

<p>TRANSFER PRICING CA. Bhavya Bansal, CA. Bhavesh Dedhia, CA. Shazia Khatri</p>	
---	--

- **Holds that the transaction of slump sale between the Assessee and its Indian AE was not an international transaction - MWH India Pvt Ltd [TS-698-ITAT-2022(Mum)-TP]**

Facts:

- The TPO in his order observed that the transaction of slump sale between two AEs was controlled by foreign holding company i.e. a non-resident AE, hence, it was an international transaction. The TPO further observed that the Assessee has not filed Form no. 3CEA in support of the claim of slump sale of Pune unit as required under Section 50B of the Act.
- In view of the above observation, the Assessing Officer disallowed Assessee's claim of carry forward of loss and determined the loss at 'Nil'.
- DRP upheld the observation of the TPO and AO despite the Assessee filing a belated Form 3CEA.
- Subsequently, the Assessee filed an appeal before the Hon'ble Tribunal.

Hon'ble Tribunal's Ruling:

Deciding in favour of the Assessee on principle, the Hon'ble Tribunal noted as under:

"It is an admitted fact that both the aforesaid companies are subsidiaries of Foreign Holding Company i.e. MWH Europe Ltd. A bare reading of section 92B defining 'international transaction' would show that there is no such condition that the transaction between two resident companies, subsidiary of a Foreign Holding Company shall be deemed as international transaction for the purpose of section 92C of the Act. Since, the asset purchase agreement is between two resident companies such transaction cannot be regarded as 'international transaction. The meaning of international transaction 'contained in section 92B of the Act is plain and clear. It does not envisage that if a resident AE is a subsidiary of a foreign holding company, the transaction between such Indian subsidiary and another Indian company would fall within the ambit of international transaction as defined u/s. 92B of the Act. Thus, we do not agree with the findings of authorities below that the transaction of slump sale between the assessee and MWH ResourceNet (India) Pvt. Ltd. is an international transaction.

Another facet of slump sale transaction is that the assessee has not furnished Form 3CEA along with the return of income. The assessee purportedly filed form 3CEA on 23/03/2013 before the Assessing Officer during draft assessment proceedings. However, the draft assessment order was already passed on 22/03/2013 i.e. a day prior to the filing of form 3CEA.... Taking into consideration entirety of facts we deem it appropriate to restore this issue back to the file of Assessing Officer for the limited purpose of ascertaining the value of transaction for the purpose of section 50B of the Act."

- **Rejects TP adjustment in the hands of the Assessee when mirror transaction held to be at ALP in the hands of the AE - Tecnimont SPA India Office [TS-700-ITAT-2022(Mum)-TP]**

Facts:

- The Assessee (PE of a foreign company) had sub-contracting transactions with its two Indian AEs;
- The TPO observed that that the AEs were excessively remunerated by Assessee for the sub-contract work and accordingly proposed an adjustment.
- The DRP upheld the approach of the TPO.
- In the appeal before Hon'ble Tribunal, the Assessee contended that both the AEs were also scrutinized and the ALP adjustments ordered by TPO/DRP/AO. However, transaction was ultimately held by the Tribunal to be at Arm's Length.

Hon'ble Tribunal's Ruling:

Deleting the TP adjustment in the hands of the Assessee, Hon'ble Tribunal observed as under:

- The transaction of certain payments made by Assessee (PE) to its AEs in India being held at ALP in the hands of AEs by the coordinate Bench and the same being mirror transaction for the Assessee, cannot be considered excessive in the hands of the Assessee.
- Where the coordinate Bench has accepted the international transaction to be at ALP in the hands of the AE, then the international transaction that Assessee has with AE is also at ALP.

Relevant operative para from Hon'ble Tribunal's order is reproduced as under:

"... we note that the payments made by the assessee PE to its AE's i.e. assessee with TICB and EDTICB were held to be at Arm's Length by this Tribunal (supra); and since the same international transaction of the instant assessee's procurement cost (being sub-contracting income for the AE's i.e. of assessee viz TICB and EDTICB) has been accepted as Arm's Length for the AE's and the same being mirror transaction cannot be considered excessive in the hands of the assessee/appellant. Therefore, on the same reasoning/ratio of the decision of the Tribunal (Bangalore) in UE Development India Pvt. Ltd. (supra) which has been upheld by Hon'ble High Court (supra), we hold that where the Tribunal has accepted the international transaction to be at Arm's Length Price in the hands of AE, then the international transaction that the assessee had with the AE's to be also at Arm's Length Price and therefore no adjustment was warranted in the facts and circumstances of the case. And the revenue could not point out any change in facts/law in respect to the ratio-decidenti of Bangalore Tribunal/Karnataka High Court in the case of UE Development India Pvt. Ltd. (supra). So we allow the ground no. 6 of the assessee's appeal and direct deletion of Arm's Length Price made as per the impugned order."

- **Absence specific time limit observes an order passed under Rule 13 of the DRP rules cannot be held as barred by limitation if it is passed within six months (being reasonable time) from the end of the month in which the directions were passed.- Michael Page International Recruitment Pvt. Ltd (ITA No.1323/Mum/2021)**

Adjudicating on limitation period available for rectification of mistake by DRP under Rule 13 of the DRP Rules, Hon'ble Tribunal noted as under:

- Rule 13 of the DRP Rules 2009 provide for rectification of DRP Order. It prescribes that *"After the issue of directions under rule 10, if any mistake or error is apparent in such direction, the panel may, suo motu, or on an application from the eligible assessee or the Assessing Officer, rectify such mistake or error, and also direct the Assessing Officer to modify the assessment order accordingly"*

However, Rule 13 of the DRP Rules, do not prescribe a time limit for rectification of mistakes in DRP Order.

- The time limits for rectification of mistakes in sections 154 and 254 of the Act would not come into play, as, strictly speaking, the Dispute Resolution Panel is not covered by the expression "income tax authority referred to in Section 116", as is sine qua non for application of Section 154, and the time limit applicable for the Income Tax Appellate Tribunal, which is exclusively for the ITAT, will have no application on the DRP either.
- If one is to proceed on the basis that even the rectification of a mistake can only be done within the time limit prescribed under Section 144C(12) of the Act, which provides that *"no directions under sub-section (5) will be issued after nine months from the end of the month in which draft order was forwarded to the assessee"*, it will result in a glaring incongruity in the sense that the directions issued by the DRP on the last day will in effect have not a single day for rectification of mistakes.
- It is a settled principle that Law is to be interpreted in such a manner as to make it work rather than make it redundant. When there is no specific time limit for passing the rectification order under Rule 13 of the DRP Rules, these provisions will become unworkable. Undoubtedly, there has to be a reasonable time limit within which a rectification order can be passed. When the time limit is not set out in the statute, it is indeed open to us to consider as to what will constitute a reasonable time limit for passing such an order.

- What is reasonable time varies from context to context. The shortest time limit for rectification of mistakes, under Section 254(2) of the Act, is for a period of six months. When a higher forum like ITAT can be permitted six months' time for the rectification of the mistakes apparent on record, there should be no good reason that similar time for rectification of mistake apparent on record is not allowed to the DRP.
- We see no reasons to hold that the time limit permitted to the DRP for the rectification of mistakes apparent on record should be any less than the time permitted to the ITAT for the rectification of mistakes apparent on the record. We, therefore, hold that any order passed under Rule 13 of the DRP rules "cannot be held as barred by limitation if it is passed within six months from the end of the month in which the order was passed".
- Once DRP has passed the rectification order within the timeline, the time limit available to the AO for rectification of an order passed in congruity with DRP directions as per 144C(13) shall be governed by Section 154.
- Before parting, Hon'ble Tribunal remarked "*we may add that it is certainly desirable that the time limit for passing a rectification order under rule 13 of the DRP Rules, and a time limit for giving effect to such a rectification order, are specifically provided for in the statute itself. That will provide much-needed clarity to everyone-including the field officers.*"
- **Upholds netting off of payables against receivables before computing the arm's length interest on overdue receivables - M/s Sony India Pvt. Ltd. [ITA No. 493/DEL/2021]**

With respect to TP adjustment qua outstanding receivables, Hon'ble Tribunal observed that DRP had rightly addressed the Assessee's objections by extending credit period from 30 days to 60 days, netting off payables and charging of interest of net receivables and accepting LIBOR over SBI base rate. Relevant para is reproduced as under:

"46. We have given thoughtful consideration to the orders of the authorities below. We find that the objections of the assessee have been suitably addressed by the DRP by extending credit period from 30 days to 60 days, netting off payables and charging of interest of net receivables and acceptance of LIBOR instead of SBI base rate. We, therefore, do not find any reason to interfere with the findings of the DRP."