

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Challa Nagendra Prasad, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 185/Del/2023 : Asstt. Year: 2013-14

Mavenir UK Holdings, Reading International Business Park, Part Spur AG, Reading, RG2, 6DH, United Kingdom (ASSEESSEE)	Vs	The ACIT, (International Taxation) Circel INT Tax 2(2)(1), New Delhi (RESPONDENT)
PAN No. AACCC3819N		

**Assessee by : Sh. Manuj Sabharwal, Adv. &
Ms. Shalini, Adv.**

Revenue by : Sh. Vizay B. Vasanta, CIT-DR

Date of Hearing: 03.01.2024

Date of Pronouncement: 05.01.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 27.12.2022 passed by the AO u/s 147 r.w.s. 144 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal are as under:-

"1. On the facts and circumstances of the case & in law, the final assessment order passed by the Learned Assessing Officer (Ld. AO) under Section 144 read with Section 147 of the Income-tax Act, 1961 ('the Act') is invalid, bad in law and liable to be quashed.

2. On the facts and circumstances of the case & in law, the final order passed by the Ld. AO is barred by limitation being in contravention of the provisions of Section 144C(4) of the Act to mandatorily pass the assessment order within one month from the end of the month in which the statutory period of filing the objections expired.

3. *On the facts and circumstances of the case & in law, the draft assessment order passed under Section 144C read with Section 147 and Section 144 of the Act dated 4 March 2022 is invalid, bad in law and beyond jurisdiction for the reason that section 144 does not warrant passing of a draft order.*
4. *On the facts and circumstances of the case & in law, the notice under Section 148 of the Act dated 30 March 2021 purportedly delivered at an incorrect and non-existent address is invalid, barred by limitation, bad in law and beyond jurisdiction for want of a proper and valid service to the Appellant, thereby vitiating the subsequent assessment/ reassessment proceedings.*
5. *On the facts and circumstances of the case & in law, the Appellant ought to be provided with the copy of sanction obtained under section 151 of the Act prior to initiating the reassessment proceedings and other documents relied upon by the Ld. AO in the draft assessment thereby providing an opportunity to the Appellant to rebut the same before confirming the proposed addition under consideration.*
6. *On the facts and circumstances of the case & in law, the addition by the Ld. AO and the draft assessment order passed under Section 144C of the Act is in gross violation of principles of natural justice for want of proper opportunity.*
7. *On the facts and circumstances of the case & in law, the communication sent by the Ld. AO vide email dated 28 February 2022 were invalid and were not in compliance with Circular No. 19/2019 dated 14 August 2019 in absence of mandatory Document Identification Number (DIN*).*
8. *On the facts and circumstances of the case & in law, the Ld. AO grossly erred in observing that the Appellant has a Permanent Establishment (PE*) in India under the provisions of India-UK double taxation avoidance agreement (DTAA').*
9. *On the facts and circumstances of the case & in law, the Ld. AO grossly erred in taxing the receipts on account of sale of software license and allied support services on a net basis in absence of such receipts being 'effectively connected' with the alleged PE under the provisions of India-UK DTAA.*
10. *On the facts and circumstances of the case & in law, the Ld. AO erred in making an ad-hoc attribution of 80% of the receipts from India in the hands of the alleged PE without providing any basis thereof.*
11. *On the facts and circumstances of the case & in law, the Ld. AO grossly erred in making an addition of INR 18,97,66,675 as business income during the year under consideration.*

12. On the facts and circumstances of the case & in law, the Ld. AO erred in not granting credit of Tax Deducted at Source (TDS) amounting to Rs. 2,89,34,481 in the final assessment order
13. On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under section 234A and 234B of the Act."

3. The draft of the Assessment Order, in this case, has been passed on 04.03.202. The assessee filed objections before Id. DRP on 06.04.2022, i.e., after the due date of the time allowed for filing of the objections before the Id. DRP. The due date for passing of the final Assessment Order was 31.05.2022. Since the final Assessment Order has been passed on 27.12.2022 in divergence to due date prescribed u/s144C of the Income Tax Act, we hold that, the order passed by the Assessing Officer is barred by limitation, and hence, treated as void.

4. For the sake of ready reference the Provisions of section 144C are reproduced as under:

"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 pro-posed 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 in the income or loss returned 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, 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) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) *The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.*

(9) *If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.*

(10) *Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.*

(11) *No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.*

(12) *No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.*

(13) *Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.*

(14) *The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.*

(15) *For the purposes of this section,—*

(a) *"Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;*

(b) *"eligible assessee" means,—*

(i) *any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and*

(ii) *any foreign company.'."*

5. The assessee vide letter dated 11.04.2022 has filed a letter before the Assessing Officer informing that the assessee

has filed objections before the office of DRP-II on 06.04.2022 against the draft Assessment Order. This clearly proves that the assessee has filed objections before the DRP after the due date. Under such circumstances the AO should have carried the proceedings to finalize the Assessment Order as per the provisions of section 144C(4).

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 05/01/2024.

Sd/-
(C.N Prasad)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 05/01/2024

NV, Sr. PS

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI