

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI M BALAGANESH, AM, &
SHRI PAVAN KUMAR GADALE, JM**

आयकरअपीलसं./ I.T.A. No. 4322/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2012-13)

आयकरअपीलसं./ I.T.A. No. 3317/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2012-13)

Asst. CIT Circle-6(2)(2) Mumbai	बिधम/ Vs.	M/s Essel Corporate Resources Pvt. Ltd. 135, Continental Building Dr. A.B. Road, Worli Mumbai-400018
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCE 0473D		
(अपीलाथी/ Appellant)	:	(प्रत्यथी / Respondent)

अपीलाथीकीओरसे/ Appellant by	:	Shri Manoj Kumar, CITDR
प्रत्यथीकीओरसे/ Respondent by	:	Shri Madhur Aggarwal, AR
सुनवाईकीतारीख/ Date of Hearing	:	19.01.2023
घोषणाकीतारीख / Date of Pronouncement	:	17.04.2023

आदेश / O R D E R

PER M. BALAGANESH AM:

Both appeals by Revenue are filed against the separate orders of Learned Commissioner of Income Tax (Appeals)-12, Mumbai [“Ld. CIT(A)”, for short], dated 03/04/2017 and 07/03/2017 for Assessment Years 2012-13.

2. The revenue has raised the following grounds in both the appeals:-

ITA No.4322/Mum/2017

“1. On the facts and circumstances of case and in law, the Ld. CIT(A) erred in rejecting application u/s 154 without giving opportunity to the A.O.

2. On the facts and circumstances of case and in the law, the Ld. CIT(A) erred in rejecting the application u/s 154 of the act, filed

by the A.O. holding that there is no mistake apparent from the record.

3. The Appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restore.

4. The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary.”

ITA No.3317/Mum/2017

“1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is not justified in holding that the assessment completed on 31.03.2016 is beyond the time limit prescribed in section 153(1)(a) of the Act, without considering the fact a reference u/s 90 of the Act was made by the Assessing Officer hence the time limit to pass the assessment order was extended by a year to 31.03.2016.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not providing opportunity to the Assessing Officer through A.O. had specifically asked for the same vide letter dated 25.01.2017 to Ld. CIT(A).

3. The Appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.

4. The Appellant craves leave to amend or alter any ground or to submit additional new ground, may be necessary.”

3. We have heard the rival submissions and perused the materials available on record. The assessee filed its return of income on 29.09.2012 declaring a loss of Rs.1,99,11,429/-. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter

referred to as the „Act“)on 30.03.2016 determining total income of the assessee at Rs 4164,62,52,690/- after making the following additions / disallowances:

- Addition of Rs. 2319,54,67,195/- on account of transfer of shares of listed company to wholly owned subsidiaries as gift without consideration;
- Disallowance of expenses u/s 37 of the Act amounting to Rs. 15,18,012/-;
- Addition of Rs. 1844,46,98,000/- u/s 68 of the Act in respect of unsecured loans from Prime Publishing Pvt. Ltd;
- Disallowance u/s 14A of the Act read with Rule 8D of the Income Tax Rules amounting to Rs. 60,87,493/-; and □ Disallowance u/s 36(1)(iii) of the Act amounting to Rs. 72,74,805/-.

4. The assessee preferred an appeal against the assessment order before Learned Commissioner of Income-tax (Appeals)-12, Mumbai [hereinafter referred to as the “CIT(A)”]. The ld. CIT(A) disposed of the appeal vide order dated 07.03.2017 by setting aside the assessment order on the ground that the order ought to have been passed before 31.03.2015 and since the assessment order was passed beyond that date, the assessment is barred by limitation.

5. The ld. AO filed a miscellaneous application before the ld. CIT(A) contending that the decision of the ld. CIT(A) suffers from mistake apparent from record leading to erroneous decision in view of the fact that a reference was made to Mauritius Revenue Authority (hereinafter referred to as “MRA”) u/s 90 of the Act and therefore the assessment order should be restored as the ld. AO would get extended time limit of one year to frame the assessment in view of Explanation 1(viii) of Section 153 of the Act. The ld. CIT(A), however, vide order dated 03.04.2017 dismissed the miscellaneous application of the ld. AO holding that there was no such mistake apparent from record.
6. Aggrieved, the revenue has preferred the present appeals before us.
7. We find that in order to address the disputed issue of assessment being barred by limitation, the chronology of events listed hereinbelow would be relevant. We have also considered the chronology of events relevant to yet another company Cyquator Media Services Pvt Ltd along with the assessee herein for the sake of cohesive understanding of the disputed issue on limitation. Along with the relevant event, the submissions of the ld.AR and ld. DR are also considered by us by making specific reference to the paper book submitted by the assessee as under:-

Sr. No.	Date	Event	Page No. of Paper Book
1.	29.09.2012	The assessee filed its return of income declaring a loss of Rs 1,99,11,429/-	
2.	06.08.2013	The assessee's case was selected for scrutiny and notice under section 143(2) of the Act was issued	
3.	13.04.2014 12.08.2014 22.08.2014 04.03.2015 14.03.2015	Submissions were filed before the Id. AO from time to time in regular course of assessment proceedings	
4.	20.03.2015	Essel Media & Entertainment Limited (herewith referred as "EMEL"), a Mauritius based company had during the financial year ended 31.03.2012 relevant to the Assessment Year i.e. AY 2012-13 subscribed to shares of the assessee and Cyquator Media Services Private Ltd (herewith referred as "Cyquator"), a group company of the assessee.	07
		<p>As the genuineness of the said investments into the assessee and Cyquator by EMEL was required to be verified by the Department and as the Jurisdictional Principal Commissioner of Income Tax (herewith referred as "PCIT-6") was the same i.e. PCIT-6, two foreign references were proposed to Foreign Tax and Tax Research (hereinafter referred to as " FT&TR) unit of CBDT, Ministry of Finance for the same entity i.e. EMEL.</p> <p>FT&TR forwarded this information request to the Mauritius Revenue Authority (herewith referred as "MRA")</p> <p>It is not in dispute that two references were made by the Id. PCIT for the same foreign entity with respect to the case of the assessee as well as the case of Cyquator. But the fact of Id. AO making reference to FT & TR in terms of section 90 of the Act for exchange of information, was not made known to the assessee at all.</p>	

5.	25.03.2015 27.03.2015 30.03.2015	The assessee filed further submissions with the Id. AO as required by him in the regular course of assessment proceedings. No assessment was framed on the assessee by the normal due date of 31.03.2015 as per section 153 of the Act sans FT & TR reference.	
6.	23.04.2015	Common Notice was issued by MRA to EMEL to provide information as required by Indian Tax Authorities w.r.t transactions with the assessee and Cyquator.	8 - 10
7.	08.05.2015	Common response filed by EMEL with MRA submitting certain details.	11
8.	08.06.2015	Common response filed by EMEL with MRA submitting balance details. In response, in Para „f’, EMEL filed details with respect to Cyquator and in Para ‘g’, EMEL filed details with respect to the assessee.	12 - 16
9.	18.06.2015	Details filed by EMEL for both the assessee and Cyquator with MRA were forwarded by MRA to Indian Tax Authorities. This is evident from the email dated 27.05.2022 from MRA confirming to EMEL that the aforesaid responses were forwarded to Indian Tax Authorities (Pg 17). This was pursuant to various opportunities provided to the revenue by this Bench to provide the requisite details to prove that the assessment was not barred	
		by limitation. Pursuant to this, the revenue had placed on record this email dated 27.05.2022 received from MRA.	

10.	14.07.2015	<p>Information for both, i.e. the assessee and Cyquator, received by FT&TR was forwarded by FT&TR to PCIT- 6, the competent authority, who as mentioned is the common PCIT for the case of Cyquator and the assessee.</p> <p>The subject in the said letter referred only to Cyquator and not to the assessee, however, it is clear from the aforesaid narration that common responses from EMEL for both the assessee and Cyquator were forwarded by MRA to FT&TR which in turn forwarded the same to PCIT-6.The information has been received in a common letter.</p> <p>We find that as per clause (viii) (now clause (x)) of Explanation 1 to section 153 of the Act, the extended time limit granted to the Id. AO for passing the assessment order is upto the date of receipt of the information by competent authority i.e. PCIT.</p> <p>Merely because the subject of such letter referred to the name of only Cyquator, we are unable to persuade ourselves to accept to the argument of the Id. DR before us that no information was received by the Id. PCIT qua the assessee, so as to seek extended limitation period of 1 year. In our considered opinion, the relevant fact is receipt of information and not whether the name mentioned in the covering letter with which the information has been received. Hence the argument advanced by the Id. DR in this regard is dismissed. Further, it is immaterial whether this information was forwarded by the Id. PCIT to the Id. AO or not as what is relevant for computing the limitation period is when the competent authority i.e. Id. PCIT receives the information as per the Act. Even if there is some delay in forwarding of information by the Id. PCIT to the Id.AO, that would not automatically extend the statutory time limit prescribed in the Act, as movement of information from Id. PCIT to Id. AO is purely an internal matter.</p>	18
11.	04.09.2015	The Id. AO of Cyquator intimated the Id. PCIT that further information in order to verify the genuineness of investment by EMEL in Cyquator was required.	19 - 22
12.	12.09.2015	As no further information was sought from the MRA in respect of	

	<p>the assessee, this is the date by which the assessment of the assessee ought to have been completed as explained herein.</p> <p>Section 153(1) provides that the assessment ought to be completed within 2 years from the end of the assessment year in which the income is first assessable.</p> <p>Explanation 1(viii) (now Explanation 1(x)) to section 153 of the Act provides that:</p> <p>(i) <i>the period commencing from the date on which a reference 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 so requested is received by the Commissioner or</i></p> <p>(ii) <i>a period of one year, whichever is less.</i></p> <p><i>ought to be excluded for the purposes of computing the period of limitation for completing the assessment.</i></p> <p>The first proviso to the said Explanation further provides that if the limitation period after exclusion of the aforesaid time in making foreign reference is less than 60 days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.</p> <p>In the present case for A.Y. 2012-13, the ordinary time limit for completion of assessment would therefore be 2 years from end of Assessment Year i.e. 31.03.2015. However, as foreign reference was made in the present case on 20.03.2015 i.e. 11 days before the ordinary limitation period for completion of assessment, the time limit stood extended by the earlier of the below:-</p> <ul style="list-style-type: none"> • 11 days after excluding the period of reference. The reference was made on 20.03.2015 and information was received by the competent authority i.e. PCIT-6 on 14.07.2015 as stated supra. The period between 20.03.2015 to 14.07.2015 shall be excluded. Accordingly, the said period should be excluded. • Period of 1 year 	
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13.	30.09.2015	Notice was issued by MRA to EMEL to provide further information as required by Indian Tax Authorities presumably for Cyquator's case as information specific to Cyquator has been asked at Point (c) of the notice. As stated earlier, no information was sought qua the assessee in this notice issued by MRA to EMEL.	23
14.	21.10.2015	Letter filed by EMEL with MRA submitting the required details	24
15.	21.03.2016 23.03.2016 28.03.2016	The assessee filed further submissions with the Id. AO as required by him in the regular course of assessment proceedings.	

16.	30.03.2016	<p>Assessment under section 143(3) was completed by the ld. AO beyond the time limit prescribed under section 153 of the Act read with Explanation 1(viii) and proviso to the said explanation as explained in Sr. 12 above.</p> <p>It is pertinent to note that in the said assessment order, no addition was made on account of share premium / share capital</p>	
		<p>money received by the assessee from EMEL (which was subject matter of verification with MRA) which clearly proves that the ld. AO had accepted the information received from FT&TR on 14.07.2015 in so far as the assessee is concerned. Therefore, the ld. AO had not called for any further information from MRA qua the assessee. The ld. AO had made addition in respect of other transactions of the assessee which had nothing to do with the share subscription by EMEL. On the contrary, in the assessment in the case of the Cyquator, share premium / share capital money received by Cyquator from EMEL was taxed u/s 68 of the Act, which shows that the AO in the case of Cyquator was not satisfied with the information received from MRA and had therefore asked for further information on 04.09.2015 which allegedly was not received by the PCIT. Hence in order to complete the assessment within the limitation period of 1 year, the AO of Cyquator did not wait for the further information to be received from MRA and proceeded to frame the assessment in the hands of Cyquator making addition towards share premium/share capital money received from EMEL. As stated supra, no further details were called for by the AO of the assessee with regard to the share premium/share capital received from EMEL. Hence the limitation period expires earlier as far as the assessee is concerned as stated supra.</p>	
17.	31.03.2018	<p>Notice u/s 148 of the Act was issued seeking to tax transfer of shares of listed companies based on their market value although the same were transferred as gift without consideration as was sought to be done in the original assessment order. Even in the reassessment notice, no allegation has been made to tax the share subscription by EMEL.</p>	

18.	20.12.2018	The assessee, challenged the said notice under section 148 in writ before the Hon ^{ble} Bombay High Court in ITXA 3341 of 2018. The Hon ^{ble} Bombay High Court was pleased to grant ad interim relief until final disposal of the petition, which continues to be pending as on the date of final hearing, as informed by the Id. AR. This is reckoned as a statement made from the Bar by the Id. AR. No contrary evidence was brought on record by the Id. DR to disprove this statement.	
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(emphasis supplied by us)

8. As stated earlier, the Bench had been directing the revenue to produce the complete records of the reference made to FT & TR qua the assessee with regard to the issue of share subscription made by EMEL with the assessee company. The Id. DR filed various details from time to time in the form of paper books and letters duly signed by the present AO having jurisdiction over the assessee herein. Infact, on few occasions, the Id. AO also was physically present at the time of hearing. On 15.11.22, the Id. AO was present at the time of hearing and filed a letter dt 15.11.22. The bench on perusal of the same returned the letter to the Id. AO with a direction to modify the same by duly incorporating the common information received from MRA in the case of assessee and Cyquator. Further the Id. AO on 20.12.22, filed a letter dated 17.11.22 addressed to Id. CIT DR ITAT E Bench stating that information received from MRA was forwarded to the field authorities on 14.07.2015. Further information was sought u/s 90 of the Act by the Indian Tax Authorities from MRA vide letter dated 04.09.2015. On 20.12.22, the revenue was directed to confirm in writing the following :-

- a) Whether any part information was received from MRA in the case of the assessee herein ?
- b) Whether further information sought by the Indian Tax Authorities vide letter dated 04.09.2015 pertain to the assessee herein?
- c) Whether any reminders were sent by Income Tax Authorities seeking information u/s 90 of the Act in the case of the assessee herein after 04.09.2015 ?

9. In response to the above three queries raised by the Bench, the ld. AO filed a letter dated 18.01.23 addressed to the ld. CIT DR ITAT E Bench, which was placed on record before the Bench. In the said letter, the ld. AO reproduced the order sheet noting dated 20.12.22 wherein the aforesaid details were called for by the Bench and gave a reply to the same. The said reply is reproduced hereunder for the sake of convenience :-

Extract from the letter of the AO dated 18.01.2023

3. In this regard, on verification of the records, it is found that the details of the letters so solicited dated 14.07.2015 and 04.09.2015 pertain to FT & TR reference made in the case of M/s Cyquator Media Services Pvt Ltd. It is once again reiterated that the said letters do not pertain to the case in question before the hon'ble ITAT. However, since the same has

been sought and given that it is confidential information, the same is enclosed herewith for sharing with the Bench only. It is requested to maintain the confidentiality of the same.

10. From the annexures filed by the ld. AO along with the letter dated 18.01.23, it contains a letter dated 04.09.2015 which was called for by the Bench on earlier occasion. On perusal of the said letter dated 04.09.2015, it is very clear that further information was sought only in the case of Cyquator and not the assessee. Hence it is very clear that no information was sought by the Indian Tax Authorities from MRA after the receipt of information on 14.07.2015 qua the assessee herein. Hence as stated in the tabular form supra, the due date for completing the assessment would be 60 days from 14.07.2015 as per the proviso to Explanation 1 to Section 153 of the Act, which would be 12.09.2015.

11. In view of the above, we hold that the assessment order passed u/s 143(3) of the Act in the case of the assessee ought to be passed on or before 12.09.2015 in view of the provisions of section 153(1) read with Explanation 1 and proviso to the said explanation. The assessment order, having been passed on 30.03.2016 is clearly beyond the time limit of 12.09.2015 and hence we have no hesitation to conclude that the assessment order is time barred and bad in law. Accordingly, the grounds raised by the revenue in ITA No. 3317/Mum/2017 and ITA No. 4322/Mum/2017 are hereby dismissed.

12. In the result, both the appeals of the revenue are dismissed.

Orders pronounced in the open court on 17th April, 2023.

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

मुंबई Mumbai;ददनांक Dated : 17/04/2023

PK, Sps

आदेशकीप्रनिनिनिअग्रेनर्/ Copy of the Order forwarded to :

- 1.अपीलाथी/ The Appellant
- 2.प्रत्यथी/ The Respondent
- 3.आयकरआयुक्त/ CIT- concerned
- 4.दवभागीयप्रदतदनदध, आयकरअपीलीयअदधकरण, मुंबई/ DR, ITAT, Mumbai 5.
- गार्डफाईल / Guard File

आदेशधिसधर/ BY ORDER,

डि/सहधयकिंजीकधर (Dy./Asstt.Registrar)
आयकरअपीलीयअनर्करण, मुंबई/ ITAT, Mumbai