

HC: Quashes TPO's unsigned order barred by limitation and consequent draft assessment order

Jun 20, 2024

Toyota Tausho India Private Limited [TS-251-HC-2024(KAR)-TP]

Conclusion

Karnataka HC allows Toyota Tausho India Pvt Ltd's writ petition, quashes TPO's order and the consequent draft assessment order as barred by limitation for AY 2018-19; Notes Assessee contended that the last date to pass order by TPO was 31.07.2021, however, Assessee received an e-mail on 02.08.2021 enclosing a copy of TPO order, which was both digitally and physically unsigned and also not available on the ITBA portal; Notes Assessee further submitted that subsequently, it received one more email on 13.08.2021 purporting to enclose a copy of physically / manually signed TPO order dated 31.07.2021, however, on 16.08.2021, the unsigned TPO order was uploaded on ITBA portal after expiry of time limit and without even being authenticated by the TPO's digital signature; Observes, *"The undisputed fact that the TPO order was not digitally signed on 31.07.2021 or subsequently even on 02.08.2021 when the respondent addressed an email to the petitioner and that the same was subsequently physically / manually signed on 12.08.2021 and furnished to the petitioner along with an email on 13.08.2021 is clearly borne out from the material on record. In other words, despite recognising, confirming and affirming that the TPO order was not signed either physically or digitally on 31.07.2021, the 1st respondent signed the same physically only subsequent on 12.08.2021 and it is this manually / physically signed copy that was uploaded on the ITBA portal on 16.08.2021, thereby leading to the sole inference that as on the last date of limitation i.e., 31.07.2021, a legally valid TPO order had not been passed by the 1st respondent and as such, the impugned order deserves to be quashed"*; Opines that *"TPO order having not been signed digitally before purporting to be passed and uploaded on 31.07.2021 is clearly illegal and non-est and the same deserves to be quashed"*; Accordingly allows the petition and quashes TPO's order and the draft assessment order.:HC KAR

Decision Summary

The ruling was delivered by Single Judge Bench comprising Justice S.R. Krishna Kumar.

Advocates Nageshwar Rao and Mohan Maiya G L argued on behalf of the assessee while Revenue was represented by Advocate Ravi Raj Y V and Mr. H. Shanthi Bhushan.

Case Law Information

Taxpayer Name

- Toyota Tausho India Private Limited

Judicial Level & Location

- High Court Karnataka

Appeal Number

- WRIT PETITION NO. 19053 OF 2021 (T-IT)

Date of Ruling

- 2024-02-13

Ruling in favour of

- Assessee

Section Reference Number

- [92C](#)

Nature of Issue

- Powers / Jurisdiction of Assessing Authorities
- Time limit for completing the assessment

Judges

- Justice S.R. Krishna Kumar

Counsel for Tax Payer

- Nageshwar Rao
- Mohan Maiya G L

Counsel for Department

- Ravi Raj Y V
- H. Shanthi Bhushan

Industry

- Others

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 13TH DAY OF FEBRUARY, 2024****BEFORE****THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR****WRIT PETITION NO. 19053 OF 2021 (T-IT)****BETWEEN:**

M/S TOYOTA TAUSHO INDIA PRIVATE LIMITED
PLOT NO.33 AND 34,
BIDADI INDUSTRIAL AREA RAMANAGARA TALUK,
KARNATAKA-562109
REPRESENTED BY ITS GENERAL MANAGER,
MR SOUMENDRA KUMAR MAHAPATRA,
AGED ABOUT 51 YEARS.

...PETITIONER

(BY SRI. NAGESHWAR RAO., ADVOCATE FOR
SRI. MOHAN MAIYA G L.,ADVOCATE)

AND:

1. DEPUTY COMMISSIONER OF INCOME TAX
(TRANSFER PRICING) CIRCLE 2(2)(2),
BMTc BUILDING, 80 FEET ROAD,
6TH BLOCK, NEW KHB GAMES VILLAGE,
KORAMANGALA,
BANGALORE – 560 095.
2. NATIONAL FACELESS ASSESSMENT CENTRE
NORTH BLOCK, NEW DELHI-110 001.
3. DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 3(1) (1), BANGALORE,
BMTc BUILDING, 80 FEET ROAD,
6TH BLOCK, NEW KHB GAMES VILLAGE,
KORAMANGALA,
BANGALORE-560 095.
4. PRINCIPAL COMMISSIONER OF INCOME TAX
BMTc BUILDING, 5TH FLOOR, 80 FEET ROAD,
6TH BLOCK, NEW KHB GAMES VILLAGE,
KORAMANGALA,
BANGALORE-560 095

Digitally signed by
VANDANA S
Location: High
Court of Karnataka



5. UNION OF INDIA
MINISTRY OF FINANCE,
THROUGH THE SECRETARY,
DEPARTMENT OF REVENUE,
ROOM NO.46, NORTH BLOCK,
NEW DELHI-110 001.

...RESPONDENTS

(BY SRI. RAVI RAJ Y V.,ADVOCATE FOR R-1 TO R-4
SRI. H. SHANTHI BHUSHAN, DSGI FOR R-5)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED TRANSFER PRICING ORDER DTD.31.7.2021 VIDE ANNEXURE-C UNDER SECTION 92CA(3) IN RELATING TO ASSESSMENT YEAR 2018-19 AND IMPUGNED DRAFT ASSESSMENT ORDER DTD.29.9.2021 VIDE ANNEXURE-N PASSED PURSUANT THERETO AND ETC.

THIS PETITION, COMING ON FOR FURTHER HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this petition, petitioner has sought for the following reliefs:-

“ a) *Issue writ in the nature of certiorari or any other appropriate writ, order or direction quashing the impugned transfer pricing order ITBA/TPO/F/92CA3/2021-22/1034559725(1) dated: 31.07.2021 (vide Annexure-C) under Section 92CA(3) in relation to assessment year 2018-19 and impugned draft assessment order ITBA/AST/F/144C/2021-22/1036016749(1) dated: 29.09.2021 (vide Annexure-M) passed pursuant thereto;*

b) *Issue writ in the nature of Prohibition or any other appropriate writ, order or direction staying all further proceedings pursuant to impugned transfer pricing order ITBA/TPO/F/92CA3/2021-22/1034559725(1) dated: 31.07.2021 (vide Annexure –C) and impugned draft assessment order ITBA/AST/F/144C/2021-*



22/1036016749(1) dated: 29.09.2021 (vide Annexure-M) in relation to assessment Year 2018-19.

c) Issue writ in the nature of Mandamus or any other writ, order or direction restraining the Respondent, their superiors, subordinates, servants and/or agents from giving any effect to and/ or in furtherance of the impugned unsigned transfer pricing order ITBA/TPO/F/92CA3/2021-22/1034559725(1) dated: 31.07.2021 (vide Annexure –C) and impugned draft assessment order ITBA/AST/F/144C/2021-22/1036016749(1) dated: 29.09.2021 (vide Annexure-M) in relation to assessment Year 2018-19.

d) for ad-interim relief in terms prayer(b) and (c) above;

e) Such further and/or other orders be made and /or directions be given as would afford complete relief to the Petitioner.”

2. Heard learned counsel for the petitioner and learned counsel for the respondents – revenue and perused the material on record.

3. Briefly stated the facts and contentions urged on behalf of the petitioner are as follows:-

Petitioner is a private limited company to whom a digitally show cause notice dated 14.07.2021 was issued by the 1st respondent – Transfer Pricing Officer (TPO) rejecting the transfer



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pricing analysis submitted by the petitioner for the assessment year 2018-19. The petitioner submits its response dated 19.07.2021 and the last date prescribed for passing an order by the 1st respondent under Section 92CA (3) of the Income Tax Act, 1961 (for short 'the I.T.Act') was 31.07.2021. It is contended that on 02.08.2021, the petitioner received an e-mail enclosing a copy of an unsigned order purported / alleged to have been passed on the last date i.e., 31.07.2021. The said enclosed order was both digitally and physically unsigned as can be seen from the order itself, which was also not available on the ITBA portal. Subsequently, the petitioner received one more email on 13.08.2021 purporting to enclose a copy of physically / manually signed TPO order dated 31.07.2021. So also, on 16.08.2021, the unsigned TPO order was uploaded in the ITBA portal after expiry of time limit and without even being authenticated by the TPO's digital signature.

3.1 Petitioner contends that based on the aforesaid unsigned an illegal TPO order, which was passed beyond the prescribed period of limitation, the 2nd respondent issued show cause notice, to which, the petitioner sought for sufficient and reasonable opportunity to submit its reply and due to paucity of time, the petitioner submitted a reply on 27.09.2021 culminating in



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the impugned order passed immediately thereafter on 29.09.2021 in violation of principles of natural justice and as such, the petitioner is before this Court by way of the present petition.

4. The respondents have filed its statement of objections *interalia* contending that the TPO order was passed on 31.07.2021 itself and due to technical glitch / error in the ITBA portal, the order was generated without digital signature. It is contended that on 02.08.2021, the 2nd respondent realised this mistake in the TPO order not being digitally signed before being uploaded on 31.07.2021 and accordingly, issued a reminder dated 02.08.2021 to send a signed copy immediately for necessary action. So also, one more reminder dated 16.08.2021 was issued by the 2nd respondent in this regard to provide a signed copy of TPO order, since the same was not digitally signed at the time of being uploaded on 31.07.2021. It is further contended that a physically / manually signed TPO order was provided to the petitioner on 02.08.2021 and 13.08.2021. It is contended that the DIN number shown in the TPO order is generated only after the same was passed and uploaded on the ITBA portal and consequently, merely because the TPO order dated 31.07.2021 had not been signed either digitally or



physically / manually on that day when it was uploaded, it cannot be said that the TPO order was not passed within the period of limitation. Under these circumstances, the respondents sought for dismissal of the petition.

5. The petitioner has filed its rejoinder *inter alia* denying and disputing the various contentions urged in the statement of objections by the respondents. It is contended that the TPO order was not passed on 31.07.2021 as contended by the respondents. It is alternatively submitted that even assuming the TPO order was generated on 31.07.2021, the same was uploaded subsequently on 13.08.2021 along with physically / manually signed TPO order, which was never digitally signed at any point in time. It is therefore contended that the various contentions urged by the respondents are liable to be rejected and the petition deserves to be allowed.

6. I have given my anxious consideration to the rival submissions and perused the material on record.

7. The material on record and the rival contentions will indicate that it is an undisputed fact that the impugned TPO order was not signed digitally or physically / manually on 31.07.2021 as is evident from the email dated 02.08.2021 sent to the petitioner by



the respondents enclosing a copy of the unsigned TPO order. In fact, even according to the respondents, the TPO order could not be signed digitally on 31.07.2021 due to a technical glitch / error in the ITBA portal. It follows therefrom that what was alleged to be passed and uploaded on the ITBA portal on 31.07.2021 i.e., the last date of limitation was only digitally unsigned TPO order which was also not signed physically or manually. In this context, it is relevant to state that it was incumbent upon the TPO order to be digitally signed in terms of the CBDT Circular dated 12.02.2018 r/w Section 282A of the I.T.Act. Under these circumstances, it is clear that the TPO order having not been signed digitally before purporting to be passed and uploaded on 31.07.2021 is clearly illegal and non-est and the same deserves to be quashed.

8. The material on record also discloses that in its email dated 02.08.2021, the respondents purport to enclose a copy of the TPO order dated 31.07.2021 which is undisputedly unsigned as on that day. In fact, as is clear from the emails at Annexures-R2 and R3 dated 02.08.2021 addressed by the 2nd respondent to the 1st respondent – TPO, the impugned order had not been digitally signed and the TPO was instructed to take necessary steps to sign



the order which was done physically / manually by him subsequently and furnished to the petitioner along with the email dated 13.08.2021. The undisputed fact that the TPO order was not digitally signed on 31.07.2021 or subsequently even on 02.08.2021 when the respondent addressed an email to the petitioner and that the same was subsequently physically / manually signed on 12.08.2021 and furnished to the petitioner along with an email on 13.08.2021 is clearly borne out from the material on record. In other words, despite recognising, confirming and affirming that the TPO order was not signed either physically or digitally on 31.07.2021, the 1st respondent signed the same physically only subsequent on 12.08.2021 and it is this manually / physically signed copy that was uploaded on the ITBA portal on 16.08.2021, thereby leading to the sole inference that as on the last date of limitation i.e., 31.07.2021, a legally valid TPO order had not been passed by the 1st respondent and as such, the impugned order deserves to be quashed.

9. The sequence of events that emerge from the material on record including the rival pleadings and documents can be summarised as under:-



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(i) The TPO order was not passed on the last date of limitation i.e., 31.07.2021 as contended by the respondents;

(ii) The TPO order, even if passed, had not been digitally or physically / manually signed by 1st respondent on the last date i.e., 31.07.2021, thereby rendering the same illegal, invalid and barred by limitation;

(iii) The TPO order had not been uploaded on the ITBA portal on 31.07.2021, the last date of limitation;

(iv) The 2nd respondent addressed an email on 02.08.2021 to the 1st respondent confirming that the TPO order had not been digitally signed and asked him to take necessary action, thereby also indicating that the TPO order had not been physically / manually signed even as on 02.08.2021;

(v) The petitioner received an email on 02.08.2021 enclosing a copy of the TPO order which was neither signed digitally nor manually / physically as on that day, thereby rendering the same invalid, illegal and barred by limitation.

(vi) The petitioner received an email on 13.08.2021 enclosing a copy of the TPO order which was physically / manually signed only on 12.08.2021, much beyond the last date of limitation i.e., 31.07.2021;



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(vii) The undisputed fact that the 2nd respondent noticed that the TPO order was digitally unsigned on 31.07.2021 as evident from the email addressed by him to the 1st respondent on 02.08.2021 is sufficient to come to the conclusion that digital / physical / manual signature of the TPO on the order is an essential and mandatory requirement, failing which, the TPO order would be rendered invalid, illegal, and non-est in the eye of law.

(viii) The physically / manually signed TPO order was also uploaded in the ITBA portal only on 16.08.2021, much beyond the last date of limitation i.e., 31.07.2021.

(ix) The mere generation of DIN number in the TPO order is not sufficient to cure the various inherent defects, lacunae, omissions and deficiencies in the TPO order which was barred by limitation warranting interference by this Court in the present petition.

10. In view of the aforesaid facts and circumstances, the impugned Transfer Pricing Order at Annexure-C said to have been passed on 31.07.2021 and the consequent draft assessment order at Annexure-M dated 29.09.2021 are illegal and arbitrary and deserves to be quashed.



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11. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned Transfer Pricing Order at Annexure-C said to have been passed on 31.07.2021 and the consequent draft assessment order at Annexure-M dated 29.09.2021 are hereby quashed;

**SD/-
JUDGE**

Srl.