IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2437/2021

Renaissance Services BV]
C/o Marriott Hotels India]
Private Limited, 303 A, 304,]
Fulcrum, B Wing, Hiranandani]
Business Park, Sahar road,]
Andheri(E), Mumbai-400 099.]
PAN: AAECR4995E]…. **Petitioner.**

Vs.

Dy. Commissioner of Income Tax-]
International Tax Circle-4(1)(1)]
Mumbai having an address at 17th]
floor,Air India Building, Nariman]
Point, Mumbai-400 021.]

2. Union of India]
Through the Secretary,]
Ministry of Finance,]
Government of India,]
North Block,]
New Delhi -110 001] ….. **Respondents.**

Mr. J. D. Mistri, Senior Advocate a/w Advocate Paras Savla and Advocate Pratik Poddar for petitioner.

Mr. Suresh Kumar, Advocate for Respondents.

CORAM : K.R. SHRIRAM &
N.R.BORKAR, JJ.

DATE : 21st APRIL 2022.

ORAL JUDGMENT (PER K.R. SHRIRAM, J.) :

1. Petitioner is a Company and tax resident of the Netherland. Petitioner is impugning in this petition an order dated 27.09.2021 passed under Section 143(3) r/w Section 144-C(3) of the Income Tax Act, 1961 (hereinafter to be referred to as the 'said Act') and consequent penalty notice on the ground that assessment order was passed beyond the period of limitation provided u/s 144-C of the said Act.

2. Petitioner filed its original return of income for the relevant Assessment Year 2018-2019 on 29.10.2018 declaring total income of 19,96,290/-. Subsequently, return was revised to claim correct tax deducted at source, total income being the same. Return of income was picked up for scrutiny and notice dated 22.09.20219 u/s 143(2) of the said Act was issued to petitioner. Subsequent notices were also issued and petitioner responded to those notices. Respondent no.1 passed draft assessment order dated 19.4.2021 u/s 143(3) r/w Section 144-C of the said Act proposing to make addition amounting to Rs.38,97,58,539/- (hereinafter to be referred as 'draft assessment order').

3. This draft assessment order came to be passed as per the provisions

of Sub-section 1 of Section 144-C of the said Act with variations proposed since the petitioner was eligible assessee as per provisions of Section 144-C(15)(b) of the said Act.

4. As per provisions of Sub-section 2 of Section 144-C of the said Act eligible assessee has a right to file objections to draft assessment order or convey his acceptance against proposed variations in draft assessment order within 30 days from the date of receipt of draft assessment order. If assessee conveys his acceptance to the draft assessment order or does not file objections with Dispute Resolution Panel (hereinafter to be referred to as 'DRP') within time limit prescribed in Section 144-C(2) of the said Act, then, as per Sub-section 4 of Section 144-C of the said Act, the Assessing Officer has to pass final assessment order on the basis of the draft order within 1 month from the end of the month in which acceptance is received or period of filing of objections under Sub-section 2 of Section 144-C of the said Act expires.

5. By letter dated 15.5.2021, forwarded to respondent no.1 by email on 17.5.2021, petitioner informed respondent no.1 that it would not be opting for DRP route and instead would pursue normal appellate channel, i.e., file

an appeal with Commissioner of Income Tax (Appeals) against final assessment order. Petitioner, of course, also noted its objections to the additions proposed. In short, petitioner informed respondent no.1 to go ahead and pass final assessment order as per proposed draft without prejudice to petitioner's right to raise all objections before Commissioner of Income Tax(Appeals). Receipt of this communication is admitted by respondent no.1.

6. Therefore, it is petitioner's case that as per provisions of sub-section 4 of Section 144-C of said Act, respondent no.1 ought to have passed final assessment order u/s 143(3) r/w Section 144-C(3) of the said Act, within one month, from the end of the month in which acceptance of variations is received or period to file objections expires which, in the present case was 30.06.2021. According to the petitioner since the order impugned in this petition has been passed only on 27.9.2021, order is non-est, bad in law and requires to be quashed and set aside since it is passed beyond the period of limitation prescribed.

7. It is respondent's case that order passed is within limitation because;

a) e-mail dated 17.5.2021 was not communicated through eproceeding functionality on ITBA system

b) Pursuant to Circular no.8/2021 dated 30.4.2021, time limit to file objections by the tax payer to DRP u/s 144-C of the said Act was extended to be filed within time provided under that Section or by 31.5.2021 whichever is later.

c) As per notification no.74/S.O.2580(e) dated 25.6.2021 time limit for completion for assessment which were getting time barred on 30.6.2021 was extended to 30.9.2021 and the same has also been clarified by Press Release dated 20.6.2021 issued by CBDT by which time limit for passing assessment order was further extended to 30.9.2021.

8. Therefore, questions which arise that require answer from us are :

a) Whether the Circular and Notifications relied upon by respondents, cover petitioner's case ?

b) Whether time to complete assessment under Section 144-C (4) could be stated to have been extended till 30.9.2021 ?

9. Sub-section 1, 2, 3 and 4 of Section 144-C of the said Act reads 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 which is prejudicial to the interest of such assessee.*

***(2)** On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order-*

(a) file his acceptance of the variations to the Assessing Officer; or

b) file his objections, if any, to such variation with-

i) the Dispute Resolution Panel and

ii) the Assessing Officer.

***(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).

***(4)** The Assessing Officer shall, notwitstanding anything contained in section 153 (or section 153B), pass the assessment order under sub-section (3) within one month from the end of the month in which -*

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section(2) expires."

10. Circular No.8 of 2021 dated 30.4.2021, notification no.74/2021 dated 25.6.2021 and press release of CBDT dated 25.6.2021 are scanned and reproduced herein for ease of reference.

Circular No. 08/2021

Exhibit R2

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F.NO.225/49/2021/ITA-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 30th April, 2021

Subject: Extension of time lines related to certain compliances by the Taxpayers under the Income-tax Act 1961

1. In view of severe pandemic, the Central Board of Direct Taxes, in exercise of its powers under Section 119 of the Income-tax Act, 1961, provides following relaxation in respect of income tax compliances by the taxpayers:

a) Appeal to Commissioner (Appeals) under Chapter XX of the Income-tax Act,1961 for which the last date of filing under that Section is 1st April 2021 or thereafter, may be filed within the time provided under that Section or by 31st May 2021, whichever is later;

b) Objections to Dispute Resolution Panel (DRP) under Section 144C of the Income-tax Act, 1961, for which the last date of filing under that Section is 1st April 2021 or thereafter, may be filed within the time provided under that Section or by 31st May 2021, whichever is later;

c) Income-tax return in response to notice under Section 148 of the Income-tax Act 1961, for which the last date of filing of return of income under the said notice is 1st April 2021 or thereafter, may be filed within the time allowed under that notice or by 31st May 2021, whichever is later;

d) Filing of belated return under sub-section (4) and revised return under sub-section (5) of Section 139 of the Income-tax Act,1961 for Assessment Year 2020-21, which was required to be filed on or before 31st March 2021, may be filed on or before 31st May 2021;

e) Payment of tax deducted under Section 194-IA, Section 194-IB and Section 194M of the Income-tax Act,1961 and filing of challan-cum-statement for such tax deducted, which are required to be paid and furnished by 30th April 2021 under Rule 30 of the Income-tax Rules, 1962, may be paid and furnished on or before 31st May 2021;

f) Statement in Form No. 61 containing particulars of declarations received in Form No.60, which is due to be furnished on or before 30th April 2021, may be furnished on or before 31st May 2021.

sd/-
(Ravinder Maini)
Director to the Government of India

Copy to:

1. PS to FM / PS to MoS(F) [illegible]
2. PS to Revenue Secretary.
3. [illegible]
4. All Pr. CCsIT/CCsIT/Pr. DGsIT/DGsIT
5. [illegible]
6. [illegible]
7. Web Manager, with a request to place the order on official Income-tax website.
8. CIT (M&TP), Official Spokesperson of CBDT with a request to publicise [illegible]
9. [illegible]
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi
11. [illegible]
12. The Guard File.

30/04/2021
(Ravinder Maini)
Director to the Government of India

True Copy

Advocate for Petitioner/Respondent

Exhibit P-3

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MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 25th June, 2021

S.O. 2580(E).— In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafterreferred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), *vide* number S.O. 4805(E), dated the 31st December, 2020 and No. 10/2021 dated the 27th February, 2021, published in the Gazette of India,Extraordinary, Part-II, Section 3, Sub-section (ii),*vide* number S.O. 966(E) dated the 27th February, 2021and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II,Section 3, Sub-section (ii),*vide* number S.O 1432(E) dated the 31st March, 2021 and No. 38/2021 dated 27th April, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub section (ii), *vide*number S.O. 1703(E) dated the 27th April, 2021, (hereinafter referred to as the said notifications), theCentral Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act, that,

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and,—

(i) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order,-

(a) for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, expires on the 30th day of June, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of September, 2021;

(b) for imposition of penalty under Chapter XXI of the Income-tax Act,—

(i) the 29th day of September, 2021 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 30th day of September, 2021 shall be the end date to which the time limit for completion of such action shall stand extended;

(ii) the compliance of any action, referred to in clause (b) of sub-section (1) of section 3 of the said Act, relates to intimation of Aadhaar number to the prescribed authority under sub-section (2) of section 139AA of the Income-tax Act, the time limit for such the compliance of such action shall stand extended to the 30th day of September, 2021;

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to sending an intimation under sub-section (1) of section 168 of the Finance Act, and the time limit for completion of such action expires on the 30th June, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of September, 2021.

[Notification No. 74/2021/ F. No. 370142/35/2020-TPL]

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SHEFALI SINGH, Under Secy., Tax Policy and Legislation Division

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. No. 4805(E) dated 31st December, 2020 and was last amended vide S.O. 1703(E) dated 27th April,2021.

True Copy

Exhibit P-4

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NOTARY * INDIA * GOVERNMENT OF

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 25th June, 2021

PRESS RELEASE

Government grants further extension in timelines of compliances. Also announces tax exemption for expenditure on Covid treatment and ex-gratia received on death due to Covid

A. Tax exemption

I. Many taxpayers have received financial help from their employers and well-wishers for meeting their expenses incurred for treatment of Covid-19. In order to ensure that no income tax liability arises on this account, it has been decided to provide income-tax exemption to the amount received by a taxpayer for medical treatment from employer or from any person for treatment of Covid-19 during FY 2019-20 and subsequent years.

II. Unfortunately, certain taxpayers have lost their life due to Covid-19. Employers and well-wishers of such taxpayers had extended financial assistance to their family members so that they could cope with the difficulties arisen due to the sudden loss of the earning member of their family. In order to provide relief to the family members of such taxpayer, it has been decided to provide income-tax exemption to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of Covid-19 during FY 2019-20 and subsequent years. The exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other persons.

Necessary legislative amendments for the above decisions shall be proposed in due course of time.

B. Extension of Timelines

In view of the impact of theCovid-19 pandemic, taxpayers are facing inconvenience in meeting certain tax compliances and also in filing response to various notices. In order to ease compliances to be made by taxpayers during this difficult time reliefs are being provided through Notifications nos. 74/2021 & 75/2021 dated 25th June 2021 Circular no. 12/2021 dated 25th June, 2021. These reliefs are

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1) **Objections to Dispute Resolution Panel (DRP) and Assessing Officer under section 144C of the Income-tax Act, 1961** (hereinafter referred to as "the Act"), for which the last date of filing under that section is 1st June, 2021 or thereafter, may be filed within the time provided in that section or by **31st August, 2021**, whichever is later.

2) **The Statement of Deduction of** Tax for the last quarter of the Financial Year 2020-21, required to be furnished on or before 31st May, 2021 under Rule 31A of the Income-tax Rules, 1962 (hereinafter referred to as "the Rules"), as extended to 30th June, 2021 vide Circular No.9 of 2021, may be furnished **on or before 15th July, 2021.**

3) **The Certificate of Tax Deducted at Source in Form No.16**, required to be furnished to the employee by 15th June, 2021 under Rule 31 of the Rules, as extended to 15th July, 2021 vide Circular No.9 of 2021, may be furnished **on or before 31st July, 2021.**

4) **The Statement of Income paid or credited** by an investment fund to its unit holder in **Form No. 64D** for the Previous Year 2020-21, required to be furnished on or before 15th June, 2021 under Rule 12CB of the Rules, as extended to 30th June, 2021 vide Circular No.9 of 2021, may be furnished **on or before 15th July, 2021.**

5) **The Statement of Income paid or credited** by an investment fund to its unit holder in **Form No. 64C** for the Previous Year 2020-21, required to be furnished on or before 30th June, 2021 under Rule 12CB of the Rules, as extended to 15th July, 2021 vide **Circular No.9 of 2021**, may be furnished **on or before 31st July, 2021.**

6) The application **under Section 10(23C), 12AB, 35(1)(ii)/(iia)/(iii) and 80G** of the Act in **Form No. 10A/ Form No.10AB**, for registration/ provisional registration/ intimation/ approval/ provisional approval of **Trusts/ Institutions/ Research Associations etc.**, required to be made on or before 30th June, 2021, may be made on or before **31st August, 2021**.

7) The **compliances** to be made by the taxpayers such as investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purpose of **claiming any exemption under the provisions contained in Section 54 to 54GB** of the Act, for which the last date of such compliance falls between 1st April, 2021 to 29th September, 2021 (both days inclusive), may be completed on or before **30th September, 2021.**

8) The **Quarterly Statement in Form No. 15CC** to be furnished by authorized dealer in respect of remittances made for the quarter ending on 30th June, 2021,

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required to be furnished on or before 15th July, 2021 under Rule 37 BB of the Rules, may be furnished on or before 31st July, 2021.

9) The **Equalization Levy Statement in Form No. 1** for the **Financial Year 2020-21**, which is required to be filed on or before 30th June, 2021, may be furnished on or before **31st July, 2021**.

10) The **AnnualStatement** required to be furnished under **sub-section (5) of section 9A of the Act by the eligible investment fund in Form No. 3CEK** for the Financial Year 2020-21, which is required to be filed on or before 29th June, 2021, may be furnished on or before **31st July, 2021.**

11) **Uploading of the declarations** received from recipients in **Form No. 15G/15H during the quarter ending 30th June, 2021**, which is required to be uploaded on or before 15th July, 2021, may be uploaded by **31st August,2021**.

12) **Exercising of option** to withdraw pending application (filed before the erstwhile Income Tax Settlement Commission) under **sub-section (1) ofSection 245M** of the Act in **Form No. 34BB**, which is required to be exercised on or before 27th June, 2021, may be exercised on or **before 31st July, 2021.**

13) **Last date of linkage of Aadhaar with PAN under section 139AA of the Act**, which was earlier extended to 30th June, 2021 is further extended to 30th **September, 2021**.

14) **Last date of payment of amount under Vivad se Vishwas(without additional amount)** which was earlier extended to 30th June, 2021 is further extended to 31st August, 2021.

15) **Last date of payment of amount under Vivad se Vishwas (with additional amount)** has been notified as 31st October, 2021.

16) **Time Limit for passing assessment order** which was earlier extended to 30th June, 2021 is further extended to **30th September, 2021**.

17) **Time Limit for passing penalty order** which was earlier extended to 30th June 2021 is further extended to 30th September, 2021.

18) **Time Limit for processing Equalisation Levy returns** which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.

(Surabhi Ahluwalia)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT

True Copy

Advocate for Petitioner/Respondent

11. Section 144-C of said Act clearly provides two options to the assessee when the assessee receives draft assessment order which is prejudicial to the interest of such assessee. The two options are to be exercised within 30 days from receipt of draft assessment order, i.e.,

a) file his acceptance of variations to the Assessing Officer; or

b) file objections to any such variations with the Dispute Resolution Panel and the Assessing Officer.

If, the Assessing Officer receives acceptance of variations from the assessee or does not receive any objections within 30 days of receipt of acceptance by the assessee of draft order, the Assessing Officer shall complete the assessment on the basis of draft order. Sub-section 4 of Section 144-C prescribes for time within which such assessment order has to be passed, whether the Assessing Officer has received acceptance of variation or has not received any objections to variations and that period prescribed is within 1 month from the end of the month in which acceptance is received or the period of filing of objections under Sub-section 2 of Section 144-C of the said Act expires. In this case, communication has been received by respondent no.1 on 17.5.2021 and therefore, time limit under sub-section 4 of Section 144-C of the said Act would expire on 30.06.2021. Even if we accept respondent no.1's grievance that e-mail dated 17.5.2021 was not uploaded in ITBA system and if at all we say that the email has to be ignored, still, draft order having been received by petitioner on 19.4.2021, thirty day period provided under sub-section 2 of Section 144-C of the said Act would have expired on 18.05.2021 which would mean time limit under Sub-section 4 of the said Act would still expire on 30.6.2021. Admittedly, in this case, order has been passed on 27.09.2021.

12. Let us consider whether we could accept respondent's contention that order was within time. Mr. Suresh Kumar submitted under the provisions of the *Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020* r/w notification received and relied in the affidavit-of-reply, time has been extended. Mr. Suresh Kumar submitted that notification under Relaxation Act issued by the Government of India for mitigating pains of the tax payers due to general lockdown and restrictions due to COVID pandemic. Same yard-stick apply to the Government officials who were also prevented from working in normal conditions. Government tried its best to save citizens including tax payers and Officers of Government department and hence, provision should be given purposive interpretation. Mr. Suresh Kumar submitted that time limit to file objections by the tax payers to DRP was extended by CBDT Circular No. 8 of 2021 dated 30.4.2021 and as per said Circular last date for filing

of objections before DRP which was due on 1.4.2021 or thereafter was extended upto 31.5.2021. Thus, in view of the said Circular, petitioner could have filed objections to draft order dated 19.4.2021 by 31.5.2021. Therefore, as per sub-section 4 of Section 144-C of the Act, the Assessing Officer was required to complete assessment by 30.6.2021, i.e., within one month from the end of the month in which period of filing objections had expired. Subsequently, Notification No.74/2021, S.O.2580(E) dated 25.6.2021 was issued by Central Board of Direct Taxes and as per notification, time limit for completion of assessment which were getting time barred on 30.6.2021 was extended to 30.9.2021. Mr. Suresh Kumar submitted that this was clarified by CBDT in its press release dated 25.6.2021.

13. In our view, neither Circular no.8/2021 nor notification no.74/2021 dated 25.6.2021 or press release dated 25.6.2021 would help respondent no.1.

In Circular No. 8/2021 dated 30.4.2021, sub-clause (b) of Clause 1 only provides for objections to Dispute Resolution Panel u/s 144-C of the said Act for which, last date of filing under that Section is 1.4.2021 or thereafter may be filed within the time provided under that Section or by 31.5.2021 whichever is later. Therefore, it only provides for extension of time for filing of objections. It does not extend time for passing order under sub-section 4 of Section 144-C of the Act. In any case, even if, we proceed on the basis that, it would extend time to pass orders, still, as admitted in affidavit in reply itself, time to pass such order would have expired on 30.6.2021.

14. Now coming to the notification no.74/2021 dated 25.6.2021 relied upon by respondent no.1, in our view that notification does not apply to assessment u/s 144-C of the Act. We say this, because, by the said notification no.74/2021 the Government of India, relying on the provisions of Relaxation Act are only partially modifying notifications already issued under Relaxation Act which are referred to in the said notification. Circular no.8/2021 has not been modified because it is not referred to in the said notification. Moreover, Clause A(i) of the said Notification only provides for assessment or re-assessment under the said Act and the time limitation for completion of such action u/s 153 or 153-B thereof expires on 30.06.2021, due to its extension by the said notifications, such time limit shall further stand extended to 30.9.2021. First of all, it does not refer to Section 144-C of the said Act. Sub-section 4 of Section 144-C of the said Act also says that the Assessing Officer shall, notwithstanding anything contained in Section 153 or 153-B shall pass assessment order under sub-

section (3) within time prescribed therein. Thirdly, it also says "… due to which extension by said notifications ……" and the said notifications are defined in the said notification itself and none of those notifications apply to the provisions of Section 144-C of the said Act. We would add, it is not even the case of respondent that, any of these notifications will apply to Section 144-C(4) of the said Act. If that was the case, we would have expected him to say so in the affidavit-in-reply. For this reason certainly press release relied upon dated 25.6.2021 will also be not applicable. In fact press release clarifies "Extension of Timelines-….. provided through notification nos.74/2021 and 75/2021 dated 25.06.2021 …..". None of the notifications referred in the press release pertains to any timeline prescribed u/s 144-C of the said Act.

15. In the circumstances, we will have to agree with petitioner's case that the assessment order dated 27.09.2021 has been passed beyond prescribed time limit.

16. Therefore, we allow petition in terms of prayer clause (a) of the petition, which reads as under;

> "(a) *that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order, or direction in the nature of certiorari under Article 226*

of the Constitution of India calling for all papers and proceedings of the petitioner's case pertaining to Assessment Year 2018-2019, and after examining the validity, legality and propriety thereof, and quash and set aside final Assessment order and consequential penalty notice made by respondent no.1, as non-est, being barred by limitation".

17. Petition disposed with no order as to costs.

(N.R. BORKAR, J.) **(K.R.SHRIRAM, J.)**