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

WRIT PETITION NO. 451 OF 2022

ExxonMobil Company Private Limited ….Petitioner

V/s.

The Deputy Commissioner of Income Tax 6(1)(1), Mumbai and Anr. …Respondents

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Mr. Paras S. Savla for Petitioner.
Mr. Charanjeet Chanderpal a/w Ms. Priti Chhabriya for Respondent No.1-Revenue.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 18th APRIL, 2022

P.C. :

1. Petitioner has filed this petition impugning an order dated 7th February, 2020 for the assessment year 2006-07 passed by Respondent No.1

2. When the petition was listed on 20th February, 2022, it was stood over today. We found that respondent's counsel Mr. Charanjeet Chanderpal has even filed vakalatnama on 23rd March, 2022. No affidavit in reply has been filed. When the matter was called out Ms.Chhabriya requested the petition be kept back as Mr. Charanjeet Chanderpal will be coming and addressing the court. The matter was kept back and called out again when Mr. Charanjeet Chanderpal was again not available.

3. One of the grounds of challenge is that petitioner is eligible assessee as defined under Section 144C of the Income Tax Act, 1961 (the

Act). Mr. Savla submits that petitioner therefore should have been given draft of the proposed order of assessment if the Assessing Officer proposed to make any variations which was prejudicial to the interest of petitioner. Section 144C (1) of the Act reads as under :

> *"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".*

4. Clause (b)(i) of Sub Section 15 of Section 144C of the Act defines eligible assessee and it reads as under :

> *(b) "eligible assessee" means,—*
>
> *(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA;*

5. Admittedly this is a case where Respondent No.1 was giving effect to an order dated 10th June, 2011 passed by the Income Tax Appellate Tribunal (ITAT) by which the ITAT had set aside the file for adjustment on transfer pricing issue. Mr. Savla states that it is also petitioner's case that the order passed in any way is time barred as provided under Sub Section 7 of Section 153 of the Act. In any case, Mr. Savla states that since Respondent No.1 was to give effect to the order passed by the Transfer Pricing Officer, as noted earlier, a draft of the proposed order ought to have been served upon petitioner before the final impugned order was passed. In

the petition, there is averment in ground 'C' that in this case there is no dispute that the provisions of Section 144C of the Act read with Section 92CA of the Act was applicable and Section 144C (1) of the Act mandates that the draft assessment order was necessary before the Assessing Officer can proceed to pass the final assessment order. Even in partial remand proceedings from the Tribunal, it is averred the Assessing Officer is obliged to pass the draft assessment order under Section 144C(1) of the Act and passing draft assessment order is without jurisdiction. As noted earlier, no reply has been filed, though respondent had enough time, denying these averments.

6. At this stage, Mr. Charanjeet Chanderpal entered the court and to a query posed by the court in fairness states that Section 144C of the Act would be applicable and under Sub Section (1) of Section 144C Respondent No.1 ought to have issue the draft assessment order. Mr. Charanjeet Chanderpal also states that he had just received the file from department. At the same time, Mr. Charanjeet Chanderpal states if the draft assessment order has not been issued before the final assessment order is passed, the law is very clear, the order has to be set aside.

7. Having perused the petition and also the impugned order, it does appear that no draft assessment order has been issued. In the circumstances, the impugned order dated 7th February, 2020

is quashed and set aside. All the consequential orders are also quashed and set aside.

8. Petition disposed with no order as to costs.

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