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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 5722/2017 & C.M.NO.23860/2017 (stay)**

CONTROL RISKS INDIA PVT. LTD. ..... Petitioner
Through: Mr. Aditya Vohra, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **27.07.2017**

1. The challenge in this writ petition is to an order dated 11th May, 2017 passed by the Respondent, Deputy Commissioner of Income Tax, Circle 6 (2) (hereafter the Assessing Officer - 'AO') under Section 254/143(3) of the Income Tax Act, 1961 ('Act') read with Section 144C as well as the consequential notice of demand dated 11th May, 2017 issued under Section 156 of the Act for the Assessment Year ('AY') 2011-12.

2. The facts, in brief, are that the Petitioner is engaged in the business of providing specialist risk consultancy services. Consequent upon the return filed by the Assessee for the AY in question, a draft assessment order was passed by the AO on 16th March, 2015 making *inter alia* the following conditions/disallowance:-

(i) Transfer pricing adjustment: Rs.2,29,27,042/-

(ii) Disallowance of interest on late deposit of TDS Rs.5,35,894/-

3. Aggrieved by the abovementioned draft assessment order, the Petitioner approached the Dispute Resolution Panel ('DRP'). On 23rd December, 2015, the DRP passed an order confirming the above variations. In compliance with the directions of the DRP, the Transfer Pricing Officer ('TPO') recomputed the value of the transfer pricing adjustment by an order dated 14th January, 2016. This resulted in the final assessment order being passed by the AO on 29th January, 2016 under Section 143(3) read with Section 144C of the Act.

4. Thereafter, the matter was taken in appeal by the Assessee to the Income Tax Appellate Tribunal ('ITAT'). By an order dated 28th September, 2016, the ITAT remitted the matter to the TPO to consider the additional details filed by the Petitioner before the ITAT and upon such consideration to pass a speaking order.

5. The TPO then undertook a fresh benchmarking analysis and passed an order dated 31st March, 2017 proposing an adjustment of Rs. 1,19,49,680/- to the Arm's Length Price ('ALP') determined by the Petitioner.

6. Thereafter, instead of passing a draft assessment order, the AO passed a final assessment order on 11th May, 2017 which has been challenged by the Petitioner in this writ petition.

7. That consequent upon an order of the TPO under Section 92 CA (3) of the Act, it is incumbent upon the AO to pass a draft assessment order under Section 144C of the Act, is the settled legal position as explained by the

Court in its decision in ***Turner International India Pvt. Ltd. Vs. DCIT, (2017) 82 Taxman.com 125 (Del)***. In the present case, clearly the AO overlooked the above legal position and proceeded to pass a final assessment order, thereby depriving the Assessee of an opportunity of questioning the draft assessment order under Section 144C of the Act before the DRP.

8. Consequently, the Court has no hesitation in hereby setting aside the impugned assessment order dated 11th May, 2017 passed by the AO. The consequential notice of demand of the same date under Section 156 of the Act issued to the Petitioner is also hereby quashed.

9. The writ petition is accordingly allowed with no order as to costs. The application is disposed of.

S. MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 27, 2017
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