



W.P.No. 25511 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.25511 of 2019 &
WMP.Nos.25040 & 30136 of 2019

M/s.Pfizer Healthcare India Private Limited,
(Formerly known as Hospira Healthcare
India Private Limited)
Represented by the authorized signatory,
Mahalakshmi Barath,
Sri Nivas, New No.86, Old No.89,
GN Chetty Road, T. Nagar,
Chenna-600017

...Petitioner

Vs.

Deputy Commissioner of Income Tax,
Corporate Circle-5(2)
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600034

...Respondent

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorari and quash the draft assessment order dated 26.07.2019 in PAN:AABCO2190F for the assessment year 2015-16 passed by the respondent under Section 143(3) read with Section 144C(1) of the Income Tax Act, 1961.

For Petitioner : Mr.N.V.Balaji
For Respondent : Mr.D.Prabhu Mukund Arunkumar
Junior Standing Counsel



W.P.No. 25511 of 2019

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ORDER

The petitioner is engaged in the business of manufacture of generic drugs, research and development and export to group entities. The challenge in the present writ petition is to draft assessment order dated 26.07.2019, passed in terms of Section 143(3) r.w. Section 144C(1) of the Income Tax Act, 1961 (in short 'Act').

2. The primary arguments advanced by Mr.N.V.Balaji, for the petitioner and Mr.D. Prabhu Mukund Arun Kumar, learned Junior Standing Counsel for the respondent, turn around the bar of limitation.

3. The admitted dates and events are as relevant to decide the issue are as follows:

(i) The order of assessment relates to assessment year (AY) 2015-16 and the time limit for completion of regular assessment as per Section 153(1) of the Act, being 21 months from the end of the relevant assessment year, is 31.12.2017.

(ii) A reference was made to the Transfer Pricing Officer (TPO), since the business of the petitioner included transactions that related to entities abroad for which a proper determination of arms' length price (ALP) is to be



W.P.No. 25511 of 2019

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(iii) In such an event, the provisions of Section 153(4) assume relevance, and read as follows:

153. Time limit for completion of assessment, reassessment and recomputation.

.....

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of [section 92CA](#) is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.

(iv) With the extension of the 12 months, the period in totality for completion of assessment would be 33 months from the end of the relevant assessment year, being 31.12.2018.

(v) There was a request by the TPO for Exchange of Information (EoI) and a reference was made to the competent authority in terms of Section 90A of the Act.

(vi) The reference for EoI was made by the TPO on 29.10.2018 and the last of the information sought was received by him on 27.03.2019. The order of the TPO was passed on 24.05.2019.

(vii) Explanation to Section 153 sets out certain exclusions in



computing period of limitation taking into account events that might intervene pending proceedings at various stages.

(viii) Clause (x) of Explanation-1 to Section 153 refers to the exclusion of the period when the TPO was awaiting information from the competent authority and reads as follows:

Time limit for completion of assessment, reassessment and recomputation.

153.

.....

Explanation 1- For the purpose of this section, in computing the period of limitation-

.....

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(ix) The period between 29.10.2018 and 27.03.2019 is thus to be excluded in computing the time available to the TPO to pass an order of transfer pricing.

(x) The first proviso to Section 92(CA)(3A) states that, if on excluding the time during which a reference to the competent authority for EoI was pending, as set out in Clause (x) Explanation-1 to Section 153, the time



available to the TPO was less than 60 days, the limitation for passing of a TPO shall be deemed to have been extended to 60 days.

(xi) The provisions of Section 92(CA)(3A) and the proviso thereunder read as follows:

*Reference to Transfer Pricing Officer:
92CA.*

.....

(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in [section 153](#), or as the case may be, in [section 153B](#) for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires:

Provided that in the circumstances referred to in clause (ii) or clause (x) of Explanation 1 to Section 153, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly.

(xii) The last of the information in this case was received by the TPO on 27.03.2019, by which time, the time for completion of regular assessment had itself long elapsed, on 31.12.2018.



W.P.No. 25511 of 2019

(xiii) The provisions of Section 92(CA)(3A) state that a transfer pricing order is to be passed at any time before 60 days prior to the date on which the period of limitation, referred to in Section 153 for making an assessment, expires.

(xiv) Thus, had no reference been made for exchange of information, the time limit would have expired on 31.10.2018. This is a view that I have taken in a batch of writ petitions in W.P.Nos.32699 of 2019 etc. and batch which conclusion stands affirmed by the Division Bench in W.A.Nos.1120 of 2021, vide order dated 31.03.2022 .

(xv) The reference in this case has been made on 29.10.2018 by the TPO, at which time the time available for passing of a TPO was two days. In such circumstances, the period for passing of a transfer pricing order stands extended to 60 days, being 28.12.2018. The transfer pricing order was passed on 24.05.2019 in light of the multiple extensions of time in the interim.

(xvi) The second proviso under Explanation-1 to Section 153 would then stand triggered, whereunder, limitation for completion of assessment in a situation where the limitation for completion of TPO stands extended, also stands extended to 60 days. The second proviso under Explanation 1 to



Section 153 reads thus:

153. Time limit for completion of assessment, reassessment and recomputation.

.....
Explanation-1

.....
Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(xvii) With the passing of the transfer pricing order on 24.05.2019, leaving less than 60 days for completion of assessment, limitation stood extended by another 60 days for completion of assessment. Till this point, the dates and events are admitted by both parties.

4. The impugned order has been passed on 26.07.2019 and, according to the petitioner, is barred by limitation. It is the petitioner's submission that the order of assessment ought to have been passed on or before 22.07.2019 reckoning the period of 60 days from 24.05.2019.

5. The revenue supports the impugned order relying upon the provisions of Section 92(CA)(4) that read as follows:



W.P.No. 25511 of 2019

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*Reference to Transfer Pricing Officer:
92CA.*

*(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of **section 92C** in conformity with the arm's length price as so determined by the Transfer Pricing Officer.*

6. Learned counsel for the respondent thus argues that it is the date of receipt of the TPO by the Assessing Officer that would constitute the effective date for computing the period of 60 days for completion of assessment.

7. The order of the TPO was received by the DCIT, Corporate on 29.05.2019 and DCIT, Corporate Circle-5(2), Chennai on 03.06.2019, and thus the 60 days period, according to revenue, would run from 03.06.2019 and expire on 02.08.2019. Thus, the passing of the draft assessment order on 26.07.2019 is, according to the respondent, proper.

8. I am unable to accept the explanation of the revenue as Section 92(CA) is only a machinery provision that provides for the procedure for passing of a transfer pricing order and does not constitute a prescription for computing limitation.

9. Section 153 deals exclusively with limitation and the statutory



extensions/exclusions therefrom, as set out under the Explanation thereto.

Section 92CA(3A) sets out the specific time periods to be adhered to in completion of the transfer pricing proceedings and work as limitation within the period of overall limitation provided under Section 153 for the completion of assessment.

10. The limitations set out under sub-section (3A) of Section 92CA are to be construed in the context of, and within the overall limitation provided for under Section 153. There is, in my considered view, no situation that is contemplated that would alter the limitation set out under Section 153C save the exclusions set out under Explanation-1 to Section 153C itself.

11. The time limits set out under sub-section (3A) of Section 92CA are thus subject to the limitation prescribed under Section 153 that can, under no circumstances, be tampered with. If the argument of the revenue is to be accepted, the limitation set out under Section 153 would stand distorted, which is an incorrect understanding of the legal position.

12. The second proviso to Explanation-1 of Section 153 is categorical in stating that period of limitation available to the Assessing Officer for making an order of assessment shall be extended to 60 days. The 60 days period,



thus must run from the date of transfer pricing order to provide for the seamless completion of assessment.

13. The transmission of a transfer pricing order from the TPO to the Assessing Officer is an internal administrative act and cannot impact statutory limitation, which is the exclusive prerogative of Section 153 alone.

14. There are other situations as well where, in the course of an assessment, the officer is permitted to seek the assistance of experts, such as

i) Under Section 142 (2A) for special audit by an accountant, if the assessing officer believes that the nature and complexity of accounts, volume of the accounts, multiplicity of transactions or specialised nature of business activity require specialized attention. It is necessary the previous approval of the Principal Chief Commissioner/Chief Commissioner /Principal Commissioner/Commissioner be obtained by the assessing officer prior to reference to the accounts for special audit and the accountant is to be nominated by the superior officer.

ii) Reference to valuation officer under Section 142A for estimation of value including fair market value of any asset property or investment.

15. The provisions of Section 142A provide for estimation of value of assets by the valuation officer. The provision states that the assessing officer



W.P.No. 25511 of 2019

may, for the purposes of assessment or re-assessment, make a reference to a valuation officer to estimate the value including fair market value of any asset, property or investment and submit a copy of the valuation report to him.

16. Sub-Section (6) says that upon completion of the process of valuation, the officer shall send a copy of the report of the estimate made under Section 142A(4) or to the best of his judgment under sub-section (5), as the case may be, to the assessment officer and the assessee within a period of 6 months from the end of the month in which the reference is made under sub-section (1).

17. Sub-section (7) says that the Assessing Officer may on receipt of the report from the valuation officer and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or re-assessment.

18. In such situations as well, the time taken for furnishing of the reports of special audit and valuation report shall extend limitation in terms of clause (iv) and v) of Explanation I to Section 153.

19. In contrast, power is granted to the Joint Commissioner to issue directions under Section 144A for completion of assessment. That provision



W.P.No. 25511 of 2019

states that the Joint Commissioner, on his own motion or on reference made to him by the assessing officer or assessee, may call for and examine the record or any proceedings in which the assessment is pending.

20. If he considers, that having regard to the nature of the case, amount involved or any other reason, it is necessary or expedience to issue directions for the guidance of the assessing officer, he may do so and such directions shall be binding upon the assessing officer.

21. The issuance of the direction and the communication of such direction by the Joint Commissioner to the assessing officer to aid in the completion of assessment is expected to be within the overall limits provided for completion of assessment under Section 153 and Explanation (1) thereto and nowhere it is contemplated that such reference would extend the limitation. This situation is not a situation that finds reference in the situations set out in Explanation I to Section 153. So too in the present case.

22. In light of the detailed discussion as above, the impugned order of assessment is held to be barred by limitation and is set aside. This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

Ska/sl

11.11.2022



W.P.No. 25511 of 2019

Index : Yes/No

Speaking Order/Non speaking Order

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To

Deputy Commissioner of Income Tax,
Corporate Circle-5(2)
4th Floor, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600034



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W.P.No. 25511 of 2019

DR.ANITA SUMANTH,J.

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W.P.No.25511 of 2019 &
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