IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-2' BENCH, NEW DELHI (THROUGH VIDEO CONFERENCING)

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 8892/DEL/2019
[A.Ys 2015-16]

Olympus Medical Systems India Pvt. Ltd., Ground Floor, Tower-C, SAS Tower, The Medicity Complex, Sector-38, Gurgaon – 122 001	Vs.	DCIT, Circle – 3(1), Gurugram
PAN No. AABCO 2131 L		
[Appellant]		**[Respondent]**

Date of Hearing : 24.08.2020
Date of Pronouncement : 26.08.2020

Assessee by : Shri Nageshwar Rao, Adv.
Ms. Deepika Aggarwal, Adv.

Revenue by : Shri Anupam Kant Garg, CIT-D.R

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order dated 16.10.2019 framed u/s 143(3) r.w.s 144C of the Act for the Assessment Year 2015-16.

2. The grievance of the assessee can be summarized as under:

i. Ground against adjustment made in relation to Advertisement, Marketing and Promotion expenses.

ii. Ground pertaining to protective adjustment using Cost Plus Method and Bright Line Test.

iii. Ground pertaining to interest on outstanding receivables.

3. Vide application dated 16.06.2020, the assessee sought permission for admission of additional ground of appeal drawing support from the decision of the Hon'ble Supreme Court in the case of NTPC 229 ITR 383. The additional ground reads as under:

> *"That the Assessing Officer erred on facts and in law in directly passing final assessment order dated 07.12.2018 in the garb of issuing draft assessment order and raising a demand vide notice issued u/s 156 and initiating penalty proceedings vide notice dated 07.12.2018 issued u/s 274 r.w.s 271 of the Act, thereby violating the provision of section 144C of the Act."*

4. Vide his written submission as well as argument, the DR strongly objected to the afore stated additional ground. The DR vehemently contended that this issue was never raised before any of the lower authorities and has been raised for the first time. It is say of the DR that the issue is not purely a legal one, but has aspect of facts as well.

5. Per contra, the Counsel for the assessee reiterated his reliance on the decision of the Hon'ble Supreme Court in the case of NTPC (supra).

6. We have carefully considered the issue raised in the additional ground. We do not find any force in the contention of the DR. The additional ground is purely a legal issue and does not require verification of any facts outside the record. Accordingly, the additional ground is admitted.

7. Since the additional ground goes to the root of the matter we will address to it first. It would be pertinent to mention here that on identical set of facts the Tribunal in the case of Perfetti Van Melle (India) (P) Ltd. in ITA No.9116/Del/2019 vide order dated 11.08.2020 has decided the issue in favour of the assessee and against the Revenue. Since one of us i.e. AM was the author of the afore stated judgment of the Co-ordinate Bench, it would be convenient for us to refer to the said decision of the Co-ordinate Bench wherein all the issues raised by the representative of both the sides have been duly considered. The relevant part of the said decision read as under:

"11. Provisions of section 144C read as under:

> *"144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee."*

12. Most relevant clauses pertinent for adjudication of the quarrel reads as under:

> *"(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—*
> *(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or*
> *(b) no objections are received within the period specified in sub-section (2).*
>
> *(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 51a[or section 153B], the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received."*

13. In the light of the afore stated provisions of section 144C of the Act and relevant sub-sections, the ld. counsel for the assessee vehemently argued that the assessment proceedings concluded on 27.12.2018, and therefore, any orders passed thereafter are non est, to which the ld. DR rebutted by stating that the assessee itself has participated in the subsequent proceedings. Therefore, it cannot be said that the proceedings culminated on 27.12.2018.

14. It is the say of the ld. DR that on 27.12.2018, the Assessing Officer has only framed a draft assessment order and final assessment order was framed after receiving order of the Dispute Resolution Panel [DRP].

15. In our considered view, provisions of section 144C of the Act triggers a series of steps prescribed in sub-section (2) to section 12

and as can be seen from the most relevant sub-sections (3) and (13) extracted hereinabove, the assessment is complete either under subsection (3) or sub section (13).

16. Facts on record show that on 27.12.2018, the Assessing Officer quantified the taxable income and determined tax payable by issuing and serving demand notice u/s 156 of the Act. In our considered opinion, this action of the Assessing Officer has brought the proceedings to an end and the proceedings initiated u/s 144C of the Act stand concluded.

17. A perusal of Section 144C of the Act shows that the Assessing Officer shall, at the first instance, forward a draft of the proposed order of assessment and on receiving such order, the assessee may approach the DRP by raising objections. If the assessee accepts the variation, then the Assessing Officer shall proceed by framing the final assessment order and if the objections are raised before the DRP, then, upon receipt of directions issued by the DRP, the assessee shall complete the assessment. However, we find that while framing the said draft assessment order, the Assessing Officer not only issued and served demand notice, but has also initiated the penalty proceedings.

18. The question whether demand notice is an integral part of the assessment order has been answered by the Hon'ble High Court of Gujarat in the case of CIT Vs. Purshottam Das T Patel 209 ITR 52 wherein the Hon'ble High Court has relied on the decision of the Hon'ble Supreme Court in the case of Kalyan Kumar Ray Vs. CIT 191 ITR 634. The relevant findings of Hon'ble High Court read as under:

> *" 'Assessment' is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial as the former. The Incometax Officer has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and the demand notice has to be issued under section 156 of the Incometax Act, 1961, in consequence of such an order. The statute does not, however, require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is superscribed 'assessment order'. It does not prescribe any form for the purpose. Once the*

assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time-consuming. If, therefore, the Income-tax Officer first draws up an order assessing the total income and, indicating the adjustments to be made, directs the office to compute © Company Law Institute of India Pvt. Ltd. the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income-tax Officer that the process described in section 143(3) will be complete." In our opinion, this decision, far from helping the Revenue, goes against it. The Supreme Court has in terms stated that assessment is one integrated process involving not only the assessment of the total income but also the determination of the tax. It has further observed that the latter is as crucial as the former. Therefore, unless the total income is determined and the determination of tax is also done, it cannot be said that the process of assessment is complete. What section 153 requires is that the assessment should be completed within the prescribed time-limit. The words "order of assessment" cannot be construed to mean assessment of total income only. Those words would mean an order in writing whereby the total income of the assessee is assessed and the tax payable by him is determined. When an order in writing in respect of both these things is passed, it can be said that there is a complete order of assessment. These two steps may be taken simultaneously or separately, but it cannot be gainsaid that both of them will have to be taken within the time prescribed by the Act. Admittedly, in this case the second step was not taken within the prescribed time. After determining the total income, the Income-tax Officer possibly left the matter to his subordinates for the purpose of calculating the tax payable by the assessee on the basis of the assessed total income. Even if we assume in favour of the Assessing Officer that he approved the said calculation when the papers were put before him for signing the demand notice, and that he signed the same, the fact remains that that step was taken by him after the prescribed period was over. The

Tribunal was, therefore, right in holding that the assessment in this respect was time-barred. We, therefore, answer the question in the affirmative, i.e., against the Revenue and in favour of the assessee. No order as to costs".

19. Through his written submissions dated 07.08.2020, the ld. DR strongly stated that there should be no confusion in relation to the order dated 27.12.2019 in as much as it was a draft of proposed order of assessment. The ld. DR further stated that notice of demand mentions proposed\draft notice of demand and referring to the communication with the DCIT, Circle 3(1), Gurgaon, the ld. DR pointed out that even the Assessing Officer has mentioned that no entry has been made in the Demand and Collection Register and order was not uploaded on ITD.

20. Referring to the decision of the Hon'ble High Court of Gujarat in the case of Purshottam Das [supra], the ld. DR stated that the same has to be considered in the light of the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works Pvt Ltd 198 ITR 297 wherein the Hon'ble Supreme Court has held as under:

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. v. Union of India this Court cautioned:

It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a

question when the question did not even fall to be answered in that judgment."

21. We fail to persuade ourselves to agree with the submissions of the ld. DR. In our understanding of the law, there is no provision in the I.T Act which provides for proposed/draft notice of demand and secondly, whether the demand has been entered in Demand and Collection Register or the order uploaded in the ITD is and internal matter/procedure of the Revenue and cannot be taken into consideration to decide whether the demand notice issued alongwith order dated 27.12.2018 complete the proceedings.

22. In so far as the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works is concerned, the decision of the Hon'ble High Court of Gujarat has been in the context of whether notice of demand is an integral part of assessment or not and while deciding the issue, the Hon'ble High Court has considered the decision of the Hon'ble Supreme Court in the case of Kalyan Kumar Ray [supra] and, therefore, the decisions referred to hereinabove are in the same context in which the facts of the case in hand are considered.

23. In light of the aforesaid decision, we are of the considered opinion that the Assessing Officer has by-passed the relevant subsections i.e. sub-section (3) and (13) to section 144C of the Act mentioned elsewhere.

24. Whether by by-passing mandatory provisions of the Act can assessment survive? The answer has been given by the Hon'ble Supreme Court in the case of Dipak Babaria 3SCC 502 wherein the Hon'ble Supreme Court has held as under:

"If the law requires that a particular thing should be done in a particular manner, it must be done in that way and none other. State cannot ignore the policy intent and procedure contemplated by the statute.

25. In light of the above ratio laid down by the Hon'ble Supreme Court, we are of the considered opinion that by issuing the demand notice on 27.12.2018 itself the Assessing Officer has by passed all the mandatory sub-sections of section 144C of the Act.

26. The ld. DR has placed reliance on the decision of the Co-ordinate Bench in the case of Price Water House Company 117 Taxmann.com 276 in ITA No. 2298/KOL/2016. It is the say of the ld. DR that under similar circumstances, the Tribunal has upheld the assessment order. The ld. DR vehemently stated that by participating in subsequent proceedings, the assessee was well aware that the order dated 27.12.2018 is merely a draft assessment order and not a final assessment order. The ld. DR concluded by saying that the assessee cannot approbate and reprobate.

27. The question whether participation in subsequent proceedings would estop the assessee from challenging the validity of the order dated 27.12.2018 has been answered by the Hon'ble Supreme Court in the case of V Mr. T.P. Firm MUAR in 56 ITR 67 wherein the Hon'ble Supreme Court has laid down the ratio

> *"Approbate and Reprobate" is only species of estoppel. It applies only to conduct of parties as in the case of estoppel, it cannot operate against the provisions of a statute. IF particular income is taxable under the I.T. Act, it cannot be taxed on the basis of estoppel or any other equal document. Equity is out of placed in tax place. A particular income is either exigible under the Income tax under taxing statute or not. If it is not, the ITO Has no power to tax the said income."*

28. With our utmost respect to the co-ordinate bench [Kolkatta], we fail to persuade ourselves to follow the same as the said decision of the Tribunal has not considered the decision of the Hon'ble Supreme Court discussed hereinabove and the decision is per incurium.

29. The ld. DR has tried to distinguish the decisions relied upon by the ld. counsel for the assessee in his written submissions.

30. We have carefully perused the written submissions of the ld. DR. We are of the considered view that the decisions relied upon by us extracted hereinabove are directly related to the underlying facts in issue before us.

31. Another argument of the ld. DR that merely issue of notice of demand and penalty notice will not convert draft assessment order into final assessment order, does not hold any water, in as much as

the mandatory provisions of the Act have to be followed and the Assessing Officer does not get any leverage for bypassing the mandatory provisions of the Act.

32. We find that there are series of decisions of the Tribunal wherein in the set aside proceedings, if the Assessing Officer has not followed the mandatory steps mentioned in section 144C of the Act, assessment order has been treated as void. To name a few such decisions, Nikon India Pvt Ltd ITA Nos. 8752 & 8753/DE/2019. The principles laid down by the co-ordinate bench in this decision were approved by decisions by various High Courts like the Hon'ble High Court of Delhi in the case of Turner International Pvt Ltd 398 ITR 177 and JCB India Ltd WPC 3399/2016.

33. The ld. DR has also drawn strong support from the provisions of section 292B of the Act stating that the subsequent participation of the assessee would debar the assessee to raise this issue before the appellate authority. The answer to this has been given by the Hon'ble High Court of Delhi in the case of JCB India Ltd [supra]. The relevant findings read as under:

> *"14. The short question that arises for consideration is whether, after the remand proceedings, the AO could have, without issuing a draft assessment order under Section 144 C of the Act, straightway issued the final assessment order. 15. Mr Syali, learned Senior Counsel for the Assessee, referred to the decision of this Court dated 17th May 2017 passed in W.P. (C) No. 4260/2015 (Turner International India Pvt. Ltd. v. Deputy Commissioner of Income Tax, Circle 25(2), New Delhi) to urge that the AO could not have passed the final assessment order without complying with the mandatory requirement under Section 144C of the Act whereby first a draft order had to be issued in respect of which an objection can be filed by the Assessee before the DRP. The failure to do so, according to Mr. Syali, was not a mere irregularity. He further referred to a decision of the Gujarat High Court dated 31st July 2017 in Tax Appeal No. 542 of 2017 (Commissioner of Income Tax, Vadodara-2 v. C-Sam (India) Pvt. Ltd.) W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 7 of 12 16. In response, Mr. Sanjay Jain, learned Additional Solicitor General of India appearing for the Revenue, submitted that there was an*

efficacious alternative remedy available to the Petitioner to file appeals against the impugned final assessment orders passed by the AO. It is denied that it was mandatory on the part of the AO to pass a draft assessment order since this was a second round before the TPO pursuant to remand by the ITAT. Moreover, it was not as if the ITAT had set aside the entire assessment order of the AO. The setting aside was only in respect of the transfer pricing adjustment and that too with a specific direction to the AO for determining the arms length price "after considering fresh comparables." Since the assessment itself was not cancelled by the ITAT or completely set aside, it is the provisions of Section 153 (3) (ii) of the Act which would apply. Mr Jain submitted that the requirement of passing a draft assessment order under Section 144C was only in the first instance and not after the remand by the ITAT. 17. The Court is unable to agree with the submissions made on behalf of the Revenue by Mr. Jain. Section 144C (1) of the Act is unambiguous. It requires the AO to pass a draft assessment order after receipt of the report from the TPO. There is nothing in the wording of Section 144C (1) which would indicate that this requirement of passing a draft assessment order does not arise where the exercise had been 18 undertaken by the TPO on remand to it, of the said issue, by the ITAT. 18. It was then contended by Mr. Jain that the assessment order passed by the AO should not be declared to be invalid because of the failure to first W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 8 of 12 pass a draft assessment order under Section 144C of the Act. In this regard, reference is made to Section 292B of the Act. 19. As already noted, the final assessment order of the AO stood vitiated not on account of mere irregularity but since it was an incurable illegality. Section 292B of the Act would not protect such an order. This has been explained by this Court in its decision dated 17th July 2015 passed in ITA No. 275/2015 (Pr. Commissioner of Income Tax, Delhi-2, New Delhi v. Citi Financial Consumer Finance India Pvt. Ltd.) where it was held: "Section 292B of the Act cannot be read to confer jurisdiction on the AO where none exists. The said Section only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income,

assessment notices, summons or other proceedings, provided the same are in substance and in effect in conformity with the intent of purposes of the Act." 20. The Court further observed that Section 292B of the Act cannot save an order not passed in accordance with the provisions of the Act. As the Court explained, "the issue involved is not about a mistake in the said order but the power of the AO to pass the order." 21. In almost identical facts, in Turner 19 International (supra), this Court held in favour of the Assessee on the ground that it was mandatory for the AO to have passed a draft assessment order under Section 144C of the Act prior to issuing the final assessment order. The following passages from said decision are relevant for the present purposes: "11. The question whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of first passing draft assessment order in terms of Section 144C(1) W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 9 of 12 of the Act is no longer res intregra. There is a long series of decisions to which reference would be made presently. 12. In Zuari Cement Ltd. v. ACIT (decision dated 21st February, 2013 in WP(C) No.5557/2012), the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of the Act would result in rendering the final assessment order "without jurisdiction, null and void and unenforceable." In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013. 13. In Vijay Television (P) Ltd. v. Dispute Resolution Panel [2014] 369 ITR 113 (Mad.), a similar question arose. There, the Revenue sought to rectify a mistake by issuing a corrigendum after the final assessment order was passed. Consequently, not only the 20 final assessment order but also the corrigendum issued thereafter was challenged. Following the decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra) and a number of other decisions, the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel (supra) quashed the final order of the AO and the demand notice. Interestingly, even as regards the corrigendum issued, the Madras High Court held

that it was beyond the time permissible for issuance of such corrigendum and, therefore, it could not be sustained in law. 14. Recently, this Court in ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of India [2016] 388 ITR 383 (Del.), following the decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra), the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel, Chennai (supra) as well as the Bombay High Court in International Air Transport Association v. DCIT (2016) 290 CTR (Bom) 46, came to the same conclusion." W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 10 of 12 22. In the decision of the Gujarat High Court in C-Sam (India) (supra), the Court negated the plea that noncompliance with the terms of Section 144C of the Act is merely an 'irregularity'. The Gujarat High Court held that it was of 'great importance and mandatory'. The following passages of the said decision of Gujarat High Court are relevant for the present purposes: "6. These statutory provisions make it abundantly clear that the procedure laid 21 down under Section 144C of the Act is of great importance and is mandatory. Before the Assessing Officer can make variations in the returned income of an eligible assessee, as noted, sub-section (1) of Section 144C lays down the procedure to be followed notwithstanding anything to the contrary contained in the Act. This non-obstante clause thus gives an overriding effect to the procedure 'notwithstanding anything to the contrary contained in the Act'. Sub-section (5) of Section 144C empowers the DRP to issue directions to the Assessing Officer to enable him to complete the assessment. Sub-section (10) of Section 144C makes, such directions binding on the Assessing Officer. As per SubSection 144C, the Assessing Officer is required to pass the order of assessment in terms of such directions without any further hearing being granted to the assessee. 7. The procedure laid down under Section 144C of the Act is thus of great importance. When an Assessing Officer proposes to make variations to the returned income declared by an eligible assesses he has to first pass a draft order, provide a copy thereof to the assessee and only thereupon the assessee could exercise his valuable right to raise objections before the DRP on any of the proposed variations. In addition to giving such opportunity to an assessee, decision of the DRP is

made binding on the Assessing Officer. It is therefore not possible to uphold the Revenue's contention that such requirement is merely a procedural. The requirement is mandatory and gives substantive rights to the assessee to object to any additions before they are made and such objections have to be considered W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 11 of 12 not by the Assessing Officer but by the DRP. Interestingly, once the DRP gives directions under sub-section (5) of Section 144C, the Assessing Officer is expected to pass the order of assessment in terms of such directions without giving any further hearing to the assessee. Thus, at the level of the Assessing Officer, the directions of the DRP under subsection (5) of Section 144C would bind even the assessee. He may of course challenge the order of the Assessing Officer before the Tribunal and take up all contentions. Nevertheless at the stage of assessment, he has no remedy against the directions issued by the DRP under sub-section (5). All these provisions amply demonstrate that the legislature desired to give an important opportunity to an assessee who is likely to be subjected to upward revision of income on the basis of, transfer pricing mechanism. Such opportunity cannot be taken away by treating it as purely procedural in nature." 23. In the present case, just as in Turner International (supra), it is submitted that, at the most, failure to pass a draft assessment order under Section 144C of the Act is a curable defect and that the Court should now delegate the parties to a stage as it was when the TPO issued a fresh order after the remand by the ITAT. 24. This very argument of the Revenue has been negated by the Court in Turner International (supra) where it was observed in paras 15 and 16 as under: "15. Mr. Dileep Shivpuri, learned counsel for the Revenue sought to contend that the failure to adhere to the mandatory requirement of issuing a draft assessment order under Section 144C (1) of the Act would, at best, be a curable defect. According to him the matter must be restored to the AO to pass a draft assessment order and for the Petitioner, thereafter, to pursue the matter before the DRP. W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 12 of 12 16. The Court is unable to accept the above submission. The legal position as explained in the above decisions in unambiguous.

> *The failure by the AO to adhere to the mandatory requirement of Section 144C (1) of the Act and first pass a draft assessment order would result in invalidation of the final assessment order and the consequent demand notices and penalty proceedings."*
> *25. For all of the aforementioned reasons, the Court finds no difficulty in holding that the impugned final assessment orders dated 30th March 2016 passed by the AO for AYs 2006-07, 2007-08 and 2008 -09 are without jurisdiction on account of the failure, by the AO, to first pass a draft assessment order and thereafter, subject to the objections filed before the DRP and the orders of the DRP, to pass the final assessment order. The Court also sets aside the orders of the TPO dated 30th March 2016 issued pursuant to the remand by the ITAT."*
>
> *34. Considering the facts of the case in totality, in the light of the decisions discussed hereinabove, we have no hesitation to hold that the proceedings culminated on 27.12.2018 when the demand notice was issued and served upon the assessee along with penalty notice u/s 274 of the Act and, therefore, all the subsequent proceedings and orders become non est. The additional ground is, accordingly, allowed."*

8. The aforestated decision of the Co-ordinate Bench covers all the issues pertaining to the present appeal qua the additional ground. In the light of the decision of the Co-ordinate Bench (supra), we have no hesitation to hold that the proceedings culminated on 07.12.2018 when the demand notice was issued and served upon the assessee along with the penalty notice u/s 274 of the Act and therefore all the subsequent proceedings and orders become non est. The additional ground is accordingly allowed.

9. Since we have held that the order of the DRP and the final assessment order are non est, therefore, we do not find it necessary to dwell into the merits of the case.

10. In the result, appeal of the assessee is allowed.

The order is pronounced in the open court on 26.08.2020.

Sd/-	**Sd/- /-**
[KULDIP SINGH]	**[N.K. BILLAIYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 26th August, 2020

*Priti Yadav, Sr. PS**

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi