

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

WRIT PETITION NOS.32699, 33751, 34174, 34389, 34568, 34743,
34817, 35272, 35300, 35420, 35485, 35520 AND 32703 OF 2019
AND

WMP.NOS.389, 2789, 1928, 3552, 1898, 2048, 3553, 1929 & 2599 OF
2020 AND 33116, 34233, 34234, 34803, 34805, 35053, 35054, 35281,
35282, 35493, 35494, 35580, 35581, 36070, 36072, 36100, 36101,
36102, 36250, 36251, 36308, 36309, 36362, 36363 AND 33117 OF 2019

1. M/S.PFIZER HEALTHCARE INDIA PRIVATE LIMITED,
(FORMERLY KNOWN AS HOSPIRA HEALTHCARE
INDIA PRIVATE LIMITED)
REPRESENTED BY THE AUTHORIZED SIGNATORY,
BODHISATWA RAY, SRI NIVAS, NEW NO.86,
OLD NO.89, GN CHETTY ROAD, T.NAGAR,
CHENNAI 600 017.

... PETITIONER IN WP.NO.32699 OF 2019

1 SAINT GOBAIN INDIA PVT LTD.,
LEVEL 7 SUGAPI ACHI BUILDING RUKMINI
LAKSHMIPATHI ROAD, EGMORE, CHENNAI 600 008
REPRESENTED BY ITS COMPANY SECRETARY
MR.L.VENKATESWARAN.

... PETITIONER in WP.No.33751 of 2019

1 M/S.SIEMENS GAMESA RENEWABLE POWER PVT LTD.,
(FORMERLY KNOWN AS M/S GAMESA RENEWABLE POWER PVT.LTD.)
REPRESENTED BY THE FISCAL HEAD-S.RAMACHANDRAN,
334, THE FUTURA BLOCK -B, 8TH FLOOR,
RAJIV GANDHI SALAI, SHOLINGANALLUR,
CHENNAI-119.

... PETITIONER in WP.No.34174 of 2019

1 M/S.BNY MELLON TECHNOLOGY PRIVATE LIMITED
(FORMERLY KNOWN AS INAUTIX TECHNOLOGIES INDIA
PRIVATE LIMITED) REP.BY ITS MANAGING DIRECTOR
NITIN CHANDEL, NO.4, 10TH FLOOR, TIDEL PARK,
TARAMANI, CHENNAI-113.

... PETITIONER in WP No.34389 of 2019

1 KUBOTA AGRICULTURAL MACHINERY INDIA PRIVATE LIMITED
BLOCK NO.94, TOWER 1, 8TH FLOOR,
TVH BELICIAA TOWERS, MRC NAGAR,
CHENNAI - 600028
REP. BY ITS MANAGING DIRECTOR AKIRA KATO

... PETITIONER in WP No.34568 of 2019

1 M/S.FLEXTRONICS TECHNOLOGIES (INDIA) PRIVATE LIMITED
PLOT NO.3, PHASE II, SIPCOT INDUSTRIAL PARK
SANDAVELLURE VILLAGE, SRIPERUMBUDUR TALUK,
KANCHIPURAM DISTRICT, TAMIL NADU 602 106.
REP.BY ITS AUTHORISED SIGNATORY ASHOK SRIDHARAN

... PETITIONER in WP No.34743 of 2019

1 M/S.MANDO AUTOMOTIVE INDIAN PVT LTD.
S 1A AND S5 PILLAIPAKKAM POST
VENGADU VILLAGE KANCHEEPURAM DISTRICT 602 105
TAMILNADU, REPRESENTED BY ITS DIRECTOR
FINANCE SUDARARAJAN-J

... PETITIONER in WP No.34817 of 2019

1 TVS MOTOR COMPANY LTD.
29/8 JAYALAKSHMI ESTATES HADDOWS ROAD
CHENNAI 600 006 REPRESENTED BY ITS COMPANY
SECRETARY MR.K.S.SRINIVASAN

... PETITIONER in WP No.35272 of 2019

1 PERKINS INIDA PRIVATE LIMITED
7TH FLOOR INTERNATIONAL TECH PARK
CHENNAI TARAMANI ROAD TARAMANI
CHENNAI - 600113 PAN. AAGCP3353A REP. BY ITS
AUTHORIZED SIGNATORY K.KRISH KUMAR

... PETITIONER in WP No.35300 of 2019

1 M/S.VERIZON DATA SERVICES INDIA PVT.LTD.
NO.1 CITIUS-B BLOCK 8TH FLOOR
OLYMPIA INDUSTRIAL ESTATE GUINDY
CHENNAI -600 032 REPRESENTED BY ITS
AUTHORIZED SIGNATORY MR.RAMNATH SUBRAMANIAN

... PETITIONER in WP No.35420 of 2019

1 M/S BGR BOILERS PVT LTD
REP.BY AUTHORISED SIGNATORY R N S TOMAR
443 GUNA BUILDING ANNA SALAI TEYNAMPET
CHENNAI 600 018 TAMIL NADU.

... PETITIONER in WP No.35485 of 2019

1 ALLISON TRANSMISSION INDIA PVT LTD.
(ATIPL) A-21 SIPCOT INDUSTRIAL PARK
ORAGADAM SRIPERUMBUDUR TALUK
KANCHIPURAM - 602 105 TAMIL NADU
REP.BY ITS MANAGING DIRECTOR MR.RAJSINGH MOSES

... PETITIONER in WP No.35520 of 2019

1 M/S.PFIZER HEALTHCARE INDIA PVT LTD
(FORMERLY KNOWN AS HOSPIRA HEALTHCARE INDIA PRIVATE LTD.)
REP.BY THE AUTHORIZED SIGNATORY
MR.BODHISATWA RAY SRI NIVAS
NEW NO.86 OLD NO.89,
GN CHETTY ROAD, T NAGAR, CHENNAI-600 017.

... PETITIONER in WP No.32703 of 2019

Vs.

- 1.JOINT COMMISSIONER OF INCOME TAX,
ADDL/JCIT, TRANSFER PRICING OFFICER-2,
ROOM NO.505, 5TH FLOOR, TOWER-1,
BSNL BUILDING, 16, GREAMS ROAD,
CHENNAI - 600 006.
- 2.DEPUTY COMMISSIONER OF INCOME TAX,
CORPORATE CIRCLE - 5(2), 4TH FLOOR, WANAPARTHY BLOCK,
121, MAHATMA GANDHI ROAD,
NUNGAMBAKKAM, CHENNAI - 600 034.

... RESPONDENTS in WP.No.32699 of 2019

1 THE DEPUTY COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER CIRCLE 3(1)
TOWER 1 BSNL BUILDING 16 GREAMS ROAD
CHENNAI 600 006

2 THE DEPUTY COMMISSIONER OF INCOME TAX
LARGE TAX PAYER UNIT 2 121
NUNGAMBAKKAM HIGH ROAD
CHENNAI 600 034

... RESPONDENTS in WP No.33751 of 2019

1 THE ADDITIONAL COMMISSIONER OF INCOME TAX
ADDL/JCIT TRANSFER PRICING OFFICER
3 INCOME TAX OFFICE - BSNL TOWER
NO.16 GREAMS ROAD CHENNAI - 600 006

2 THE DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE -2(1) 121
MAHATMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI - 600 034

... RESPONDENTS in WP No.34174 of 2019

1 JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER - 2 (I/C)
ROOM NO.511, 5TH FLOOR TOWER - I BSNL
BUILDING NO.16 GREAMS ROAD, CHENNAI - 600006

2 DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1(2) 6TH FLOOR
WANAPARTHY BLOCK AAYAKAR BHAWAN
NUNGAMBAKKAM CHENNAI - 600034

... RESPONDENTS in WP No.34389 of 2019

1 THE ADDITIONAL COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER 3
TOWER 1 BSNL BUILDING 16 GREAMS ROAD
CHENNAI - 600006

2 THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE-4(2) 121
NUNGAMBAKKAM HIGH ROAD, CHENNAI - 600034

... RESPONDENTS in WP No.34568 of 2019

1 THE ADDITIONAL JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER -1 (TPO -1) ROOM NO.502
5TH FLOOR TOWER -I INCOME -TAX OFFICE
BSNL TOWER NO.16 GREAMS ROAD,
CHENNAI-600 006.

2 THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 2(1) ROOM NO.511
WANAPARTHY BLOCK - V FLOOR NO.121
MAHATMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI - 600 034.

... RESPONDENTS in WP No.34743 of 2019

1 THE ADDITIONAL COMMISSIONER OF INCOME TAX
ADDL/JCIT TPO3 ROOM NO.502, 5TH FLOOR,
TOWER I INCOME TAX OFFICE
BSNL TOWER NO.16 GREAMS ROAD
CHENNAI 600 006

2 THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 4(1) ROOM NO.430
MAIN BUILDING IV FLOOR CHENNAI
MAIN BUILDING NO. 121 MAHATMA GANDHI ROAD
NUNGAMBAKKAM CHENNAI - 600 084.

... RESPONDENTS in WP No.34817 of 2019

1 THE JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER CIRCLE -3(1)
TOWER -1 BSNL BUILDING 16 GREAMS
ROAD CHENNAI - 600 006

2 THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE -3(1) 121
NUNGAMBAKKAM HIGH ROAD
CHENNAI 600 034

... RESPONDENTS in WP No.35272 of 2019

1 JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER NO.2 ROOM
NO.511 5TH FLOOR BSNL BUILDING TOWER 1
NO.16 GREAMS ROAD CHENNAI - 600006

- 2 DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 5(2) ROOM NO.415
MAIN BUILDING - 4TH FLOOR CHENNAI MAIN
BUILDING NO. 121 MAHATMA GANDHI ROAD
NUNGAMBAKKAM CHENNAI-34

... RESPONDENTS in WP No.35300 of 2019

- 1 THE ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER-3 (TPO-3) ROOM NO.502
5TH FLOOR TOWER 1 INCOME TAX OFFICE
BSNL TOWER NO.16 GREAMS ROAD CHENNAI-600 006.

- 2 THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 3(2) ROOM NO.511
WANAPARTHY BLOCK - V FLOOR NO.121
MAHATMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI - 600 034

... RESPONDENTS in WP No.35420 of 2019

- 1 JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER-2 ROOM NO 511
5TH FLOOR TOWER -I BSNL BUILDING NO. 16
GREAMS ROAD CHENNAI 600 006

- 2 ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1(2) 6TH FLOOR
WANAPARTHY BLOCK AAYAKAR BHAWAN
NUNGAMBAKKAM CHENNAI 600 034

... RESPONDENTS in WP No.35485 of 2019

- 1 THE ADDITIONAL COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER 1 (1) TOWER -1
BSNL BUILDING 16 GREAMS ROAD
CHENNAI - 600 006

- 2 THE DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1(1) NO. 121
MAHATMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI - 600 034.

... RESPONDENTS in WP No.35520 of 2019

- 1 DEPUTY COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER -2 (2)
ROOM NO.505 5TH FLOOR TOWER -1 BSNL BUILDING
16 GREAMS ROAD CHENNAI 600 006.
- 2 DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE -5 (2) 4TH FLOOR
WANAPARTHY BLOCK 121 MAHATMA GANDHI ROAD
NUNGAMBAKKAM CHENNAI 600 034.

... RESPONDENTS in WP No.32703 of 2019

Prayer:

WP.No.32699 of 2019:-

PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of First Respondent in passing the impugned Order No.ITBA/TPO/F/92CA3/2019-20/1019692338(1) for the Assessment Year 2016-17 under Section 92CA(3) of the Income-tax Act, 1961 dated 01.11.2019, quash the same as illegal, arbitrary and devoid of merit.

WP No.33751 of 2019:-

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari Call for the records of the 1st Respondent and quash the impugned order passed under section 92CA of the Act dated 01.11.2019 in PAN AABCS4338M for the Assessment year 2016-17 in order No.ITBA/TPO/F/92CA3/2019-20/1019692179 (1) or pass such further or other orders as may deem fit and proper in the circumstances of this case.

WP No.34174 of 2019:-

Petition to issue a Writ of certiorari calling for the records on the file of First Respondent in passing the impugned Order No.ITBA/Transfer Pricing Officer/F/92CA3/2019-20/1019692325 (1) for the Assessment year 2016-17 under Section 92CA(3) of the Income-tax Act, 1961 dated 01.11.2019, quash the same as illegal, arbitrary and devoid of merit.

WP No.34389 of 2019:-

Petition to issue a Writ of certiorari Calling for the records on the file of 1st Respondent in the impugned order dated 01.11.2019 in PAN AAACI6177K bearing Order No.ITBA/TPO/F/92CA3/2019-20/1019692257(1) for the Assessment Year 2016-17 under section 92CA(3) of the Income Tax Act, 1961, quash the same as illegal, arbitrary and devoid of merit

WP No.34568 of 2019:-

Petition to issue a Writ of certiorari To call for the records of the 1st Respondent and quash the impugned order passed under Section 92CA of the Act dated 01.11.2019 in PAN.AADCK5472E for the Assessment Year 2016-17 in order No.ITBA/TPO/F/92CA3/2019-20/1019691995(1)

WP No.34743 of 2019:-

Petition to issue a Writ of certiorari Call for the records of the 1st respondent and quash the impugned order under section 92 CA of the Act bearing No.ITBA/TPO/F/92CA3/2019-20/1019692288 (1) dated 01/11/2019 for the Assessment year 2016-17 issued by the 1st respondent.

WP No.34817 of 2019:-

Petition to issue a Writ of certiorari Call for the records of the 1st Respondent and quash the impugned order under section 92CA of the Act bearing No.ITBA/TPO/F/92CA3/2019-20/1019691497 (1) dated 01.11.2019 for the Assessment year 2016-17

WP No.35272 of 2019:-

Petition to issue a Writ of certiorari to call for the records of the 1st respondent and quash the impugned order passed under section 92CA(3) of the Act Dated 01.11.2019 in PAN AAACS7032B for the Assessment year 2016-17 in order No.ITBA/TPO/F/92CA3/2019-20/1019668533 (1).

WP No.35300 of 2019:-

Petition to issue a Writ of certiorari Direction or order setting aside/quashing, the Impugned Order dated 01.11.2019

passed by Respondent No.1 bearing No.ITBA/TPO/F/92CA3/2019-20/1019688886(1) of the 1st respondent and all implications consequent thereto

WP No.35420 of 2019:-

Petition praying to issue a Writ of certiorari to call for the records of the 1st respondent and quash the impugned order under section 92CA of the Act bearing No.ITBA/TPO/F/92CA3/2019-20/1019659024(I), dated 01.11.2019 for the Assessment Year 2016-17

WP No.35485 of 2019:-

Petition to issue a Writ of certiorari calling for the records on the file of Second Respondent in the impugned order dated 16.12.2019 in PAN AADCB7238D bearing Order No.ITBA/AST/F/144C/2019-20/1022407628 (1) for the Assessment Year 2016-17 under section 144C of the Income tax Act, 1961, quash the same as illegal, arbitrary and devoid of merit insofar as it relates to assessing the adjustment made by the First Respondent in his order number ITBA/TPO/F/92CA3/2019-20/1019665476(1) dated 01.11.2019.

WP No.35520 of 2019:-

Petition to issue a Writ of certiorari to call for the records of the 1st Respondent and quash the impugned order passed under Section 92CA of the Act dated 01.11.2019 in PAN AAGCA4054P for the Assessment year 2016-17 in order No.ITBA/TPO/F/92CA3/2019-20/1019678061(1) and draft assessment order No.ITBA/AST/F/144C/2019-20/1022174670(1) dated 12.12.2019 passed under Section 143(3) r.w.s 144C.

WP No.32703 of 2019:-

Petition to issue a Writ of certiorari Calling for the records on the file of 1st respondent in passing the impugned order No.ITBA/TPO/F/92CA3/2019-20/1019692173(1) for the Assessment Year 2011 -12 under section 92CA(3) of the Income Tax Act, 1961 dated 01/11/2019, quash the same as illegal, arbitrary and devoid of merit.

W.P. Numbers	Petitioner	Respondents
32699 of 2019	Mr.Ajay Vohra, Senior Counsel for Mr.R.Sivaraman	Mrs.Hema Muralikrishnan, Senior Standing Counsel
33751 & 35272 of 2019	Mr.Vikram Vijayraghavan for Subbaraya Aiyar Padmanabhan and Ramamani	Mrs.Hema Muralikrishnan, Senior Standing Counsel
34174 of 2019	Mr.R.Sivaraman	Mrs.Hema Muralikrishnan, Senior Standing Counsel
34389 & 35485 of 2019	Mr.N.V.Balaji	Mrs.Hema Muralikrishnan, Senior Standing Counsel
34568 & 35520 of 2019	Mr.S.P.Chidambaram	Mrs.Hema Muralikrishnan, Senior Standing Counsel
34743 & 34817 of 2019	Mr.Sandeep Bagmar R.	Mrs.Hema Muralikrishnan, Senior Standing Counsel
35300 of 2019	Mr.P.S.Raman, Senior Counsel for Mr.Prahalad Bhat	Mr.A.P.Srinivas, Senior Standing Counsel
35420 of 2019	Ms.P.Jayalakshmi	Mrs.Hema Muralikrishnan, Senior Standing Counsel
32703 of 2019	Mr.R.Sivaraman	Mrs.Hema Muralikrishnan, Senior Standing Counsel

C O M M O N O R D E R

All Petitioners in this batch barring one (Petitioner in W.P.No.34568 of 2019) challenge orders passed under Section 92CA (3) of the Income Tax Act, 1961 (in short 'Act') primarily on the ground that the impugned orders are barred by limitation by one day. The alternate ground canvassed by some of the petitioners is that the impugned orders have been passed in violation of the principles of natural justice. There is no dispute in regard to the facts and only legal grounds are raised and canvassed.

2. The petitioners filed returns of income including income from transactions with associated entities abroad, thus necessitating a reference of issues arising under Chapter X to the Transfer Pricing Officer (TPO). The TPO has, after issuance of notices, passed orders dated 01.11.2019 that, according to the petitioners, is barred by limitation by one day. Hence these writ petitions.

3. The submissions of the petitioners represented by Mr.Vohra and Mr.P.S.Raman, learned senior counsels and Mr.Sandeep Bagmar, Mr.S.P.Chidambaram, Mr.Vijayaraghavan, Mr.N.V.Balaji, Ms.P.Jayalakshmi and Mr.R.Sivaraman, learned counsels are as follows:

4. The provisions of Section 92CA(3A) require that an order be passed by the TPO before 60 days prior to the last day on which the period of limitation referred to in Section 153 for making assessment, expires. Assessments are to be completed within the limitation set out in Section 153, that is, within 21 months from the end of the assessment year in which the income was first assessable, ie., within 21 months from 31.03.2017 or rather, no order of assessment for the aforesaid period shall be passed after 31.12.2018. The assessments are to encompass income from international transactions as well, and for this purpose, a reference is to be made to the TPO who will, after hearing the assessee pass a transfer pricing order, in terms of Section 92CA (3A) extracted below:

Reference to the Transfer Pricing Officer:-

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(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires:

Provided that in the circumstances referred to in clause (ii) or clause (x) of Explanation 1 to section 153, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty

days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly.

5. Thus, on a combined reading of Sections 92CA(3A) and 153 (1), impugned orders dated 01.11.2019 fall beyond limitation, as limitation under Section 153 expired on 31.12.2019, the period of 60 days prior thereto would run till the 1st of November, 2019 and 'any date prior thereto' would mean the 31st of October or before.

6. They also argue that the word 'may' used in Section 92CA (3A) is to be read as 'shall'. For this purpose, I am taken in detail through the scheme of assessment and the limits imposed therefor. Section 153 prescribes an outer time limit for the completion of assessment and uses the word 'shall'. Section 92CA(3A), that prescribes a limitation within a limitation, is also mandatory and imposes a strict rule of time upon the TPO. The two provisions are couched in opposing semantics - Section 153 imposes a prohibition and states that no order of assessment shall be made after the expiry of 21 months from the end of the year when the income is assessable and 92CA is a command to the TPO to pass an order of transfer pricing at any time before 60 days prior to the date on which the period of limitation referred to in Section 153 expires.

7. There is a sanctity attached to the period of 60 days as can be seen from the proviso to sub-section (3A) of Section 92CA which states that, if, for any reason the limitation available to a TPO for passing a transfer pricing order is less than 60 days, then the remaining period shall be extended to 60 days and the period of limitation would be reckoned accordingly.

8. Moreover, the second proviso after Section 153, specifically provides that where the period available to a TPO is extended to 60 days in line with the proviso to sub-section (3A) of Section 92CA and the period of limitation available to the Assessing Authority for passing an order of assessment/re-assessment/re-computation is less than 60 days, then such remaining period shall also stand extended to 60 days.

9. In addition, the provisions of the General Clauses Act are pressed into service, to indicate situations where different words have been used in the prescription for limitation, such as 'before' and 'upto'. Reference is made to Maxwell's Interpretation of Laws as well as Halsbury's Laws of England, in support of the submission that even though the word used in

Section 92CA(3) is 'may' it should be read as 'shall' bearing in mind the context in which it has been used.

10. My attention is also drawn to the Central Action Plan issued by the Central Board of Direct Taxes for the guidance of officers in the Income tax department wherein, in Chapter VII thereof, dealing with International Taxation and Transfer Pricing, the Board has directed that, to quote from the document at page 35 thereof, 'Completion of transfer pricing audits getting time barred on 31.10.2019' be completed by that date.

11. Reliance is placed by the petitioner on the following judgments of the Supreme Court/decisions of the High Courts.

- i) State of Uttar Pradesh vs. Jogendra Singh (AIR 1963 SC 1618)
- ii) Superintendent and Remembrancer of Legal Affairs to Government of West Bengal vs. Abani Maity (1979 4 SCC 85)
- iii) Mohan Singh & Ors. vs. International Airport Authority of India & Ors. (1997 9 SCC 132)
- iv) R.Rudraiah & Anr. vs. State of Karnataka & Ors. (1998 3 SCC 23)
- v) D.K.Basu vs. State of West Bengal and others (2015 8 SCC 744)
- vi) Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others (1998 8 SCC)
- vii) Sahara Hospitality Ltd. and Another vs. Commissioner of Income-Tax and Others (352 ITR 38)
- viii) Chamber of Tax Consultants v. Central Board of Direct Taxes, New Delhi ((2019) 104 taxmann.com 397)
- ix) Sharbati Devi Jhalani vs. CWT (159 ITR 549 (Del))
- x) Surendra Kumar Jain vs. Pr. CIT (408 ITR 328 (Del))
- xi) Moser Baer India Ltd. and others vs. Additional Commissioner of Income-Tax and Another (2009 316 ITR 1 (Delhi))
- xii) M.K.Srikanta Setty vs. CIT (160 ITR 517 (Karn.))

12. By way of reply, batting solo for the Department, Ms.Hema Muralikrishnan, learned Senior Standing Counsel argues that the interpretation given by the petitioners to the time scheme under Section 92CA(3A) is incorrect. The proper reading of the timeline is, to quote the revenue:

The words used in the above section are 60 days prior to the date on which the period of limitation expires. The date on which the period of limitation expires is 00.00.00 am of 01.01.2020 and 60 days

prior to 01.01.2020 is 02.11.2019 (31 days of Dec and +29 days of Nov). Therefore, the date "before 60 days" would be a date before 02.11.2019. 01.11.2019 being a date before 02.11.2019, the impugned order passed on 01.11.2019 is within time and not barred by limitation.

(emphasis supplied in the counter)

13. According to her, limitation to pass an order of assessment runs till 12 a m of 01.01.2020. The period of 60 days would have to be computed including the 31st of December and ending on the 2nd of November, 2019. The passing of the impugned orders on the 1st of November is thus, perfectly in order.

14. Alternatively, the time frame under Section 92CA(3A) is only directory, as the assessment at that point of time is only a work-in-progress. She points out that a transfer pricing audit would only be made in relation to those transactions where Arms Length Price (ALP) is to be determined and other issues arising from the return of income, both domestic and international, would be processed parallelly/simultaneously. Thus, it is not as though the Assessing Officer has to await completion of transfer pricing audit to complete the proceedings for assessment and pass an order of assessment. The period of sixty days, is, according to her, merely a guide to ensure that the transfer pricing audit is completed, roughly, within the period of sixty days and forwarded to the Assessing Officer for integration with, and completion of assessment within the overall time limit prescribed in Section 153.

15. She points out that the General Clauses Act relied upon by the petitioners states that the proper interpretation of the word 'to' means that the date has to stand included. Thus, the reference to 60 days prior to the date on which the period of limitation referred to in section 153, expires, is a reference to the 1st of January 2020 and not 31st of December 2019. She points out that the interim orders passed by this Court permitted the Assessing Authority to continue with proceedings and pass orders of assessment, retaining the same in sealed covers. This has been done in all cases barring one, W.P.No.34568 of 2019, where the order of stay passed by this Court was not complied with and a final order of assessment come to be passed 14.01.2020. The prayer in this Writ Petition has been amended to challenge the final order of assessment in the light of the consent expressed by the learned Senior Standing Counsel for the Revenue.

16. Furthermore, the Writ Petitions are not maintainable as objections may well be filed as against draft orders of assessment before the Dispute Resolution Panel (DRP) and the provisions of Section 144C(8) are wide, entitling the DRP to confirm, reduce or enhance the variations made.

17. In reply, Mr.Vohra points out that the determination of ALP has ramifications on other aspects of taxability, such as the existence of a permanent establishment and the grant of tax credit. While, admittedly, proceedings for regular assessment and for transfer pricing do go on simultaneously, sixty days is necessary to complete adjudication of those issues where the determination of ALP assumes importance and the ALP determined has a hearing upon other issues in assessment. The observations of the TPO in the context of the transfer pricing audit will also have to be taken into account by the officer in adjudicating upon issues in some situations. It is for this reason that Legislature has, in its wisdom, specifically set apart a period of 60 days to ensure that sufficient time is available with the Assessing Officer to complete the process of assessment, holistically.

18. Some of the petitioners (in W.P.Nos.32699, 35300 and 34174 of 2019) have also raised the issue of violation of the principles of natural justice contending that notices were issued by the TPOs towards the close of limitation (whether 31.10.2019 or 01.11.2019) and time was therefore insufficient for the petitioners to make their submissions before the TPO.

19. The revenue relies on the amendment to Section 92CA(4) which requires the Assessing Officer to compute total income of an assessee after receipt of the transfer pricing order. Prior to 01.06.2007, it was mandatory for the Assessing Authority to accept the ALP determined by the TPO and the phrase used in the provision was 'having regard to'. Post amendment, the provision made it compulsory for the Assessing Authority to adopt the ALP as determined by the TPO and the phrase 'having regard to' was replaced by the phrase 'in conformity with'. Thus, according to the revenue, the AO hardly need apply his mind with respect to the ALP determined and the prescription of 60 days is merely for internal convenience of the different officers to facilitate step by step completion of assessment.

20. Much has been stated about the use of the words in the computation itself, such as 'may', 'shall', the absence of reference to 'month' as it may have led to an ambiguity of

whether the period should be reckoned as 30 or 31 days and the absence of the phrase 'no order shall be made' as used in Section 153. This, according to the revenue, leads to the conclusion that there is nothing sacrosanct about the period of 60 days which must be construed as flexible.

21. On the question of alternate remedy, I see no reason to relegate the petitioners to the Assessing Authority for completion of draft assessment that may be challenged before the DRP. Limitation, which is the issue raised in these writ petitions, is a mixed question of law and facts, but there are no disputes on factual aspects in the present case. The writ petitions are thus, held to be maintainable.

22. Limitation has been prescribed for each stage/process in an assessment, commencing with the filing of a return, transfer pricing proceedings under Section 92, filing of objections to draft assessment order in terms of Section 144C(2), passing of final order of assessment after expiry of the period for filing of objections in terms of Section 144C(4), issuance of directions by the DRP in terms of Section 144C(12) and passing of final assessment order after receipt of directions from the DRP in terms of Section 144C(13). An assessment involving issues of transfer pricing is thus measured by limitation at every step.

23. On the question of interpretation of the language employed in the provisions, the following judgements of the Supreme Court settle the position that one should not proceed blindly on the basis of the words/phrases employed in Statute, whether 'may', 'shall', 'no order shall be passed' or 'within' and the scheme of assessment in entirety as well as the intention of Legislature qua that scheme of assessment must be taken into account.

24. In Superintendent and Remembrancer of Legal Affairs to Government of West Bengal vs. Abani Maity (1979 4 SCC 85), the Bench states thus:

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17. But a statute is not to be interpreted merely from the lexicographer's angle. The court must give effect to the will and inbuilt policy of the Legislature as discernible from the object and scheme of the enactment and the language employed therein.

18. Exposition ex visceribus actus is a long recognised rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation. For instance, the use of the word "may" would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, "of an ineffectual angel beating its wings in a luminous void in vain". If the choice is between two interpretations", said Viscount Simon L.C. in *Nokes v. Doncaster Amalgamated Collieries, Ltd*,

the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

19. The provisions of Sections 63 and 64 of the Act are to be interpreted in the light of this principle. The language and scheme of the Excise Act, taken as a whole, show that the purpose of this legislation is not only to raise revenue but also to control and restrict the import, export, transport, manufacture and sale of intoxicants. Free and unrestricted use of intoxicants and illicit trade in contraband intoxicants not only means a loss of revenue to the public exchequer but also has a harmful effect on public health and morals. Moreover, illicit trade and smuggling of intoxicants is often committed in an organised and clandestine manner, and is difficult to detect.

20. We have, therefore, to adopt that construction of the expressions "shall be liable to confiscation" used in Section 3(2) and "may" in sub-section (1) of Section 64, which will preserve the efficacy of the provisions as an instrument for combating these anti-social activities, and reject the other which will render them ineffective.

21. Thus considered, it seems clear that the expressions "shall be liable to confiscation" and "may" in the aforesaid provisions were intended to have a compulsive force.

25. In *Mohan Singh & Ors. vs. International Airport Authority of India & Ors.* (1997 9 SCC 132), the Bench, considering the identical question as before me now, states:

17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall" or "may" depends on conferment of power. In the present context, "may" does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In "*Craies on Statute Law*" (7th Edn.), it is stated that the Court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall" is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under Consideration. As stated earlier, the question

as to whether the statute is mandatory or directory depends upon the language in which the intent is couched. The meaning and purpose the Act seeks to achieve. In "Sutherland Statutory Construction" (3rd Edn.) Volume 1 at page 81 in paragraph 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, then variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation. In "Crawford on the Construction of Statutes" at page 516, it is stated that:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other"

26. In *R. Rudraiah & Anr. vs. State of Karnataka & Ors.* (1998 3 SCC 23), a Division Bench of the Supreme Court states:

13. The point is whether the language in Section 48-A of the Land Reforms Act, 1961 fixing a period of limitation is clear and unambiguous. If the period is 6 months from the date of commencement of section 1 of the KLR Amendment Act of 1978 (Act 1/1979), and if the date of commencement of that section is not in dispute and the six month period for filing application is to count from 1.1.79 and it expired on 30.6.1979, can it be said that the language of section 48-A is ambiguous and is to be liberally construed? Can it be said that if 30.6.79 is the last day for filing of applications by tenant then section 48-A must be treated as harsh and unjust to tenants and should be interpreted differently?

17. It is true there is a principle of interpretation of statutes that the plain or grammatical construction which leads to injustice or absurdity is to be avoided (See Venkatarama Iyer, J in Tirath Singh vs. Bachiter Singh (AIR 1955 SC 830 at 855). But that principle can be applied only if "the language admits of an interpretation which would avoid it". Shamrao V. Parulekar v. District Magistrate (AIR at 327). In our view Section 48-A, as amended, has fixed a specific date for the making of an application by a simple rule of arithmetic, and there is therefore no scope for implying any 'ambiguity' at all. Further

"the fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide".

(Sir Dinshaw Mulla in Nagendranath Dev vs. Sureshchandra Dev [ILR 60 Cal 1 (PC)]).

27. In M.K.Srikanta Setty vs. CIT (160 ITR 517 (Karn.)), the Bench was considering the provisions of Section 3 of the Voluntary Disclosure of Income and Wealth Act, 1976 (Central Act 8 of 1976) and states in that context, as follows:

7. Section 3 of the Act provides for making a declaration in accordance with the provisions of section 4 of the Act before January 1, 1976, or on or before December 31, 1975. The time specified in section 3 of the Act for making a declaration is an absolute period which cannot be extended or condoned by any one under any circumstance.

8. In the context, the words "make" and "made" occurring in sections 3 and 4 of the Act mean that a declaration under the Act should be filed or presented on or before December 31, 1975, and not beyond that date.

10. In Nagendra Nath Dey v. Suresh Chandra Dey, AIR 1932 PC 165, the Judicial Committee of the Privy Council stated the rule of construction to be followed in interpreting articles of the Act in these words (at p. 167) :

"... The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But, in construing such provisions, equitable considerations are out of place and the strict grammatical meaning of the words is, their Lordships think, the only safe guide."

11. In more than one case, our Supreme Court has restated these principles. On these principles that govern, this court is bound to place a strict construction on the period of limitation stipulated by section 3 of the Act. Any hardship to be caused is totally irrelevant and must be ignored by the court.

28. The Supreme Court in D.K.Basu vs. State of West Bengal and others (2015 8 SCC 744) was interpreting the provisions of Section 21 of the Protection of Human Rights Act, 1993 and in that context states thus:

A plain reading of the above would show that Parliament has used the word "may" in sub-section (1) of Section 21 while providing for the setting up of a State Human Rights Commission. In contrast Parliament has used the word "shall" in Section 3(1) while providing for constitution of a National Commission. The argument on behalf of the defaulting States, therefore, was that the use of two different expressions which dealing with the subject of analogous nature is a clear indication that while a National Human Rights Commission is mandatory a State Commission is not. That argument is no doubt attractive, but does not stand close scrutiny. The use of the word "may" is not by itself determinative of the true nature of the power or the obligation conferred or created under a provision. The legal position on the subject is fairly well settled by a long line of decisions of this Court. The stated position is that the use of the word "may" does not always mean that the authority upon which the power is vested may or may not exercise that power. Whether or not the word "may" should be construed as mandatory and equivalent to the word "shall" would depend upon the object and the purpose of the enactment under which the said power is conferred as also related provisions made in the enactment. The word "may" has been often read as "shall" or "must" when there is something in the nature of the thing to

be done which must compel such a reading. In other words, the conferment of the power upon the authority may having regard to the context in which such power has been conferred and the purpose of its conferment as also the circumstances in which it is meant to be exercised carry with such power an obligation which compels its exercise.

12. The locus classicus on the subject is found in *Julius v. Bishop of Oxford* where Justice Cairns, L.C. observed: (AC pp. 222-23)

"... The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

Lord Blackburn in the same case observed: (AC p.241)

"I do not think the words 'it shall be lawful' are in themselves ambiguous at all. They are apt words to express that a power is given; and as, prima facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf."

13. A long line of decisions of this Court starting with *Sardar Govindrao v. State of M.P.* have followed the above line of reasoning and authoritatively held that the use of the words "may" or "shall" by themselves does not necessarily suggest that one is

directory and the other mandatory, but, the context in which the said expressions have been used as also the scheme and the purpose underlying the legislation will determine whether the legislative intent really was to simply confer the power or such conferment was accompanied by the duty to exercise the same.

14. In *Official Liquidator v. Dharti Dhan (P) Ltd.* this Court summed up the legal position thus: (SCC p. 171, paras 7-8)

"7. In fact, it is quite accurate to say that the word 'may' by itself, acquires the meaning of 'must' or 'shall' sometimes. This word, however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness.

8. Thus, the question to be determined in such cases always is whether the power conferred by the use of the word 'may' has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word 'may' indicates that annexes any obligation to its exercise but the legal and factual context of it."

15. So also, this Court in *N.D. Jayal v. Union of India* interpreted the provisions of the Environment (Protection) Act, 1986 to mean that the power conferred under the Act was not a power simpliciter, but, was a power coupled with duty. Unless the Act was so interpreted, sustainable development and protection of life under Article 21 was not possible, observed the Court. In *Mansukhlal Vihaldas Chauhan v. State of Gujarat* this Court held that the scheme of the statute is determinative of the nature of duty or power conferred upon the authority while determining whether such power is obligatory, mandatory or directory and that even if that duty is not set out clearly and specifically in the statute, it may be implied as correlative to a right. Numerous other pronouncements of this Court have similarly addressed and answered the issue.

16. It is unnecessary to refer to all those decisions for we remain content with reference to the decision of this Court in *Bachahan Devi v. Nagar Nigam, Gorakhpur* in which the position was succinctly summarised as under: (SCC pp. 383-84, paras 18-21)

"18. It is well settled that the use of the word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force. As a general rule, the word 'may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes

a duty. Cases, however, are not wanting where the words 'may', 'shall' and 'must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances.

19. '17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall" or "may" depends on conferment of power. [Depending upon the] context, "may" does not always mean may. May is a must for enabling compliance with provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes [his] duty to exercise [that power]. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.'

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretionary and 'shall' is obligatory, the connotation is not inelastic and inviolate. Where to interpret the word 'may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall'.

21. The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of the words 'may' and 'shall' is not decisive of its discretion or mandates. The use

of the words 'may' and 'shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed."

The above decision also dispels the impression that if Parliament has used the words "may" and "shall" at the places in the same provisions, it means that the intention was to make a distinction inasmuch as one was intended to be discretionary while the other mandatory. This is obvious from the following passage where this Court declared that even when the two words are used in the same provision the Court's power to discover the true intention of the legislature remains unaffected: (Bachahan Devi case, SCC p. 384, para 22)

"22. '9. ... Obviously where the legislature uses two words "may" and "shall" in two different parts of the same provision prima facie it would appear that the legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive. The power of court to find out whether the provision is directory or mandatory remains unimpaired."

29. The provisions of Section 144C prescribe mandatory time limits both pre and post the stage of passing of a transfer pricing order. Assessments involving transfer pricing issues are different and distinct from regular assessments and the intention of Legislature is to fast track such assessments. Bearing in mind the specialized nature of such assessments, a separate set of Officers attend to the framing of assessments and the DRP has been constituted for redressal of disputes involving TP issues, in a timely fashion. In this scheme of things, I am unable to accept the submission that the period of 60 days stipulated for passing of an order of transfer pricing, is only directory or a rough and ready guideline. This argument is rejected.

30. Now, coming to the question of how the 60 day period is to be computed, the critical question would be whether the period of 60 days would be computed including the 31st of December or excluding it. Section 153 states that no order of assessment shall be made at any time after the expiry of 21 months from the end of the assessment year in which the income

was first assessable. The submission of the revenue is to the effect that limitation expires only on 12 a m of 01.01.2020. However, this would mean that an order of assessment can be passed at 12 a m on 01.01.2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31.12.2019. The period of 21 months therefore, expires on 31.12.2019 that must stand excluded since Section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to Section 153 expires'. Excluding 31.12.2019, the period of 60 days would expire on 01.11.2019 and the transfer pricing orders thus ought to have been passed on 31.10.2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31.10.2019. The impugned orders are thus, held to be barred by limitation.

31. In the following cases, final orders of assessment have been passed on 28.02.2020 stating that the same shall be subject to the outcome of the writ petitions pending before the Madras High Court.

Writ Petition No.	Name of Assessese
34743/2019	M/s.Flextronics Technologies (India) Pvt Ltd
34817/2019	M/s.Mando Automotive India Pvt Ltd
34389/2019	M/s.BNY Mellon Technology Pvt Ltd
32699/2019	M/s.Pfizer Health Care India Pvt Ltd
32703/2019	M/s.Pfizer Health Care India Pvt Ltd
35300/2019	M/s.Perkins India Pvt Ltd
35520/2019	M/s.Allison Transmission India Pvt Ltd
34174/2019	M/s.Siemens Gamesa Renewable Power Pvt Ltd
35485/2019	M/s.BGR Boilers Pvt. Ltd..
33751/2019	M/s.Saint Gobain India Pvt. Ltd.,

32. In WP.35420 of 2019 filed by Verizon Data Services India Pvt. Ltd., an appeal is stated to have been filed by the petitioner before the Dispute Resolution Panel challenging the

draft assessment order and in WP.35272 of 2019 filed by TVS Motor Company Limited, the petitioner is stated to have requested the assessing officer to pass a final order in order to enable it to file a statutory appeal and a final order of assessment is stated to have been passed on 30.01.2020. These petitioners will pursue the statutory remedies as opted by them and these writ petitions are closed. Barring these, the writ petitions are allowed and impugned orders quashed. Connected Miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. JOINT COMMISSIONER OF INCOME TAX,
ADDL/JCIT, TRANSFER PRICING OFFICER-2,
ROOM NO.505, 5TH FLOOR, TOWER-1,
BSNL BUILDING, 16, GREAMS ROAD,
CHENNAI - 600 006.
2. DEPUTY COMMISSIONER OF INCOME TAX,
CORPORATE CIRCLE - 5(2),
4TH FLOOR, WANAPARTHY BLOCK,
121, MAHATMA GANDHI ROAD,
NUNGAMBAKKAM, CHENNAI - 600 034.
3. THE DEPUTY COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER CIRCLE 3(1)
TOWER 1 BSNL BUILDING 16 GREAMS ROAD
CHENNAI 600 006
4. THE DEPUTY COMMISSIONER OF INCOME TAX
LARGE TAX PAYER UNIT 2 121
NUNGAMBAKKAM HIGH ROAD
CHENNAI 600 034
5. THE ADDITIONAL COMMISSIONER OF INCOME TAX
ADDL/JCIT TRANSFER PRICING OFFICER
3 INCOME TAX OFFICE - BSNL TOWER NO.16
GREAMS ROAD CHENNAI - 600 006

6. JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER - 2 (I/C)
ROOM NO.511, 5TH FLOOR TOWER - I BSNL
BUILDING NO.16 GREAMS ROAD,
CHENNAI - 600006
7. DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1(2) 6TH FLOOR
WANAPARTHY BLOCK AAYAKAR BHAWAN
NUNGAMBAKKAM CHENNAI - 600034
8. THE ADDITIONAL COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER 3
TOWER 1 BSNL BUILDING 16 GREAMS ROAD
CHENNAI - 600006
9. THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE-4(2) 121
NUNGAMBAKKAM HIGH ROAD
CHENNAI - 600034
10. THE ADDITIONAL JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER -1 (TPO -1) ROOM NO.502
5TH FLOOR TOWER -I INCOME-TAX OFFICE,
BSNL TOWER NO.16, GREAMS ROAD,
CHENNAI-600 006.
11. THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 2(1) ROOM NO.511
WANAPARTHY BLOCK - V FLOOR NO.121
MAHATMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI - 600 034.
12. THE ADDITIONAL COMMISSIONER OF INCOME TAX
ADDL/JCIT TPO3 ROOM NO.205, 5TH FLOOR,
TOWER I INCOME TAX OFFICE
BSNL TOWER NO.16 GREAMS ROAD
CHENNAI 600 006
13. THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 4(1) ROOM NO.430
MAIN BUILDING IV FLOOR CHENNAI
MAIN BUILDING NO. 121 MAHATMA GANDHI ROAD
NUNGAMBAKKAM,
CHENNAI - 600 034.

14. THE JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER CIRCLE -3(1)
TOWER -1 BSNL BUILDING 16 GREAMS
ROAD CHENNAI - 600 006
15. THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE -3(1) 121
NUNGAMBAKKAM HIGH ROAD
CHENNAI 600 034
16. JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER NO.2
ROOM NO.511, 5TH FLOOR BSNL BUILDING TOWER 1
NO.16, GREAMS ROAD
CHENNAI - 600006
17. DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 5(2) ROOM NO.415
MAIN BUILDING - 4TH FLOOR CHENNAI MAIN
BUILDING NO. 121 MAHATAMA GANDHI ROAD
NUNGAMBAKKAM CHENNAI-34
18. THE ADDITIONAL/JOINT COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER-3 (TPO-3)
ROOM NO.502, 5TH FLOOR TOWER 1
INCOME TAX OFFICE, BSNL TOWER NO.16,
GREAMS ROAD, CHENNAI-600 006.
19. THE DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1(1) NO. 121
MAHATMA GANDHI ROAD
NUNGAMBAKKAM
CHENNAI - 600 034.
20. THE DEPUTY COMMISSIONER OF INCOME TAX
TRANSFER PRICING OFFICER -2 (2)
ROOM NO.505 5TH FLOOR TOWER -1
BSNL BUILDING 16 GREAMS ROAD
CHENNAI 600 006.

+2cc to Mr.N.V.Balaji, Advocate in Sr.No.29414 & 29415

+2cc to Mr.Subharaya Aiyar, Advocate in Sr.No.29194 & 29193

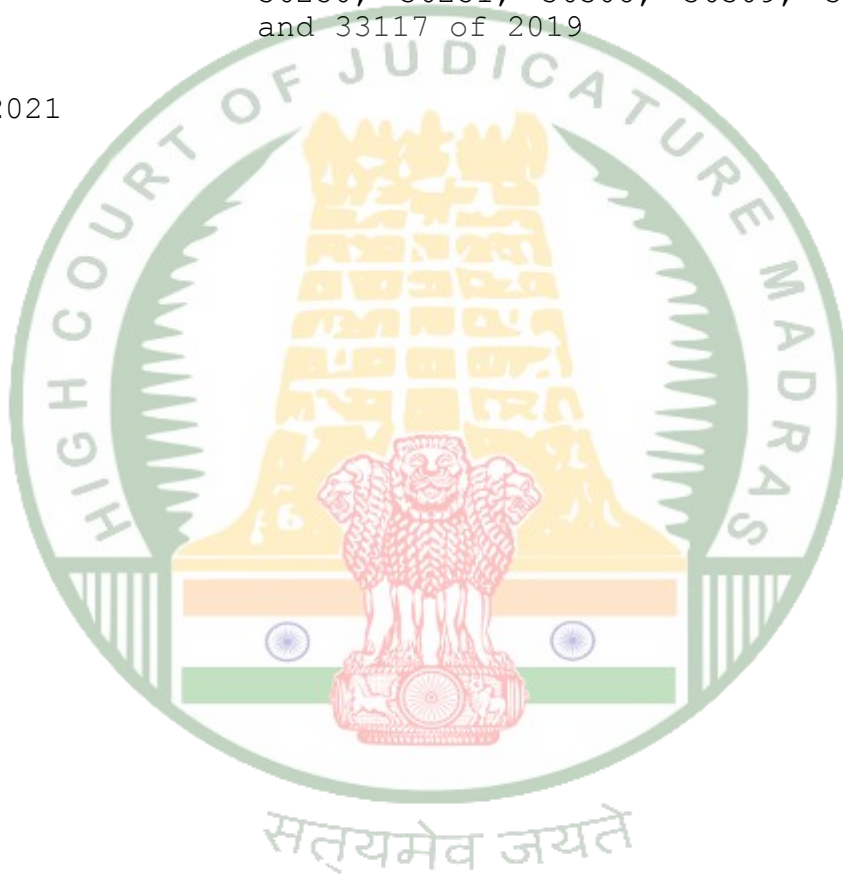
+2cc to Mr.R.Sandeep Bagmar, Advocate in Sr.No.29159 & 29160

+12cc to Mrs.Hema Muralikrishnan, Sr.St.Counsel, in Sr.No.29212

+lcc to Mr.Prahalad Bhutt, Advocate in Sr.No.29484

Writ Petition Nos.32699, 33751, 34174, 34389, 34568, 34743, 34817, 35272, 35300, 35420, 35485, 35520 and 32703 of 2019 and WMP.Nos.389, 2789, 1928, 3552, 1898, 2048, 3553, 1929 & 2599 of 2020 and 33116, 34233, 34234, 34803, 34805, 35053, 35054, 35281, 35282, 35493, 35494, 35580, 35581, 36070, 36072, 36100, 36101, 36102, 36250, 36251, 36308, 36309, 36362, 36363 and 33117 of 2019

MP (CO)
CS/03/03/2021



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