

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.2056/DEL/2022
(Assessment Year: 2018-19)**

Syniverse Technologies Services India P. Ltd., vs. ACIT, Circle 3 (1),
DLF Building No.5, Tower A, Gurgaon.
15th Floor, DLF Phase III,
Gurgaon – 122 002 (Haryana).

(PAN : AANCS1158H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Ananya Kapoor, Advocate
Shri Utkarsa Kumar Gupta, Advocate
REVENUE BY : Shri Nikhil Kumar Govila, CIT DR

Date of Hearing : 06.05.2026
Date of Pronouncement : 10.07.2026

ORDER

PER S.RIFAUR RAHMAN,AM:

1. The appeal preferred by the assessee is directed against the assessment order dated 30.06.2022 passed by the Assistant Commissioner of Income Tax, Circle 3 (1), Gurgaon under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (for short 'the Act') for Assessment Year 2018-19 pursuant to the directions of the Dispute Resolution Panel u/s 144C of the Act.

2. At the time of hearing, ld. AR of the assessee brought to our notice page 252 of the appeal set which is the intimation letter for order under section 144C (5) which is dated 05.05.2022. Ld. AR brought our notice page 242 of the appeal set which is the order giving effect to directions u/s 144C of the Act dated 17.06.2022 passed by the TPO and he also brought to our notice page 249 of the appeal set wherein TPO has dealt with the issue of payment of royalty as per the direction of ld. DRP. Ld. AR brought our notice page 156 of the appeal set which is the final assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 144C(13) of the Act dated 30.06.2022. Ld. AR submitted that jurisdiction to pass the assessment order ends on 30.06.2022 and Assessing Officer has passed the above final assessment order without incorporating the directions of ld. DRP. He also brought to our notice draft assessment order and the final assessment order and submitted that there is no change in the contents of both assessment order. The Assessing Officer passed the above final assessment order on the last date of limitation period i.e. 30.06.2022 and subsequently passed a corrigendum order u/s 144C(13) of the Act dated 27.07.2022. In this regard, ld. AR submitted that the corrigendum passed on 27.07.2022 is beyond jurisdiction and once the final assessment order passed by the Assessing Officer without following the directions of ld. DRP, impugned order is beyond jurisdiction. The

second issue, he raised was that the impugned order passed on 30.06.2022 is beyond jurisdiction and illegal. The abovesaid order itself is bad in law and passing a corrigendum on the abovesaid order is also bad in law. In this regard, he relied on the decision of Hon'ble Bombay High Court in the case of Pr.CIT vs. Lionbridge Technologies Pvt. Ltd. TS-1267-Hon'ble High Court-2018 (BOM)-TP. He submitted that the facts in the present case are exactly similar to the facts of the aforesaid case. Accordingly, he relied on the detailed findings of the aforesaid decision. Further he relied on the decision of ITAT, Mumbai Bench in the case of M/s. I.A.R. System Aktiebolag Deloitte vs. DCIT in ITA No.598 & 1850/Mum/2022 order dated 02.05.2023.

3. On the other hand, ld. DR of the Revenue accepted the facts on record that intimation u/s 144C(5) of the Act was passed on 05.05.2022 and order of the ld. DRP was dated 25.04.2022 and corrigendum to final assessment order was passed on 27.07.2022. He objected to the submissions of the ld. AR of the assessee and supported the final assessment order passed by the Assessing Officer, which is as per the provisions of section 144C of the Act.
4. Considered the rival submissions and material available on record. We observed that Assessing Officer has passed draft assessment order on 17.09.2021 u/s 144C of the Act. Against the above order, assessee

preferred an appeal before the ld. DRP and ld. DRP has passed the order dated 25.04.2022 and in the above order, ld. DRP has given direction to the Assessing Officer/TPO to incorporate the findings of the ld. DRP in respect of various objections suitably in the final assessment order. We further noticed that respectfully following the directions of the ld. DRP, TPO has passed the order giving effect to directions u/s 144C dated 17.06.2022. However, the Assessing Officer while passing the final assessment order passed i.e. impugned order dated 30.06.2022 without giving effect to the order passed u/s 144C of the Act. Further Assessing Officer passed a corrigendum order dated 27.07.2022 to final assessment dated 30.06.2022. However, the fact in the present case is that ld. TPO has passed the order giving effect on 17.06.2022 and Assessing Officer should have passed the final assessment order by incorporating the OGE passed by the TPO within the limitation period prescribed u/s 144C. However, the Assessing Officer even though on receipt of OGE from TPO failed to pass the final assessment order incorporating the same. In the present case, the Assessing Officer had passed the 'FAO' within time, however, not followed the directions of ld. DRP. Subsequently, he passed the corrigendum to cover up the statutory functions as per the provisions of section 144C of the Act. We observed that the facts in the present case are exactly similar to the facts in the case of Pr.CIT vs.

Lionbridge Technologies Pvt. Ltd. TS-1267-Hon'ble High Court-2018 (BOM)-TP (supra) and M/s. I.A.R. System Aktiebolag Deloitte (supra).

5. In the case of Pr.CIT vs. Lionbridge Technologies Pvt. Ltd., Hon'ble Bombay High Court held as under

“9. The Tribunal by the impugned order, noted the fact that even, according to the Assessing Officer, the time to complete the Assessment, consequent to the order dated 25th January, 2012 of the Tribunal expired on 31st March, 2012. This in terms of Section 153(2A) of the Act. In this case, the Tribunal held that the final order was passed on 12th March, 2012. Thereafter, the Assessing Officer after having become functus Officio, on 16th April, 2014 issued a corrigendum to the order dated 12th March, 2012, seeking to convert the final order of Assessment into a draft order of Assessment. This, the Tribunal found is not permissible as the corrigendum dated 16th April, 2014 was issued after the time to pass the Assessment Order, had expired. In fact, the Tribunal notes and follows the decision of the Madras High Court in similar facts in the case of Vijay Television (P) Ltd., v/s. DRP 369 ITR 113 (Mad.). In fact, in the above case, the Court held that a corrigendum issued beyond the period of limitation is a defective, thus ineffective. The impugned order also held that the Assessing Officer had failed to follow the directions of the order dated 25th January, 2012 of the Tribunal. Thus, allowed the Respondent's appeal.

10. Mr. Suresh Kumar, learned Counsel for the Appellant Revenue urges that, this appeal requires admission. According to him, the Respondent-Assessee had accepted the corrigendum dated 16th April, 2014, converting the final order into a draft order of Assessment. This is evident as the Respondent had filed objection to the DRP with regard to draft Assessment Order. Once it is so accepted, Mr. Suresh Kumar, submits that, it is not open to the Respondent to urge that in the absence of a final order being passed within the time limit prescribed under the statute, the order is null and void.

11 It must be noted that in respect of the procedure and determination of the ALP of International Transaction between related person, the law provides a special dispensation. In terms of Section 144C(I) of the Act, the Assessing Officer is to first pass a draft Assessment Order which is subject to challenge, by way of representation to the DRP. It is only after the DRP disposes of the representation, that the Assessing Officer passes a final order in terms of the directions of the DRP and such final order is appealable to the Tribunal. In this case, it is undisputed that on 12th March, 2014, the Assessing Officer passed a final Assessment Order in terms of the directions made by the DRP in the earlier round. The time to pass any such order, would expire in the present facts on 31st March, 2014, however, in case a Draft Assessment Order is issued, then the time to pass a final Assessment Order gets extended to one month after the passing of the directions by the DRP in terms of Section 144C(13) of the Act. Nevertheless, the Draft Assessment Order should have in the present facts been passed before 31st March, 2014 in terms of Section 153A(2A) of the Act. In this case, undisputedly, a final order was passed on 12th March, 2014 and is being sought to be corrected by issue of corrigendum on 16th April, 2014 i.e. after the time to pass the Draft Assessment Order has expired. In fact, the Tribunal placed reliance upon the decision of a single judge of the Madras High Court in *Vijay Television (P) Ltd.*, (supra). This, decision has now been upheld by the Division Bench of the Madras High Court in *Assistant Commissioner of Income Tax v/s. Vijay Television (P) Ltd.*, 407 ITR 642. In the above case, non issue of Draft Assessment Order could not be corrected by issuing a corrigendum to a final Assessment Order. Just as in the facts before the Madras High Court, here also the demand notice and institution of pending proceedings were not withdrawn by the corrigendum. Besides, in *International Air Transport Association v/s. Deputy Commissioner of Income Tax* 68 taxmann.com 246 – this Court has held that the Draft Assessment Order is necessary in terms of Section 144 C(1) of the Act before the Assessing Officer can proceed to pass a final Assessment Order. In the absence thereof, the order is without jurisdiction. So far the contention on behalf of the Revenue that the Respondent was estopped from challenging the corrigendum dated 16th April, 2004, as it was accepted by it and a representation also filed to the DRP. This submission overlooks the fact that there can be no estoppel on issue of law pertaining to jurisdiction. Therefore,

if the corrigendum dated 16th April, 2014 and the order dated 12th March, 2014 of the Assessing Officer is without jurisdiction, the same can be raised at any time and the principle of estoppel will not apply. Mere consent of parties does not bestow jurisdiction, if the order is beyond jurisdiction. Therefore, we do not find any substance in this objection of the Revenue. Besides, the finding of the Tribunal in the impugned order that the order of the Assessing Officer was beyond the scope of the remand by order dated 25th January, 2012 of the Tribunal. This more particularly so as the remand by the Tribunal was occasioned on account of failure of the DRP to deal with the objections of the Respondent to the Draft Assessment Order. Therefore, making a reference again to the TPO for fixing the ALP, was not called for. Nothing has been pointed out to us which would even remotely suggest that the same is not correct.

12. Therefore, in the above view, the question as proposed, does not give rise to any substantial question of law.”

6. ITAT, Mumbai Bench in the case of M/s. I.A.R. System Aktiebolag Deloitte (supra) has held as under :-

“18. Considered the rival submissions and material placed on record, we observe from the record that assessee has received certain funds by supplying software through intermediaries in India and the various Companies are listed in Para No 3.1 of the Assessment Order. It is also fact on record that assessee has received the receipts as categorized by the Ld. DRP in their order at Page No. 32 as per which assessee has received income from sale of software licence, hardware, support services to those parties who are intended to purchase the latest software from IAR and certain freight charges. Which are part and parcel of the total services rendered by the assessee during the current Assessment Year. The Assessing Officer after considering the detailed submissions of the assessee and after detailed analyses of the issue on record and also relying on various case laws held that the receipts of income by the assessee are taxable under the head “Royalty” and in objection filed by the assessee before Ld. DRP and Ld. DRP has held that the above receipts received by the assessee is involvement of support services to the extent of ₹.36,37,596/- and other portion of the income includes sale of software and hardware. Without going into merits of the findings of the Ld. DRP, we observe that Ld. DRP has come to the conclusion on their own analysis that the case of the assessee falls under FTS. We

observe that while passing the final Assessment Order Assessing Officer has not followed the directions of the Ld. DRP and passed his own Assessment Order by merely reproducing his analysis in draft Assessment Order.

19. From the record we observe that the final Assessment Order passed by the Assessing Officer is not as per section 144C(13) of the Act. However, Assessing Officer has filed a note in support of his final Assessment Order in which he has made submissions that the order passed by him is analyzing the various issue which are without prejudice views which Ld. DRP has not rejected. He is of the view that the final Assessment Order passed by him is as per section 144C(13) of the Act. After considering the submissions of both the parties, we are of the view that Assessing Officer has not followed the directions of the Ld. DRP and the directions of the Ld. DRP are very clear and Assessing Officer has not bothered to atleast classify the income earned by the assessee under the head FTS as per the directions of the Ld. DRP and royalty. He proceeded to complete the final Assessment Order based on his own analysis made by him in draft Assessment Order which is clearly a violation of not following the directions of the higher authorities and also the provisions of section 144C(13) of the Act. At the time of hearing, Ld. DR heavily relied on the decision of the ITAT Bangalore in the case of Yokogawa India Ltd., v. ACIT (supra) in which the bench has remitted the issue back to the file of the Assessing Officer/TPO to redo the assessment by following the directions of the Ld.DRP. We observe that in that case there is an issue of determination of arm's length price of payment towards management fees, global sales and marketing activities fees. We do not intend to follow this decision of the ITAT Bengaluru bench for the simple reason that the Assessing Officer will get extended period of time by passing such orders which are clearly violation of the specific direction specified u/s. 144C(13) of the Act. Therefore, such violation cannot be ignored and in the given case under consideration we observe that Ld. DRP has given clear cut finding that income earned by the assessee will fall under FTS and Assessing Officer by following his own analysis and applied and completed the final Assessment Order under the head Royalty and not even he has bothered to follow the directions of the Ld. DRP and he could have atleast followed the directions of the Ld. DRP to the extent of support services under the head FTS and balance he could have brought to tax under the head Royalty. Further, we observe that the majority of the receipts received by the assessee are for sale of software licence and hardware and portion of the receipt which are received towards support services to the extent of ₹.36,37,596/- out of total receipt of ₹.2,88,87,787/-. In our view, Assessing Officer and Ld. DRP has taken

a divergent view and without going into merits of the issues raised, we are inclined to treat the Assessment Order passed by the Assessing Officer as bad in law and against the directions specified u/s.144(13) of the Act. Accordingly, we quash the assessment order passed by the Assessing Officer and grounds raised by the assessee are allowed in this regard.”

7. Accordingly, respectfully following the aforesaid order, we observed that non-following of the directions of ld. DRP is itself the 'FAO' is bad in law and subsequently passing the corrigendum will not make order good. The corrigendum so passed is beyond jurisdiction. Accordingly, the assessment order so passed by the Assessing Officer is quashed and legal issue raised by the assessee is allowed.
8. Since we have decided the issue on legal issue, the other grounds raised by the assessee are kept open.
9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 10th day of July, 2026

Sd/-

**(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 10.07.2026
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI