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HIGH COURT RULES ON WHAT SHALL BE THE LIMITATION DATE FOR PASSING OF TRANSFER PRICING ORDERS

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Introduction

In a recent judgement in DCIT v Pfizer Healthcare India Private Limited (Writ Appeal No. 1148, 1149/2021) (Judgement), a division bench of the Hon'ble Madras High Court (High Court) has upheld single judge bench order which quashed the transfer pricing order (TP Order) pertaining to assessment year (AY) 2016-17 on the ground that it was 'barred by limitation' by one day. The High Court ruled that the TP Order was required to be passed on or before 31 October 2019. In the instant case, as the TP Order was passed on 1 November 2019, it was held as time barred. Same issue was agitated in a lot of taxpayers' cases and the High Court vide this common Judgement has ruled in their favour.

Background

Income-tax Act, 1961 (IT Act) contains a provision wherein assessing officer (AO) during the course of assessment proceedings can make a reference to the transfer pricing officer (TPO) (i.e. designated officer in the income-tax department handling transfer pricing cases) in order to determine whether international transactions carried out by the taxpayer are at arm's length and whether any adjustments are required to be made. Section 92CA(3A) of the IT Act provides for timeframe for passing of TP Order. The provision says that where a reference to the TPO is made, TP Order 'may' be passed at any time before 60 days prior to the date on which the period of limitation for passing assessment order expires. Thus, limitation date for the TPO to pass TP Order is linked with the limitation date for AO to pass assessment order. Upon receiving such TP Order, AO *inter alia* makes addition of the adjustments made by the TPO in his TP Order while passing assessment order in the case of a taxpayer.

Judgement

The case of Pfizer Healthcare India Private Limited (Taxpayer), in the instant case, pertained to AY 2016-17. Thus, last date to pass assessment order was 31 December 2019. In the Taxpayer's case, TP Order for AY 2016-17 was passed on 1 November 2019. The Taxpayer challenged validity of the TP Order and filed writ petition before the High Court for quashing the same on the ground that the TP Order was 'barred by limitation' which was allowed by the single judge vide his order dated 7 September 2020. Against such order passed by the single judge, the tax department preferred further appeal before the High Court.

Before the High Court, Taxpayer argued that the TP Order for AY 2016-17 was required to be passed on or before 31 October 2019. Taxpayer also argued that while the language used in section 92CA(3A) of the IT Act is 'may', it has to be read as 'shall'. Thus, such 60 days' time limit available to the TPO is 'mandatory'.

On the other hand, tax department argued that the single judge ought not to have entertained the writ petition filed by the Taxpayer, especially when there was an alternative remedy of appeal available to them. It was also argued that TP Order dated 1 November 2019 was well within the period of limitation on referring to the General Clauses Act 1897, where it is provided that for the purpose of computation of the time limit, the day referred to as 'from' is to be excluded and the day referred to as 'to' is to be included. When the word 'to' is specifically incorporated in section 92CA(3A), the other interpretation to exclude the last day would be against the plain language of the statute and would run contrary to the intent of the legislature. The tax department also argued that the time limit for passing TP Order under section 92CA(3A) was not a limitation in *stricto sensu* as stated in section 153 of the IT Act and that the outer limitation as provided in section 153 of the IT Act alone was the criteria (and to advance the cause of justice, an alleged delay of merely one day cannot result in a loss of right of assessment).

The High Court rejected tax department's argument that 60 days' time limit available to the TPO was not 'mandatory'.

With respect to issue of how the period of 60 days is to be computed, the critical question before the High Court was whether the period of 60 days would be computed including the 31 December or excluding it. With respect to tax department's contention that limitation for passing assessment order expires only on 00.00 hours on 1 January 2020, High Court observed that such an argument is fallacious as 31 December 2019 would end at 23:59:59 and 00:00 is regarded as next day. A day for the purpose of reckoning the date ends before the stroke of midnight and the next date would commence at midnight immediately after the expiry of the previous day. High Court observed that last date would be the last day of the month (31 December 2019), which cannot be the first day of the next month (1 January 2020). The 'date' must not be reckoned with respect to sun rise but with respect to the time of 24 hours in a day. The moment last minute of the day expires, the day ends and the next moment which is the first moment of the next day becomes irrelevant for the purpose of reckoning the period of limitation. High Court referred to various references (such as reference to Independence Day, wherein the stroke of midnight at 00.00 hours on 15 August 1947 is considered as the moment of Independence as per the Indian Independence Act, 1947) and observed that midnight or 00.00 hours has been always used to denote the beginning of the next date. High Court also referred to Hon'ble Supreme Court ruling in *Commr. of Customs v. Dilip Kumar & Co* [2018 SCC OnLine SC 747] wherein the Supreme Court ruled that when there is repugnancy or conflict as to the subject or context between the General Clauses Act, 1897 and a statutory provision which falls for interpretation, the court must necessarily refer to the provisions of the statute.

High Court observed that the word 'date' in section 92CA(3A) of the IT Act would indicate 31 December 2019. But the preceding words 'prior to' would indicate that for the purpose of calculating the 60 days, 31 December 2019 must be excluded. The usage of the word 'prior' is not without significance and it was not opened to just consider the word 'to' by ignoring 'prior'. The word 'prior' in the present context, not only denotes the flow of direction, but also actual date from which the period of 60 days is to be calculated. High Court reiterated that as a settled law while interpreting a statute, it is not for the courts to treat any word(s) as redundant or superfluous and ignore the same. Thus, the High Court ruled that the 60 days is to be calculated excluding the last date because of the use of the words 'prior to' and the TPO has to pass TP Order before the 60th day. In the present case, the word 'before' used before '60 days' would indicate that an order has to be passed before 1 November 2019 (i.e. on or before 31

October 2019). The High Court thus ruled that the TP Order was 'barred by limitation' by one day.

Comments

This is a welcome Judgement by the High Court as in many instances the transfer pricing orders were passed on 1 November 2019. The High Court has in a very detailed manner analysed the statutory provisions, rationale while adjudicating the issue. High Court also reiterated settled law that while interpreting a statute, any word(s) cannot be treated as redundant or superfluous and be ignored. Basis the above Judgement, taxpayers in whose cases transfer pricing orders were passed on 1 November 2019 can now challenge the validity of TP Order by way of filing an additional ground of appeal (if not taken earlier) before the appellate authorities with whom their appeal against transfer pricing adjustment is pending.

Given the large repercussions of this Judgement from tax department's perspective, it is quite likely that they will seek to challenge this Judgment before the Hon'ble Supreme Court. It will be interesting to watch any further development in this regard.

- *Sanjay Sanghvi (Partner) and Ujjval Gangwal (Senior Associate)*

For any queries please contact: editors@khaitanco.com

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