand that “due to time barring pressures, it (the old address) might have been mentioned due to oversight”. We have also noted that the Assessing Officer nevertheless does not dispute that the notice dated 25th October 2018, issued by him under section 142(1), was on the new address, and, in response to our specific question, it is also submitted that the address on the assessment order is not a system generated order, and, in that sense, the mere fact of non-updation of database does not result being used as the default address. In any case, as rightly pointed out by the learned counsel, proviso to rule 127 (2) specifically provides that the address given database ceases to be applicable when an assessee, when the assessee **“furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication”**. While rule 127(1) of the Income Tax Rules 1962 provides that “for the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2)”, sub-rule 2 provides as follows:

(2) The addresses referred to in sub-rule (1) shall be—

(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—

- (i) the address available in the PAN database of the addressee; or**
- (ii) the address available in the income-tax return to which the communication relates; or**
- (iii) the address available in the last income-tax return furnished by the addressee; or**
- (iv). in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:**

Provided that the communication shall not be delivered or transmitted to the address mentioned in items (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:

[Emphasis, by underlining, supplied by us]

6. The justification for the use of an old address is thus devoid of legally sustainable merits. The lapse of the assessee, in the updation of PAN database, would not really validate the service of notice on the old address, as long as the requirements of the proviso to rule 127 are met by furnishing an address to the authority concerned a communication address. In any case, PAN database is just one of the options in rule 127(1). As for the address in the last income tax return, the last income tax return, at the time of forwarding of the draft assessment order, was on 30th November 2018, and it had the new address. As for the database of the MCA, the assessee has given a copy of the challan bearing SRN G8988103, evidencing the updation of the MCA database for the new address on 14 June 2018. All that, however, ceases relevant when proviso to rule 127(2) comes into play by assessee's furnishing a specific address for communication, as the assessee admittedly did, to the authority concerned, i.e. the Assessing Officer. We may further add that even the speed post, which was sent by the Assessing Officer on 10th December 2018 and which is the only justification for complying with the requirements of "forwarding" the draft assessment order within the time limit, appears to have been returned to the Assessing Officer by the postal department. In this context, we may refer to the record of proceedings of the case on 15th March 2022 as follows:

“On a perusal of tracking details of the consignment # EM 991898789IN, which admittedly contained the draft assessment order, we find that it was not served on the assessee, and was returned to the sender on 19.12.2018 at 18.13.25. When the learned Departmental Representative was confronted with the above position

and was asked to clarify the position, he further sought two weeks to ascertain the correct position and make his submissions.

Learned Sr Counsel does not oppose the request of the DR.

Adjourned to 8th April 2022. In case learned DR has nothing to controvert the post office records indicating the draft assessment order being returned to the Assessing Officer and to demonstrate any further efforts to ‘forward’ the draft assessment order before 31st December 2018, the hearing of the appeal will be concluded on this short point itself. No further adjournments.”

7. In terms of the second proviso to rule 127(2), where the communication cannot be delivered or transmitted to the address mentioned in items (i) to (iv) or any other address furnished by the addressee as referred to in the first proviso, the communication shall be delivered or transmitted to the following address:—

(i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act); or

(ii) the address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or

(iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938); or

(iv) the address of the assessee as furnished in Form No. 61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D; or

(v) the address of the assessee as furnished in Form No. 61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation); or

(vi) the address of the assessee as available in the records of the Government; or

(vii) the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act;

8. No such exercise was carried out on the facts of this case. Therefore, even if one can treat the effort to serve the draft assessment order on the old address to be legally valid, there is material on record to evidence that the draft assessment order was returned undelivered, and there is nothing to show that the Assessing Officer complied with the requirement of the second proviso to rule 127(2). It is also difficult to understand as to how many times the same draft assessment order is sent to the assessee. The Assessing Officer has sent the draft assessment order on 10.12.2018, but to the old address. He sent it again on 4th January 2019, on 16th January 2019 and on 12th February 2019. Unless there were lapses in the actions of the Assessing Officer, there was not even a need of multiple efforts to forward the draft assessment order to the assessee. The Assessing Officer has also accepted the lapse in the report dated 10th March 2022, when he mentioned that “due to time barring pressures, it (lapse to using the old address) might have happened”. The conduct of the Assessing Officer, does seem to be, leaved a lot to be desired.

9. As for service of the draft assessment order on 4th January 2019 on Mr Apte, even if that be so, that is after the end of the prescribed period, and it does not justify the legality of the draft assessment order being forwarded within the prescribed time. If such a service was in conjunction with efforts to serve the order to the correct address, it might have made some sense, but that is not the case. The Assessing Officer thus does not get any help from the same.

10. In view of the above discussions, as also bearing in mind the entirety of the case, we deem it fit and proper to uphold the plea of the assessee. There was no forwarding, not even an effort to forward, the draft assessment order to the correct address, or at least the address furnished to the Assessing Officer under proviso to rule 127(2), within the permitted time frame under Section 153 r.w.s 144C of the Income Tax Act, 1961. The order was thus barred by limitation. We hold so. The impugned assessment fails for this short reason alone. As we have allowed the appeal of the assessee on this short ground, we see no need to deal with the other grounds of appeal. All these grounds of appeal stand dismissed as infructuous but those contentions remain open.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 09th day of November, 2022.

Sd/-
Pavan Kumar Gadale
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 9th day of November, 2022

Copies to:

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|-----|----------------------|-----|-----------------------|
| (1) | <i>The appellant</i> | (2) | <i>The respondent</i> |
| (3) | <i>CIT</i> | (4) | <i>CIT(A)</i> |
| (5) | <i>DR</i> | (6) | <i>Guard File</i> |

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*

