

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE
SHRI LALIET KUMAR, JUDICIAL MEMBER
(Through virtual mode)
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

ITA No.184/Hyd/2024		
Assessment Year: 2021-22		
Skybridge Solutions Private Limited, Hyderabad, H.No.8-2-239/L/83-A, Plot No.83/A, MLA Colony, Road No.12, Banjara Hills, Hyderabad – 500034, Telangana. PAN : AALCS1899M.	Vs.	The Deputy Commissioner of Income Tax, (Transfer Pricing)-2, Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Mahesh Raichandani, C.A.	
Revenue by:	Ms. K. Haritha, CIT-DR	
Date of hearing:	23.04.2024	
Date of pronouncement:	29.04.2024	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2021-22 arises from the impugned assessment order passed u/s 143(3) r.w.s. 144C(3) r.w.s. 144B of the Income Tax Act dated 26.12.2023.

2. The brief facts of the case are that the assessee is a software development and services company, filed its income tax return for the assessment year 2021-22 on 09.03.2022, declaring a total income of Rs.1,06,49,030. The return was processed under section 143(1)(a) of the Income Tax Act on 24.08.2022. Subsequently, the case was selected for scrutiny under CASS, and a notice under section 143(2) was issued on 28.06.2022, to which the assessee responded on 15.07.2023. Thereafter, a reference under section 92CA(1) was made to the Transfer Pricing Officer (TPO) to determine the arm's length price for transactions with associated enterprises. The TPO, through an order dated 31.10.2023, directed an upward adjustment of Rs.1,83,25,993 to the assessee's income for the financial year 2020-21. Consequently, a show cause notice was issued to the assessee on November 9, 2023, regarding the proposed adjustment, along with a penalty initiation under section 270A.

2.1. Despite the show cause notice, the assessee failed to file a reply, leading to the adjustment being made in accordance with the TPO's order. Additionally, the Assessing Officer found that the assessee had under-reported income, warranting penalty proceedings under section 270A. Furthermore, the company had claimed Rs. 8,61,457 as income tax for the assessment year 2018-19 under other expenses, which was required to be disallowed under section 37(1) as expenditure of a personal nature. Hence, notices were issued to the assessee on 29.08.2022, and 31.10.2023, under section 142(1) to explain the claim, but no response was received. Another show cause notice was issued on 09.11.2023, regarding the

disallowance, but again, no response was forthcoming. Consequently, the draft assessment order was passed on 22.11.2023 proposing the total income at Rs. 2,98,36,480/-. The assessee was given 30 days to either accept the proposed variation or file objections with the DRP. However, no communication was received from the assessee within the stipulated timeframe. Hence, it was assumed that the assessee accepted the draft order, and the final assessment order was passed under section 143(3) read with sections 144C(3) and 144B of the Income Tax Act, 1961 determining the total income at Rs.2,98,36,480. Penalty proceedings under section 270A for under-reporting income and section 272A(1)(d) for non-compliance with notices were initiated separately.

3. The Registry has objected that the present appeal is not maintainable as per section 253(1)(d) of the Act. In the present case, AO has passed draft assessment order on 22/11/2023. Against that draft assessment order, assessee has not filed any objections before the AO as well as before the DRP u/s. 144C(2 & 3) of the Act.

3.1 As no objections were filed against the draft assessment order either before the AO or before the DRP, the AO had passed impugned assessment order dt. 26/12/2023, confirming the draft assessment order dt.22.11.2023

4. Before us, the ld. AR for the assessee submitted that the case of the assessee falls within the ambit of Section 253(1)(d) of the Act and it was submitted that the draft assessment order passed by the AO was in pursuance of the directions issued by the DRP. Therefore,

the present appeal is maintainable. Section 253(1)(d) of the Act is given below for ready reference :

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(d) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.] [Inserted by Act 33 of 2009, Section 73 (w.e.f. 1.10.2009).]

5. Per contra, learned DR has drawn our attention to sections 144C(1) to 144C(5) of the Act, which are to the following effect:

“144C Reference to dispute resolution panel

*(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation [***] which is prejudicial to the interest of such assessee.*

(2) On receipt of the draft order, the eligible assessee shall, within thirty 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.

(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) The Assessing Officer shall, notwithstanding anything contained in section 153 [or section 153B], 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.

(5) The Dispute Resolution Panel shall in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

6. It was the contention of the learned DR that the impugned assessment order passed by the AO was not passed pursuant to any of the directions issued by the DRP, but on account of the obligation cast on the Assessing Officer by virtue of Section 144C(3) of the Act. It was the contention of the ld. DR that in view of non-filing of the objections by the assessee before the AO after receipt of draft assessment order, Assessing Officer passed assessment order in the light of the draft assessment order. As there is no provision for filing of appeal against the order passed by the AO u/s 144C(3) of the Act before this Tribunal, therefore, the present appeal is not maintainable.

7. We have heard the rival contentions and perused the material available on record. Perusal of Section 144C(2), 144C(3) and 144C(5) of the Act clearly shows that, in case, the assessee fails to raise any objection against the draft assessment order, then the AO was left with no other option, but to pass the assessment order as required u/s. 144C(3) of the Act. The order to be passed by the AO u/s. 144C(3) of the Act is on account of the failure of the assessee to raise the objections against the draft assessment order. This obligation under the Act is not dependent upon issuance of any direction by the DRP. Hence, the order passed by the learned AO on 26/12/2023

was on account of independent obligation u/s 144C(3) of the Act and not on account of any direction issued by the DRP.

8. Section 253(1)(d) of the Act clearly postulates right of the assessee to file an appeal before the Tribunal in case, the AO passes any order in pursuant to the directions of the DRP. In the present case, the order passed by the AO was not on account of any direction but was passed on account of the obligation under Section 144C(3) of the Act, therefore, no appeal lies against such order before this Tribunal. The Tribunal is a creation of statute, and the appellate power of the Tribunal is governed by the statute which has created by the Tribunal. The scope of the appeal cannot be expanded by the judicial interpretation or by inference. In the present case, clearly, the order impugned before us is not appealable for the Tribunal. Hence, the appeal filed by the assessee does not lie before the Tribunal and therefore, the same is required to be dismissed. Accordingly, we dismiss the same.

9. At this stage, the ld. AR contended that sufficient time has been taken to file the present appeal before the Tribunal, being a wrong forum, therefore, assessee may be given liberty to approach any alternative forum or authority or Hon'ble High Court having jurisdiction. In view of the above, liberty is granted to the assessee to file any other petition / appeal before any forum or authority or Hon'ble High Court. Needless to say the appropriate forum or authority or Hon'ble High Court may consider to condone the delay on its merits by considering the time consumed by the assessee for

litigating before the Tribunal. Accordingly, the appeal of the assessee is dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 29th April, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th April, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Skybridge Solutions Private Limited, Hyderabad, H.No.8-2-239/L/83-A, Plot No.83/A, MLA Colony, Road No.12, Banjara Hills, Hyderabad – 500034, Telangana.
2	The Deputy Commissioner of Income Tax, (Transfer Pricing)-2, Hyderabad.
3	Dispute Resolution Panel (DRP), Bengaluru.
4	Director of Income Tax (IT & TP), Hyderabad.
5	Prl.CIT (Central), Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order