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

WRIT PETITION NO.2340 OF 2021

Shelf Drilling Ron Tappmeyer Limited,
being a company incorporated under
the laws of Cayman Island and
having its address in India at
4th Floor, Schindler House,
Main Street, Hiranandani Gardens,
Powai, Mumbai – 400 076

.... Petitioner

Versus

1. Assistant Commissioner of Income Tax,
(International Taxation),
Circle – 4(2)(1),
Mumbai, having his address at
Room No.1708, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

2. Principal Commissioner of
Income Tax
(International Taxation) – 4, Mumbai,
having his address at
Room No.1704, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

3. Union of India
Through Joint Secretary & Legal Adviser
Branch Secretariat,
Department of Legal Affairs,
Ministry of Law and Justice,
2nd Floor, Aayakar Bhavan, M.K.Road,
New Marine Lines Mumbai – 400 020

..... Respondents

WITH

WRIT PETITION NO.2661 OF 2021

Shelf Drilling J.T. Angel Limited,
being a company incorporated under
the laws of Cayman Island and
having its address in India at
4th Floor, Schindler House,
Main Street, Hiranandani Gardens,
Powai, Mumbai – 400 076

.... Petitioner

Versus

1. Assistant Commissioner of Income Tax,
(International Taxation),
Circle – 4(2)(1),
Mumbai, having his address at
Room No.1708, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

2. Principal Commissioner of
Income Tax
(International Taxation) – 4, Mumbai,
having his address at
Room No.1704, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

3. Union of India
Through Joint Secretary & Legal Adviser
Branch Secretariat,
Department of Legal Affairs,
Ministry of Law and Justice,
2nd Floor, Aayakar Bhavan, M.K.Road,
New Marine Lines Mumbai – 400 020

..... Respondents

WITH

WRIT PETITION NO.3059 OF 2021

Shelf Drilling Trident XII Limited,
being a company incorporated under

the laws of Cayman Island and
having its address in India at
4th Floor, Schindler House,
Main Street, Hiranandani Gardens,
Powai, Mumbai – 400 076

.... Petitioner

Versus

1. Assistant Commissioner of Income Tax,
(International Taxation),
Circle – 4(2)(1),
Mumbai, having his address at
Room No.1708, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

2. Principal Commissioner of
Income Tax
(International Taxation)
Circle– 4, Mumbai, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

3. Union of India
Through Joint Secretary & Legal Adviser
Branch Secretariat,
Department of Legal Affairs,
Ministry of Law and Justice,
2nd Floor, Aayakar Bhavan, M.K.Road,
New Marine Lines Mumbai – 400 020

..... Respondents

WITH

WRIT PETITION NO.3060 OF 2021

Shelf Drilling Offshore Resources Limited II,
being a company incorporated under
the laws of Cayman Island and
having its address in India at
4th Floor, Schindler House,
Main Street, Hiranandani Gardens,
Powai, Mumbai – 400 076

.... Petitioner

Versus

1. Assistant Commissioner of Income Tax,
(International Taxation),
Circle – 4(2)(1),
Mumbai, having his address at
Room No.1708, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

2. Principal Commissioner of
Income Tax
(International Taxation)
Circle-4, Mumbai, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

3. Union of India
Through Joint Secretary & Legal Adviser
Branch Secretariat,
Department of Legal Affairs,
Ministry of Law and Justice,
2nd Floor, Aayakar Bhavan, M.K.Road,
New Marine Lines Mumbai – 400 020

..... Respondents

Mr. J. D. Mistri, Senior Advocate a/w Mr. Nitesh Joshi i/b Mr. Atul K. Jasani, for Petitioners.

Mr. Suresh Kumar a/w Ms.Samiksha Kanani for Respondents.

**CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.**

RESERVED ON: JULY 25, 2023

PRONOUNCED ON: AUGUST 4, 2023

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

Writ Petition No.2661 of 2021 (A.Y. 2014-2015)

By consent petition is taken up for final hearing at this stage of admission.

1. Petitioner is a company incorporated under the relevant laws of Cayman Island and headquartered in Dubai, United Arab Emirates. Petitioner is engaged in the business of shallow water drilling for clients engaged in the oil and gas industry. Petitioner has been filing its Return of Income under the Income Tax Act, 1961. The petition is concerned with Assessment Year 2014-15.

2. The parent group of Petitioner on a global basis had acquired 38 rigs from one Transocean group sometime in late 2012 for which an Asset purchase Agreement had been executed. Pursuant to the said agreement, Petitioner had acquired a rig by name J.T. Angel (the said rig) which was recorded in the books of account of Petitioner at USD 13.6 million equivalent to Rs.74,22,94,527/- The said rig was already in operation for a contract between Oil and Natural Gas Corporation (ONGC) and Transocean Drilling Services (India) Pvt. Ltd. The said rig was on a bareboat charter basis. The arrangement continued upto July 2013 and from August 2013 to November 2013, the said rig was used under a nomination contract for providing drilling services to ONGC. From December 2013 to March 2014, the said rig required and underwent major repairs and refurbishment at the Pipavav Defence and Offshore

Engineering Company Limited. After the repairs and refurbishment, the said rig was deployed for performing drilling services for ONGC upto May 2017. The agreement with ONGC was entered into by Shelf Drilling Offshore Services (India) Pvt. Ltd. (SDOSIPL) which sub-contracted the job work to Petitioner. During this period, Petitioner has computed its income on presumptive basis under Section 44BB of the Income-tax Act, 1961 (“the Act”) for Assessment Year 2013-14 and from Assessment Years 2015-16 till date. For Assessment year 2014-15, i.e., the year under consideration, after fulfilling the requisite conditions in Section 44BB(3) of the Act, Petitioner exercised the option available to it to compute its income other than on presumptive basis under Section 44BB. Petitioner had also maintained books of account which have been audited in accordance with Section 44AB.

3. On 29th November 2014 Petitioner filed its Return of Income for Assessment Year 2014-15 declaring a total loss of Rs.120,18,44,672/-. The loss had been arrived at by exercising its option not to be assessed on the presumptive basis of taxation as per Section 44BB(3) of the Act and computing its income under the regular provisions of the Act. Petitioner’s Return of Income for Assessment Year 2014-15 was selected for scrutiny by issue of notice dated 28th August 2015 under Section 143(2) of the Act. In the course of assessment proceedings, notices were issued under Section

142(1) of the Act along with detailed questionnaire. Petitioner submitted its response. Respondent no.1 passed draft assessment order dated 26th December 2016 invoking the provisions of Section 145 of the Act and rejected Petitioner's books of account. Despite Petitioner having exercised its option, Petitioner's income from providing services in connection with prospecting for or extraction or production of mineral oils has been effectively computed under Section 44BB(1) of the Act, i.e., at 10% of its gross receipts. Petitioner's total income accordingly, was computed at Rs.4,34,79,980/-.

4. Petitioner filed its objections before the Dispute Resolution Panel (DRP) against draft assessment order, in accordance with Section 144C of the Act. DRP did not accept Petitioner's case and by an order dated 28th September 2017 gave its direction. Based on that, Respondent no.1 passed a final assessment order dated 30th October 2017 under Section 143(3) read with Section 144C(13) of the Act.

5. Aggrieved by the said final assessment order, Petitioner filed an Appeal before the Income Tax Appellate Tribunal (ITAT). Petitioner made various submissions before the ITAT and after hearing the parties ITAT held that Respondent no.1 and DRP erred in rejecting the books of account of Petitioner without considering the books and other

documentary evidences. By its order dated 4th October 2019, disposing the appeal, the ITAT remanded the matter to the Assessing Officer (AO) for fresh adjudication.

6. Since the ITAT had remanded the matter back to the AO, Petitioner, by a communication dated 5th February 2020, informed AO about the order and requested for an early disposal of the same. This was followed by oral requests. On 22nd February 2021, over one year later, Petitioner was called upon by Respondent no.1 to produce the details of contracts entered into by it and the reasons for incurring a loss during assessment year 2014-15. Petitioner provided all documents and details called for. By a notice dated 10th September 2021 issued by Respondent no.1 under Section 142(1) of the Act, Petitioner was directed to furnish details of month-wise operational expenses and income. Petitioner responded vide letter dated 16th September 2021. Petitioner was again called upon to provide documents and details which Petitioner provided. Repeated notices were issued under Section 142(1) of the Act to Petitioner and finally Petitioner was issued a show cause notice dated 23th September 2021 which Petitioner received at 9.42 a.m. allowing time upto 3.30 p.m. on 24th September 2021 to respond. Various allegations were made against Petitioner including non submission of documentary evidence to show the state of the rig at the time of purchase, genuineness

of the cost of acquisition etc. Various other allegations including not following accounting standard-29 or non provision of TDS details were also made.

Petitioner replied by a letter dated 24th September 2021 and reiterated its submissions made earlier.

7. Thereafter Respondent no.1 passed an assessment order dated 28th September 2021 and it reads like a final assessment order. Respondent no.1, however, by a communication dated 29th September 2021 clarified that it was only a draft order.

8. Petitioner, to safeguard against the disability of the objections being treated as delayed, has filed its objections on 27th October 2021 before the DRP. In the meanwhile, Petitioner also filed this petition challenging the impugned order dated 28th September 2021 on various grounds. The preliminary ground is that the limitation has expired on 30th September 2021 under Section 153(3) of the Act read with the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as “the Relaxation Act”) and the Notification issued thereunder. Therefore, no final assessment order can be passed in the present case as the same is time barred. In view thereof, the Return of Income as filed by Petitioner should be accepted.

9. We decided to hear the parties first on the preliminary objection of limitation. If we are satisfied that the final assessment order cannot be passed, we can dispose the petition with a direction to accept the Return of Income filed by Petitioner.

10. Before we proceed further, the controversy in short between the Department and Petitioner was under the provisions of Section 44BB of the Act which provides for presumption basis of computation of income in the case of non- resident assessee engaged, *interalia*, in the business of providing services or facilities in connection with prospecting for or extraction or production of mineral oils (the said business).

As per the said Section, 10% of the gross revenues as referred to in Sub-Section(2) thereof, is regarded as income from the said business. Sub-Section (3) thereof, enables an assessee to opt out of the said presumptive basis of taxation provided it keeps and maintains such books of account and other documents as required under Section 44AA(2) and gets the same audited and furnishes a report as required under Section 44AB of the Act. In a case where the assessee has opted out of the said provision, its income is to be computed on a net basis in accordance with Sections 30 to 43D of the Act. It is an admitted position that Petitioner qualifies for computation of its income on the basis of Section 44BB of the

Act. For the year under consideration, i.e., assessment year 2014-15, it has opted out of the said provision and has fulfilled the conditions as required under Sub-Section (3) thereof. In the first round of proceedings, the then Respondent No.1, referring to various aspects in the assessment order rejected Petitioner's books of account by invoking the provisions of Section 145 of the Act. He has thereafter estimated Petitioner's income by effectively following the computation methodology in Section 44BB(1) of the Act. In this regard, Petitioner had filed additional evidence before the DRP and also dealt with each and every aspect put against it by Respondent No.1 in draft assessment order. However, the DRP upheld the conclusion reached by Respondent No.1. On further appeal to the ITAT, it discussed each and every aspect raised by Respondent No.1 and on several of such issues specifically held that the view taken by Respondent No.1 and upheld by the DRP was erroneous and unsustainable in law. The ITAT finally held that (a) Petitioner had prepared its books of account including financial statements in accordance with generally accepted accounting principles; (b) that the said financial statements complied in all material respects with the accounting standards notified under the Companies Act; (c) that the accounts were audited which was also evident from the Tax Audit Report furnished along with the Return of Income; (d) for the purposes of invoking Section 145(3) of the Act the burden to show that the books of account were incomplete or incorrect was on Respondent No.1;

(e) Respondent No.1 and the DRP had erred in rejecting the books of account without considering the books and other documentary evidences; and (f) in view thereof, to provide a further opportunity to Respondent No.1, the issue was remanded back for fresh adjudication. Despite requests by Petitioner from 05.02.2020 to 22.02.2021, (over one year), the proceedings for giving effect to the ITAT's Order were not taken up till 22.02.2021. After calling for certain general information which had been complied with by Petitioner, a notice under Section 142(1) of the Act was issued on 10.09.2021, almost seven months later. From 10.09.2021 up to 20.09.2021, four notices under Section 142(1) have been issued, i.e., on 10.09.2021, 11.09.2021, 15.09.2021 and 20.09.2021 seeking various information and documents. The proceeding finally culminated into a show-cause notice which was issued on 23.09.2021 (received at 3:04 pm) directing Petitioner to file its response thereto by 3.30 pm on 24.09.2021, i.e., in 24 hours. A bare perusal of the impugned order shows that a substantial part of the aspects which have been found against Petitioner, were raised on 20.09.2021 and 23.09.2021. Further, there are several aspects which do not find any reference in the notices issued by Respondent No.1. Finally, the impugned order dated 28.09.2021 has been passed rejecting Petitioner's books of accounts and effectively computing Petitioner's income based on the computation methodology provided in Section 44BB(1), despite the fact that Petitioner had opted out from the

same.

11. Mr. Mistri submitted that:-

- (a) Limitation as provided in Section 153 is the outermost limit provided for passing the final assessment order under the Act. The draft assessment order, the DRP's order on the objections raised by the assessee and the final assessment order ought to have been passed within the said limitation, i.e., by 30th September 2021. Division Bench of the Hon'ble Madras High Court has upheld this position in the case of *Commissioner of Income-tax v. Roca Bathroom Products (P) Ltd.*¹ [Roca Bathroom (DB)]. The Division Bench had confirmed the law laid down by a learned single Judge of Madras High Court in *Roca Bathroom Products (P) Ltd. vs. Dispute Resolution Panel-2, Bangalore 2* [Roca Bathroom (SB)]²
- (b) In the present case, date of ITAT's order was 4th October 2019 when it was remanded to the Assessing Officer for *denovo* consideration. The due date as per Section 153(3) read with proviso thereto provided that the limitation to pass fresh order pursuant to the order of ITAT would expire on 31st March 2021, i.e., 12 months from the end of the financial year in

1 (2022) 140 taxmann.com 304 (Madras)

2 (2021) 127 taxmann.com 332 (Madras)

which the order was received by the specified authority. In view of the Notification no.10/2021 dated 27th February 2021 issued by the Central Board of Direct Taxes in the exercise of the powers conferred by Sub-Section (1) of Section 3 of the Relaxation Act and in partial modification of the earlier Notification, the time to pass the assessment order was extended to 30th September 2021. The date on which the draft assessment order has been passed is 28th September 2021. Therefore, there was no possibility of passing any final assessment order in the present case as the matter got time barred on 30th September 2021. As the final assessment order has not been passed before the said date the proceedings are rendered to be now barred by limitation. In view thereof, the Return as filed by Petitioner should be accepted.

12. We should note that the ground of limitation was inserted by way of an amendment on 12th July 2022 pursuant to liberty granted by this court on 5th July 2022. No additional reply has been filed to the amended part.

13. Mr. Suresh Kumar submitted that the time limit given under Section 153 (3) of the Act would be in addition to the time prescribed

under Section 144C of the Act. The period of time limit prescribed under Section 144C of the Act does not get subsumed in the time limit prescribed under Section 153(3) of the Act. There is no time limit prescribed under Section 144C(1) of the Act. Nine months is prescribed only for DRP to pass its order under Section 144C (12) of the Act and under Section 144C(13) of the Act one month is provided for the Assessing Officer to complete the assessment in conformity with the directions given by the DRP. Since there is no time limit prescribed to pass the draft assessment order under Section 144C(1) of the Act, where was the question of the assessment being barred under Section 153(3) of the Act. It does not arise.

14. Section 144C of the Act was held to be a *self-contained code* by the earlier decision of the Hon'ble Madras High Court in the case of **CIT vs Sanmina SCI India (P.) Ltd**³. The finding that Section 144C of the Act is a complete code is also there in the decision of the single judge in *Roca Bathroom (SB)* (Supra). Once 144C of the Act is held to be a complete code then for all things dealt by it, it would prevail over other provisions including Section 153 of the Act. Hence the decision of the Hon'ble High Court that the time limit given under Section 153 of the Act would prevail over and subsume the time limit prescribed under Section 144C of the Act is *per incuriam*. It is settled law that a self-contained code/complete code takes precedence for all things dealt by it. The Hon'ble Apex Court and High Courts have reiterated this position.

15. The provision of Section 144C of the act with a *non obstante* clause was inserted later than the incorporation of the *non obstante* clause in Section 153 of the Act. Thus the Legislature was aware of the *non obstante* clause in Section 153 of the Act when the similar non obstante clause was inserted in Section 144C of the Act. The later non obstante clause shall prevail over the already existing one. Mr. Suresh Kumar did not elaborate though.

16. Section 153 of the Act is a general provision dealing with all assesseees and all types of orders as compared to Section 144C of the Act which deals only with regard to matters pertaining to 'eligible assesseees' and orders are passed wherein assessee has choice to file objections before the DRP. Long established jurisprudence holds, for matters covered by special provisions, the overlapping general provisions must yield ground to the special provisions. Again this was not elaborated.

17. It was further submitted by Mr. Suresh Kumar that one of the ramifications of the interpretation put by the Hon'ble Madras High Court in *Roca Bathroom (DB)*(Supra) that the time limit under Section 153 of the Act would not refer to passing of draft order but to passing of the final order is that key machinery provision becomes unworkable. The implication of the finding that the time limits prescribed in Sections 144C of the Act and Section 153 of the Act are mutually inclusive and would not refer to passing of draft order but to passing of

the final order is that most of the orders passed in past years after disposal of objections by the DRP are being held to be time barred. This is so as the consistent understanding of officers of the Revenue as also of the Bar and assesseees before this decision was that the limit applied to draft orders and not the final orders.

Thus such an interpretation that makes key machinery provisions become unworkable should be rejected as assesseees do not have any vested right in procedural aspects of ongoing assessments.

18. Thus finding of the Hon'ble Madras High Court in *Roca Bathroom (DB)* (Supra) that outer time limit in case of reference to TPO would be as per Section 153 of the Act and that the entire proceedings would have to be concluded within the time limits prescribed therein is per incuriam.

19. Before we proceed further it will be useful to reproduce Sections 144C, 153 and said Notification under the Relaxation Act which read thus:

"144C. Reference to dispute resolution panel.—

(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, notwithstanding anything contained in section 153 or 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.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however,

that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation :- For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(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 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.

*(14) ******

(15) For the purposes of this section,—

*(a) ******

(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; and

(ii) any non-resident not being a company, or any foreign company.'

Time limit for completion of assessments and reassessments and recomputation.

153. (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the

income was first assessable:

Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

[Provided further] that in respect of an order of assessment relating to the assessment year commencing on—

(i) the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(ii) the 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:]

[Provided also] that in respect of an order of assessment relating to the assessment year commencing on

[]*** the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted:]

[Provided also] that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2022, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted.]

[(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of [twelve] months from the end of the financial year in which such return was furnished.]

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice

under section 148 was served:

Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

(3) Notwithstanding anything contained in sub-sections (1) [, (1A)] and (2), an order of fresh assessment [or fresh order under section 92CA, as the case may be,] in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, [or an order under section 92CA, as the case may be], may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :

Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

[(3A) Notwithstanding anything contained in sub-sections (1), (1A), (2) and (3), where an assessment or reassessment is pending on the date of initiation of search under section 132 or making of requisition under section 132A, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections shall,—

(a) in a case where such search is initiated under section 132 or such requisition is made under section 132A;

(b) in the case of an assessee, to whom any money, bullion, jewellery or other valuable article or thing seized or

requisitioned belongs to;

*(c) in the case of an assessee, to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to,
be extended by twelve months.]*

(4) Notwithstanding anything contained in [sub-sections (1), (1A), (2), (3) and (3A)], where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said [sub-sections (1), (1A), (2), (3) and (3A)], shall be extended by twelve months.

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] wholly or partly, otherwise than by making a fresh assessment or reassessment [or fresh order under section 92CA, as the case may be], such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :

Provided that where it is not possible for the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer [or the Transfer Pricing Officer, as the case may be], if satisfied, may allow an additional period of six months to give effect to the order:

Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said

order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).

[(5A) Where the Transfer Pricing Officer gives effect to an order or direction under section 263 by an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him.]

(6) Nothing contained in sub-sections (1) [, (1A)] and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of 51[sub-sections (3), (5) and (5A)], be completed

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the [Principal Chief Commissioner or Chief Commissioner or] Principal Commissioner or Commissioner, as the case may be; or

(ii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed.

(7) Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before

the 31st day of March, 2017.

(8) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A or sub-section (1) of section 153B, the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A, shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B, whichever is later.

(9) The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016:

Provided that where a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in Explanation 1, such assessment or reassessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016 (28 of 2016).

Explanation 1.—For the purposes of this section, in computing the period of limitation—

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) [, under clause (i) of the first proviso] to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification,

as the case may be, under those clauses is received by the Assessing Officer; or

(iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited [or inventory valued] under sub-section (2A) of section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit [or inventory valuation] under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings [or before the Board for Advance Rulings] under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of

section 245R; or

(ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings [or before the Board for Advance Rulings] under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the [Assessing Officer; or

(xii) the period (not exceeding one hundred and eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee,—

(a) in whose case such search is initiated under section 132 or such requisition is made under section 132A; or

(b) to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or

(c) to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to; or]

[(xiii) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or clause (iii) of sub-section (4) of section 12AB, as the case may be, is received by the Assessing Officer,]

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), [(1A),] (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 154, 155 and 158BE and for the purposes of payment of interest under section 244A, this

proviso shall also apply accordingly:

[Provided also that where the assessee exercises the option to withdraw the application under sub-section (1) of section 245M, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (5) of the said section, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year:

Provided also that for the purposes of determining the period of limitation under sections 149, 154 and 155, and for the purposes of payment of interest under section 244A, the provisions of the fourth proviso shall apply accordingly.]

Explanation 2.—For the purposes of this section, where, by an order referred to in clause (i) of sub-section (6),—

(a) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or

(b) any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed.”

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 27th February, 2021

S.O. 966(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) (hereinafter referred to as the said Act), and in partial modification of the notification 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 (hereinafter referred to as the said notification), the Central 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 the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order—

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

(i) the 29th day of June, 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 June, 2021 shall be the end date to which the time limit for completion of such action shall stand extended;

(b) 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, —

(i) expires on the 31st day of March, 2021 due to its extension by the said notification, such time limit shall stand extended to the 30th day of April, 2021;

(ii) is not covered under (i) and expires on 31st day of March, 2021, such time limit shall stand extended to the 30th day of September, 2021;

(B) where the specified Act is the Prohibition of Benami Property Transaction Act, 1988, (45 of 1988) (hereinafter referred to as the Benami Act) and the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to issue of notice under sub-section (1) or passing of any order under sub-section (3) of section 26 of the Benami Act,—

(i) the 30th day of June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Benami 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.

20. Sub-Sections (5) to (12) of Section 144C of the Act set out the procedure for receipt, adjudication and disposal of objections by the DRP. Sub-Section (5) states that the DRP shall issue such directions as it thinks fit for the guidance of the Assessing Officer in completing the assessment. In issuing the guidelines, as per Sub-Section (6) the DRP shall take into account the draft order, objections, evidences, reports of authorities and records etc. Sub-Section (7) empowers the DRP to make further enquiry, if thought necessary and Sub-Section (8) confines the power of confirmation, rejection or enhancement of the variations proposed in the draft order. Sub-Sections (9) and (10) state that the opinion of the majority of the members shall prevail and that the directions of the DRP bind the Assessing Officer. Sub-Section (11) provides for an opportunity of hearing to the assessee prior to issuance of the directions. For disposal of the objections received, Sub-Section (12) sets out a limitation of nine (9) months from the end of the month in which the draft order is forwarded to the eligible assessee. In passing a final assessment order, Sub-Section (13) specifically excludes the provisions of Section 153 stating that the Assessing Officer shall pass a final order of assessment even without hearing the assessee, in conformity with the directions issued by the DRP within one month from the end of the month when such directions were received by him.

However, in our view, the exclusion of Section 153/153B is specific to, and kicks in only at the stage of passing of final assessment order after directions are received from the DRP, and not at any other stage of the proceedings under Section 144C and hence, the entire proceedings would have to be concluded within the time limits prescribed. Sub-Sections (14) and (15) are not relevant for the purpose of this Writ Petition.

21. Under Section 153(1) of the Act, the assessment has to be completed with 21 months since the assessment relates to Assessment Year 2014-15. If it was for Assessment Year commencing on 1st April 2018 no order of assessment shall be made under Section 143 or 144 at any time after the expiry of 18 months from the end of the Assessment Year in which the income was first assessable. In respect of the order of assessment in respect of Assessment Year commencing on 1st April 2019 the time was reduced to 12 months. The time for Assessment Year commencing on 1st April 2020 was once again made to 18 months and for Assessment Year commencing 1st April 2021 the time prescribed was 9 months. The time for Assessment Year beginning 1st April 2022 was again made 12 months.

22. Section 153(3) of the Act, as applicable to the case at hand provides a non obstante clause inasmuch as it states, Notwithstanding anything contained in Sub-Sections (1), (1A) and (2), an order of fresh

assessment in pursuance of an order under Section 254 setting aside or cancelling an assessment, may be made at any time before the expiry of nine months from the end of the financial year in which the order under Section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Provided that where the order under Section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, on or after 1st April 2019, the provisions of this Sub-Section shall have effect, as if for the words “nine months”, the words “twelve months” have been substituted. In this case, since the order has been passed by the ITAT on 4th October 2019, the time will be twelve months from the end of the financial year in which the order under Section 254 was received.

The Chronology of dates and events is as under:

- a. Date of ITAT order - 4th October 2019.
- b. Due date as per Section 153(3) read with proviso - 31st March 2021.
- c. In view of the extension granted by the Notification under the Relaxation Act, the extended date would be 30th September 2021.
- d. Date of passing of draft assessment order - 28th

September 2021.

No final order was passed until filing of the petition though stay, for the first time, was granted by this court only on 30th March 2022.

23. No doubt, Section 144C of the Act is a self contained code of assessment and time limits are inbuilt at each stage of the procedure contemplated. Section 144C envisions a special assessment, one which includes the determination of Arms Length Price (ALP) of international transactions engaged in by the assessee. The DRP was constituted bearing in mind the necessity for an expert body to look into intricate matters concerning valuation and transfer pricing and it is for this reason that specific timelines have been drawn within the framework of Section 144C to ensure prompt and expeditious finalisation of this special assessment. The purpose is to fast-track a special type of assessment. That cannot be considered to mean that overall time limits prescribed have been given a go by in the process.

24. We find it difficult to accept the submissions of Mr. Suresh Kumar because it would in fact mean that, notwithstanding the twelve month period prescribed under Section 153 (3) of the Act, where it says that an order of fresh assessment in pursuance of an order under Section 254 of the Act may be made at any time before the expiry of twelve months

from the end of the financial year in which order under Section 254 of the Act is received by the Commissioner, would not apply to a case where Section 144C of the Act is applicable. It would also mean that the time prescribed in Section 153 (1) of the Act cannot apply where Section 144C of the Act is applicable in the case of an eligible assessee. If Mr. Suresh Kumar was correct, then in our view, it would have been specifically so provided in Section 153 of the Act. We would agree with Mr. Mistri that wherever the legislature intended extra time to be provided, it is expressly provided in Section 153 of the Act. Sub-Section (3) of Section 153 of the Act also applies to fresh order under Section 92 CA of the Act being passed in pursuance to an order under Section 254 of the Act. Sub-Section (4) of Section 153 of the Act specifically provides that notwithstanding anything contained in Sub-Sections (1), (1-A), (2), (3) and (3-A) of the Act, where a reference under Sub-Section (1) of Section 92 CA of the Act is made during the course of the proceeding for assessment or re-assessment, the period available for completion of assessment or re-assessment, as the case may be, under the said Sub-Sections (1), (1-A), (2), (3) and (3-A) of the Act shall be extended by twelve months.

25. Moreover, Explanation-1 below Section 153 of the Act also provides for the periods which have to be excluded while computing the twelve months period mentioned in Section 153 (3) of the Act. For

example – it provides for exclusion of the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited or inventory valued under Sub-Section (2-A) of Section 142 of the Act or in a case where an application made before the Income Tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application was made before the Settlement Commission and ending with the date on which the order is received by the Principal Commissioner or Commissioner or where the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under Sub-Section 1 of Section 245Q of the Act and ending with the date on which the Advance Ruling pronounced by it is received by the Commissioner or where reference for exchange for information is made by an authority competent under an agreement referred to in Section 90 or Section 90-A of the Act or where a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner etc., shall be excluded. There is no mention anywhere about Section 144C of the Act.

26. If we accept the submissions of Shri Suresh Kumar that when there is a remand as in this case, the AO is unfettered by limitation, it would run counter to the avowed object of provisions that were

considered while framing the provisions of Section 144C of the Act. Having set time limits every step of the way, it does not stand to reason that proceedings on remand to the AO may be done at leisure sans the imposition of any time limit at all.

27. Having considered the language of Section 144C and 153, we cannot accept that the provisions of Section 153 are excluded to the operation of Section 144C.

28. Mr. Mistri, therefore, is correct in his submissions that the time limit prescribed under Section 153 of the Act would prevail over and above the assessment time limit prescribed under Section 144C of the Act. This is because the Assessing Officer may follow the procedure prescribed under Section 144C of the Act, if he deems fit necessary but then the entire procedure has to be commenced and concluded within the twelve months period provided under Section 153 (3) of the Act. This is because, the procedure under Section 144C(1) of the Act also has to be followed by the Assessing Officer only if he proposes to make any variation which is prejudicial to the interest of the eligible assessee. If the Assessing Officer did not wish to make any variation which is prejudicial to the interest of the eligible assessee, he need not go through the procedure prescribed under Section 144C of the Act.

29. In our view, the assessment has to be concluded within twelve months as provided in Section 153(3) of the Act when there has been remand to the AO by the ITAT under Section 254 of the Act. Within this twelve months prescribed, the AO has to ensure that the entire procedure prescribed under Section 144C is completed and pass a final assessment order. For this the AO has to be prompt in passing an order contemplated under Section 144C(1) of the Act and not wait to be reminded like in this case and still take almost two years to start the process. Sub-Section (13) of Section 144C provides that an assessment officer shall, upon receipt of the directions, issued under Sub-Section (5), in conformity with the directions complete, notwithstanding anything to the contrary contained in Section 153, 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. What is contemplated under Section 144C (13) is the passing of the final assessment order. Twelve months as provided under Section 153(3) would start from the end of the financial year in which the Principal Commissioner received the order under Section 254 from the ITAT. The assessing officer should have taken steps to pass the final order under Sub-Section (13) of Section 144C within 12 months period.

30. The exclusion of applicability of Section 153, in so far as non-obstante clause in Sub-Section (13) of Section 144C is concerned, it is for limited purpose to ensure that dehors larger time available, an order based on the directions of the DRP has to be passed within 30 days from the end of the receipt of such directions. The Section and Sub-Section have to be read as a whole with connected provisions to decipher the meaning and intentions.

31. We would also observe that a similar non-obstante clause is also used in Section 144C(4) of the Act with the same limited purpose to imply, even though there might be a larger time limit under Section 153, once the matter is remanded to AO by the ITAT under Section 254, the process to pass final order under Section 144C has to be taken immediately.

32. The object is to conclude the proceedings as expeditiously as possible. There is a limit prescribed under the statute for the AO and therefore, it is his duty to pass an order in time. After 30th September 2021, the AO will have no authority to pass any final assessment order in this Case.

33. We cannot accept the submissions of Shri Suresh Kumar that

passing of draft assessment order before 30th September 2021 would suffice. We find support for this view in *Roca Bathroom (SB)* (Supra) and *Roca Bathroom (DB)* (Supra).

34. In the circumstances, since no final assessment order can be passed in the present case as the same is time barred, the Return of Income as filed by Petitioner be accepted. This would however, not preclude the Revenue from taking any other steps in accordance with law.

35. Petition disposed. No order as to costs.

Writ Petition No. 2340 of 2021 (A.Y. 2014-15)

36. Since the facts, dates, issues and the grounds of challenge which arise are the same as in Writ Petition No.2661 of 2021 and the major ground of challenge is that the final assessment order has to be passed within the period of limitation as provided in Section 153 of the Act even if the provisions of Section 144C of the Act are applicable, the findings in Writ Petition No.2661 of 2021 would squarely apply in this Petition also. Petition accordingly disposed in the same terms, i.e., since no final assessment order can be passed as the same is time barred, the Return of Income as filed by Petitioner be accepted. This would, however, not

preclude the Revenue from taking any other steps in accordance with law.

Writ Petition Nos.3059 of 2021 and 3060 of 2021- Both for A.Y. 2018-19)

37. These Writ Petitions are almost identical to the above Writ Petitions, except that the name of the Petitioners and assessment years are different. All belong to the same group. Here also the same major ground of challenge arises, viz, that the final assessment order of assessment has to be passed within the period of limitation set out in Section 153 of the Act even if the provisions of Section 144C of the Act are applicable. The only difference in these two Petitions is that in these cases it was the original order of assessment which was required to be passed within the period of limitation set out in Section 153 of the Act. As the original assessment orders are in question, the period of limitation required to be adhered to is Section 153(1) of the Act. The applicable Assessment Year being A.Y. 2018-19, the due date as per Section 153(1) was eighteen (18) months from the end of the Assessment Year. The original due date, therefore, would be 30th September 2020. But in view of the extension given by virtue of the Relaxation Act, any due date of assessment proceedings falling between 20th March 2020 and 31st December 2020 was extended to 31st March 2021. As per Notifications No. 10/2021 dated 27th February 2021, No. 38/2021 dated 27th April 2021 and No. 74/2021 dated 25th June

2021, time was extended to 30th April 2021, 30th June 2021 and finally to 30th September 2021, respectively. Hence, the conclusion arrived in Writ Petition Nos.2340 of 2021 and 2661 of 2021 will squarely apply to these Writ Petitions as well. There is no difference in the legal principle falling for consideration in these two Petitions and Writ Petition No. 2661 of 2021 and Writ Petition No. 2340 of 2021. The limitation of Writ Petition 2661 of 2021 and Writ Petition No. 2340 of 2021 is provided in Section 153(3) of the Act. In these two Petitions, it is provided in Section 153(1) of the Act as the Assessing Officer is seeking to pass the assessment order under Section 143(3) of the Act for the first time. As the date of passing draft assessment order under Section 144C was itself 28th September 2021, no final assessment order can be passed in these Petitions also as the same is time barred. The Return of Income filed by Petitioners be accepted. This would, however, not preclude the Revenue from taking any other steps in accordance with law.

38. Petitions disposed accordingly. No order as to costs.

(FIRDOSH P.POONIWALLA, J.)

(K.R. SHRIRAM, J.)