

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 358/Ahd/2022  
Assessment Year 2017-18**

M/s. Allscripts (India) LLP (As a successor in interest of allcripts India Pvt. Ltd.), 10 <sup>th</sup> /11 <sup>th</sup> Floor Atlantis Heights, Dr. Vikram Sarabhai Roa, Vadodara-390023, Gujarat PAN: AACCM2641J (Appellant)	Vs	National Faceless Assessment Centre, Delhi/DCIT, Circle- 1(1)(1), Vadodara (Respondent)
---	----	---

**Assessee by: Ms. Chandni Shah, A.R.**

**Revenue by: Shri Sudhendu Das, CIT-D.R.**

Date of hearing : 25-04-2023 Date of  
pronouncement : 08-05-2023

**□□□□/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, in proceeding u/s. 143(3) r.w.s.

144C(13) r.w.s. 144B vide order dated 25<sup>th</sup> July, 2022 passed for the assessment year 2017-18.

2. The assessee has taken the following grounds of appeal:

*“Each of the grounds of the appeal are independent and without prejudice to the others: **General Ground***

1. *On the facts and in the circumstances of the case and in law, the Learned Dispute Resolution Panel erred in confirming the addition proposed by the Learned. Assessing Officer (Ld. AO)/ Learned Transfer Pricing Officer (Ld. TPO) of INR 16,93,08,9877- to the income of the- Appellant.*

*The Appellant prays that the assessment proceedings be held as bad in law and as such deserve to be quashed.*

***Ground on validity of the order issued in the name of non-existent entity***

2. *On the facts and in the circumstances of the case and in law, the Ld. TPO erred in issuing the Transfer Pricing Order under section 92CA(3) of the Income-tax Act, 1961 ('the Act') on a non-existent company i.e. 'Allscripts (India) Private Limited', thus making the order passed by the Ld. TPO null and void.*

*The Appellant prays that since the order passed by the TPO is bad in law and deserves to be quashed, the Draft Assessment Order u/s 143(3) r.w. section 144C of the Act and the Final Assessment Order u/s 143(3) r.w. section 144C(13) of the Act are also bad in law and ought to be quashed.*

3. *On the facts and in the circumstances of the case and in law, the Ld. AO erred in issuing the Draft Assessment Order under section 143(3) read with section 144C(1) of the Act on a non-existent company i.e. 'Allscripts (India) Private Limited', thus making the order passed by the Ld. AO null and void*

*The Appellant prays that the draft assessment order passed by the Ld. AO be held as bad in law, null and void-ab-initio and accordingly the Final Assessment Order u/s 143(3) r.w. section 144C(13) of the Act*

*passed by the Ld. AO pursuant to the directions of the Ld. DRP is also liable to be quashed.*

***Transfer Pricing Adjustment in relation to provision of software development services***

4. *On the facts and in the circumstances of the case, and in law, Ld. AO/Ld. Transfer Pricing Officer (TPO), following the directions of Ld. DRP, erred in confirming the addition of INR 16,85,57,066/- to the total income of the Appellant by holding that the international transaction in relation to provision of software development services by the Appellant is not at arm's length price as envisaged under the Act.*

*The Appellant prays that the Ld. TPO be directed to accept the book value of the aforesaid international transactions as the arm's length price and accordingly, the Transfer Pricing ('TP') adjustment ought to be deleted.*

5. *On the facts and in the circumstances of the case, and in law, the Ld. AO/ Ld. TPO, following the directions of Ld. DRP, erred in disregarding the fact that the Appellant has duly complied with the provisions of Section 92C(1) and 92C(2) of the Act and thus the Ld. TPO erred in disregarding the transfer pricing benchmarking analysis carried out by the Appellant in relation to the international transaction of the provision of software development services to its Associated Enterprises ('AEs').*

*The Appellant prays that the Ld. TPO be directed to accept the transfer pricing benchmarking analysis conducted by the Appellant be accepted and consequently the TP adjustment be deleted.*

6. *On the facts and in the circumstances of the case, and in law, the Ld. AO / Ld. TPO, following the directions of Ld. DRP, has erred in applying / modifying certain filters while undertaking the transfer pricing benchmarking analysis. In doing so, the Ld. DRP/ Ld. AO/ Ld. TPO has rejected functionally comparable companies and accepted certain functionally dissimilar companies.*

*The Appellant prays that the filters applied / modified by the Ld. TPO be rejected and the transfer pricing benchmarking analysis conducted by the Appellant be accepted and consequently the TP adjustment be deleted.*

7. *On the facts and in the circumstances of the case, and in law, the Ld. AO / Ld. TPO, following the directions of Ld. DRP, has erred*

*in applying a turnover filter of 10 times lesser and 10 times higher than the turnover of the Appellant. In doing so, the Ld. DRP/ Ld. AO/ Ld. TPO has rejected functionally comparable companies selected by the Appellant.*

*The Appellant prays that the turnover filter adopted by the Ld. TPO be rejected and the functionally comparable companies, as selected by the Appellant in its TP study report be accepted.*

8. *On the facts and in the circumstances of the case, and in law, the Ld. AO / Ld. TPO, following the directions of Ld. DRP, has erred in selecting functionally dissimilar companies and excluding functionally similar companies.*

*The Appellant prays that the functional dissimilar companies be rejected, and the functionally similar companies be accepted in the set of comparable companies.*

9. *On the facts and in the circumstances of the case, and in law, and without prejudice to Appellant's contentions on application of arbitrary turnover filter, the Ld. AO / Ld. TPO, following the directions of Ld. DRP, has erred in including "Mindtree Limited" in final set of comparable companies even though it is failing 10 times turnover filter applied by Ld. AO/ Ld. TPO/ Ld. DRP.*

*The Appellant prays that Mindtree Limited ought to be removed from the final set of comparable companies.*

10. *On the facts and in the circumstances of the case, and in law, the Ld. AO/ Ld. TPO, following the directions of Ld. DRP, have erred in considering Persistent Systems Limited as a comparable company to the Appellant even though it does not pass the related party transactions ('RPT') filter of RPT to Sales less than 25%.*

*The Appellant prays that Persistent Systems Limited be rejected as a comparable company.*

11. *On the facts and in the circumstances of the case, and in law, the Ld. AO/ Ld. TPO, following the directions of Ld. DRP, have erred in considering R Systems International Limited as a comparable company to the Appellant even though it follows different financial year vis-a-vis that of the Appellant.*

*The Appellant prays that R Systems International Limited be rejected as a comparable company.*

12. *On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO, following the directions of Ld. DRP, have erred in not granting the economic adjustment on account of differences in the level of working capital of comparable companies and the Appellant while determining the arm's length price of the impugned international transaction.*

*The Appellant prays that the Ld. TPO be directed to grant the working capital adjustment sought by the Appellant.*

13. *On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO, following the directions of Ld. DRP, have erred in not granting the economic adjustment with respect to differences on account of risks assumed and differences in functional profile between the comparables companies vis-a-vis the Appellant while determining the arm's length price of the impugned international transaction. The Appellant prays that the Ld. TPO be directed to grant the risk adjustment sought by the Appellant. **Corporate Tax Additions***

14. *On the facts and in the circumstances of the case and in law, the Ld. AO, following the directions of Ld. DRP, erred in applying the rate of depreciation on computer software of 25% instead of 60% and thereby, disallowing the depreciation of INR 7,51,921 claimed in the return of income.*

*The Appellant prays that the Ld. AO be directed to allow the entire claim of depreciation on computer software and the addition made by the Ld. AO be deleted.*

15. *Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. AO, following the directions of Ld. DRP, erred in not accepting the Appellant's claim for incremental depreciation on the computer software in Assessment Year 2017-18 if the adjustments made in the past years is sustained. The Appellant prays that the Ld. AO be directed to accordingly increase the amount of the opening written down value and consequentially, grant the incremental depreciation for AY 2017-18.*

16. *On the facts and in the circumstances of the case and in law, the Ld. AO erred in not granting a deduction of INR 27,05,205 under section 80G of the Act.*

*The Appellant prays that the Ld. AO be directed to grant the correct deduction of INR 27,05,205 under section 80G of the Act.*

17. *On the facts and in the circumstances of the case and in the law, the Ld. AO erred in computing an interest of INR 4,00,29,568 under section 234B of the Act in the computation sheet.*

*The Appellant prays that the Ld. AO be directed to delete the interest of INR 4,00,29,568 computed under section 234B of the Act.*

18. *On the facts and in the circumstances of the case and in the law, the Ld. AO erred in computing an interest of INR 44,536 under section 234D of the Act in the computation sheet.*

*The Appellant prays that the Ld. AO be directed to delete the interest of INR 44,536 computed under section 234D of the Act.*

19. *On the facts and in the circumstances of the case and in law, the Ld. AO erred in incorrectly computing the book profits under section 115JB of the Act in the computation sheet.*

*The Appellant prays that the Ld. AO be kindly directed to correctly compute the book profits under section 115JB of the Act.*

*The above grounds are independent of and without prejudice to each other. The Appellant craves leave to add, alter, amend, substitute, or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing so as to enable the Hon'ble Tribunal members to decide these according to the law.*

20. *On the facts and in the circumstances of the case and in law, the Ld. AO erred in proposing to initiate penalty proceedings under section 270A of the Act.*

*The Appellant prays that the Ld. AO be directed to drop the penalty proceedings under section 270A of the Act.”*

3. The brief facts of the case are that the assessee filed return of income for 43,92,20,220/- for the impugned assessment year and the assessing officer proposed addition of 16,93,08,987/- to the total income of the assessee by way of adjustment to the arm's-length price u/s 92CA of the Act. The assessee preferred objections before DRP who dismissed the objections filed by the assessee. The assessee is in appeal before us against the order passed by DRP/ Final assessment order.
4. At the outset, the Ld. Counsel for the assessee challenged the validity of order passed by DRP on the ground that the TPO had passed order on a non-existent entity. The Ld. Counsel for the assessee submitted that Allscripts India Private Limited (AIPL) was a Private Limited company

incorporated in 1988. During Financial Year 2016-17 relevant to  
assessment

year 2017-18, AIPL was converted into Limited Liability Partnership (LLP) on 21 March 2017. The assessee had brought this fact to the notice of the Ld. Assessing Officer (ACIT Circle-1(1)(1), Vadodara) vide letter dated 12 August 2019 in response to notice issued u/s 142(1) of the Act. Further to the above, again in submission filed by the assessee before the DCIT- Transfer Pricing-1, Vadodara, the assessee intimated the fact that AIPL had been converted into a LLP. However, despite the aforesaid intimations to the Ld. Assessing Officer and the TPO, the Transfer Pricing Order was passed u/s 92CA(3) of the Act by the TPO in the name of AIPL- which was a nonexistent entity. Further, the assessee filed submission dated 31 March 2021 before the NEAC, Delhi i.e. the Assessing Officer intimating the fact of conversion of AIPL into LLP. However, the Ld. Assessing Officer passed draft assessment order in the name of AIPL, which is a non-existent entity. The Ld. Counsel for the assessee placed reliance on several judicial in support of the contention that once the order passed by TPO and draft assessment order passed by the Ld. Assessing Officer have been passed in the name of a non-existent entity, then the subsequent orders passed by DRP and final assessment order are also bad in law. Accordingly, the issue may be adjudicated in favour of the assessee on this ground of jurisdiction alone.

4.1 In response, the Ld. DR submitted that the DRP order and the final assessment order, against which the present appeal has been filed have been passed in the name of the correct entity i.e. LLP and therefore the final assessment order, against which the present appeal has been filed has been passed in the name of the correct entity and hence the order is not bad in law.

5. We have heard the rival contentions and perused the material on record. In the case of **FedEx Express Transportation v. DCIT 108 taxmann.com 542 (Mumbai - Trib.)**, the ITAT held that where draft assessment order under section 144C was passed in name of amalgamating company, which was a non-existent entity in eyes of law on date of passing of such order, it became an illegal order and, thus, entire assessment proceedings based on such an invalid draft assessment order were void ab initio and deserved to be quashed. In the case of **Siemens Ltd. v. DCIT 147 taxmann.com 118 (Mumbai - Trib.)**, the ITAT held that where draft assessment order under section 144C was passed in name of amalgamating company, which was a non-existent entity on date of passing of such order, it became an illegal order and thus, entire assessment proceedings based on such an invalid draft assessment order were void ab initio and deserved to be quashed. In the case of **BOEING India (P.) Ltd. v. ACIT 121 taxmann.com 276 (Delhi - Trib.)**, the ITAT held that where draft assessment order under section 144C was passed in name of amalgamated company which was non-existent company, said order was void ab initio. In the case of **PCIT v. Maruti Suzuki India Ltd 107 taxmann.com 375 (SC)**, the Hon'ble Supreme Court held that where assessee company was amalgamated with another company and thereby lost its existence, assessment order passed subsequently in name of said non-existing entity, would be without jurisdiction and was to be set aside. In the case of **Dimension Data Asia Pacific PTE Ltd. v. DCIT 96 taxmann.com 182 (Bombay)**, the Hon'ble High Court held that where in case of foreign assessee, Assessing Officer passed final assessment order under section 144C(13), read with section 143(3) without passing a draft assessment order under

section 144C(1), said order being violative of provisions of section 144C(1), deserved to be set aside. In the case of **Vedanta Ltd. v. ACIT 126 taxmann.com 283 (Delhi - Trib.)**, the ITAT held that Draft/final assessment order framed in name of non-existent entity is void ab initio and such order is not curable defect under section 292(b).

6. Now in the instant facts, we observe that the assessee had filed a formal intimation before the DCIT, Transfer Pricing on 11 September 2019 intimating that AIPL has been converted into LLP w.e.f. 21 March 2017 (copy of the same has been placed on record for our perusal). Further, the assessee had also filed letter dated 12 August 2019 before the ACIT, Circle 1(1)(1), Vadodara intimating him about the conversion of AIPL into LLP (copy of the letter has been placed on record for our perusal). Therefore, we observe that the fact of conversion of AIPL into LLP was intimated to both the Ld. Assessing Officer and the TPO much before passing of their respective orders, yet both the TPO and the Ld. Assessing Officer passed the Transfer Pricing Order and the draft assessment order in the name of a nonexistent entity. In our view, the view of the Courts and Tribunals on this issue is unanimous that once the draft assessment order and Transfer pricing order itself are bad in law, having been passed in the name of a non-existent entity, then the final assessment order based on the above orders is void ab initio as well. In view of the above settled position of law, we are of the view that the final assessment order sought to be appeal against is void and hence liable to be set aside.

7. In the result, Ground Number 2 of the assessee's appeal challenging the validity of the order passed in the name of the non-existent entity is allowed.
8. Since, we have adjudicated the issue in favour of the assessee on the grounds of jurisdiction itself, we are not adjudicating on the other Grounds of Appeal filed by the assessee.
9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 08-05-2023

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad : Dated 08/05/2023 □□□□ कतलप□□□□ / Copy of Order

Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-

(SIDDHARTHA NAUTIYAL)

JUDICIAL MEMBER

By order/□□□□  
□□,

उप□□□□□ □□□□□□□□

आयकर□□□□ अधकरण

□□□□□□□□