



NC: 2025:KHC:23552-DB
ITA No. 764 of 2018
C/W ITA No. 835 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

INCOME TAX APPEAL NO. 764 OF 2018

C/W

INCOME TAX APPEAL NO. 835 OF 2018

IN ITA No. 764/2018:

BETWEEN:

M/S. HIMALAYA DRUG COMPANY
MAKALI, TUMKUR ROAD,
BENGALURU-562 162,
(REPRESENTED BY ITS
CHIEF FINANCIAL OFFICER,
MS. JAYASHREE ULLALL,
AGED ABOUT 45 YEARS,
D/O SHRI. DAYANANDA ULLALA)

...APPELLANT

(BY SRI. TATA KRISHNA., ADVOCATE)

AND:

THE DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE - 1(1),
BMTc BUILDING,
80 FEET ROAD, KORAMANGALA, 6TH BLOCK,
BENGALURU-560 095.

...RESPONDENT





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(BY SRI. E.I. SANMATHI., ADVOCATE)

THIS APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 04.07.2018 PASSED IN IT(TP)A NO. 807/BANG/2016 FOR THE ASSESSMENT YEARS 2011-2012, PRAYING TO ALLOW THE APPEAL AND SET-ASIDE OR REVERSE THE IMPUGNED ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU 'B' BENCH BEARING IN IT(TP)A NO. 807/BANG/2016, DATED 04.07.2018 (SO FAR AS SAME IS PREJUDICIAL TO THE APPELLANT) AS ENCLOSED IN ANNEXURE-A AND ETC. .

IN ITA NO. 835/2018:

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX-6,
BMTc COMPLEX, KORAMANGALA,
BANGALORE.
2. DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE -1 (1),
BANGALORE.

...APPELLANTS

(BY SRI. SANMATHI E I., ADVOCATE)

AND:

M/S. THE HIMALAYA DRUG COMPANY,
MAKALI,
BANGALORE-562 162.

...RESPONDENT

(BY SRI. TATA KRISHNA., ADVOCATE)

THIS APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 04.07.2018 PASSED IN IT(TP)A NO. 807/BANG/2016 FOR THE ASSESSMENT YEARS 2011-2012, PRAYING TO DECIDE



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THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED-04/07/2018 (ANNEXURE-A) PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BENGALURU, AS SOUGHT FOR, IN THE RESPONDENT-ASSESSEE'S CASE, IN APPEAL PROCEEDINGS IN IT(TP)A NO. 807/BANG/2016 FOR ASSESSMENT YEAR 2011-12 & GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THESE APPEALS COMING ON FOR HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

The above two appeals are filed under section 260-A of Income Tax Act, 1961 (hereinafter referred to as "IT Act") questioning the order dated 04.07.2018 passed by the Income Tax Appellate Tribunal, Bengaluru, 'B' Bench in IT(TP)A No.807/Bang/2016. ITA No.764/2018 is by the assessee and the said appeal was admitted to examine the following two substantial questions of law, vide order dated 04.07.2018.



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"1. Whether on the facts and circumstances of the case, is the Tribunal justified in law in impliedly upholding validity of draft assessment order which is in substance final assessment order?"

2. Whether on the facts and circumstances of the case, is the Tribunal justified in law in impliedly holding that the Appellant and certain overseas entities are associated enterprises as defined under section 92A of the IT Act?"

ITA No.835/2018 is filed by respondent/Commissioner of Income Tax and the said appeal was admitted on 08.07.2019 to examine the following 3 substantial questions of law in the order dated 8.07.2019;

"1. Whether on the facts and in the circumstances of the case, Tribunal was justified in holding that Revenue has failed to notice the fundamental principle of international taxation and Chapter X of the Income Tax Act that the foreign associated enterprise and the Indian Associated Enterprise are separate tax centres and taxable entities whereas, the Revenue has held that no independent entity would incur such an elevated level of AMP expenses on account of a brand held by some other entity and yet not seek Arm/s Length compensation on the same principle?"

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in relying on the case of Essilor Manufacturing India Pvt. Ltd. V/s. DCIT and DCIT V/s. Nike India Pvt. Ltd. To delete the transfer pricing adjustment of



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Rs.31,69,02,034/- in respect of AMP Expenditure without appreciating that assessee has incurred huge expenditure for advertisement and selling i.e. for marketing its products though it does not won the title to the brands of products?

3. Whether in the facts and circumstances of the case, the Tribunal's order can be held as perverse in nature in holding that the Transaction net Margin Method is the most appropriate method and not Cost Price Method without considering the facts of present case whereby the assessee performs intense functions such as marketing, advertisement and sales promotion and admission, utilises more assets and bears higher risks in the domestic segment whereas AE performs all aforesaid functions in the export segment, thus on Far profile under TNMM, is akin to comparing a simple manufacturer devoid of any other functions to full-fledged manufacturer, which is not correct?"

2. The assessee had raised the contention that the order passed by the Income Tax Appellate Tribunal is beyond the period prescribed under section 144C(13) of IT Act. The said questions were answered against the assessee under order dated 21.06.2017 in the same appeal and the Appellate Tribunal had proceeded further to pass the order on merits under Annexure 'A' dated 04.07.2018, which is the subject matter of the above two appeals.



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3. Learned counsel appearing for assessee would submit that the order passed rejecting the contentions of the limitations raised by the assessee was the subject matter of ITA No.571/2017. It is submitted that the said Income Tax Appeal was allowed by this court vide judgment dated 04.06.2025. Therefore, he submits that the examination of the questions raised in this appeal would not arise.

4. Sri.E.I.Sanmathi, learned counsel appearing for respondent would not dispute the above fact.

5. In the above circumstances, we proceed to pass the following order;

ORDER

This court in its judgment dated 04.06.2025 in ITA No.571/2017 had held that the assessment order passed is beyond the time limit prescribed under Section 144C(13) of IT Act. Hence, the examination of the impugned order, which is passed subsequently on merit, would not arise.



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In the above circumstances, the question of considering the substantial questions of law raised by the assessee as well as the revenue, would not arise.

Liberty is reserved to both the parties to raise respective questions of law, in an appropriate proceedings.

All contentions of the parties are kept open.

Accordingly, above both appeals stand ***disposed of.***

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

AKV
List No.: 1 Sl No.: 40