IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2023

PRONOUNCED ON : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.24230 & 24235 of 2021
and WMP.Nos.25544, 25546, 25550 & 25553 of 2021

Havish Koorapaty ... Petitioner in W.P.No.24230/202
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Sivakumar Koorapati .. Petitioner in W.P.No.24235/20
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Vs.

The Income Tax Officer,
International Taxation Ward 1 (2),
No.16, Greams Road,
Chennai 600 006. ... Respondent in both
W.Ps.

Prayer in W.P.No.24230 of 2021 :Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling foir the records on the file of the Respondent and quash the impugned assessment order passed under Section 143(3) of the Income Tax Act, 1961 in ITBA/AST/S/143(3)/2021-22/1035764639(1) dated 21.09.2p21 for the AY 2019-2020.

Prayer in W.P.No.24235 of 2021 :Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling foir the records on the file of the Respondent and quash the impugned assessment order passed under Section 143(3) of the Income Tax Act, 1961 in ITBA/AST/S/143(3)/2021-22/1035675311(1) dated 17.09.2021 for the AY 2019-2020.

In both cases

For Petitioner : M/s.Vandana Vyas

For Respondent : Mr.Prabhu Mukunth Arunkumar
Junior Standing Counsel &
Mr.B.Ramana Kumar
Senior Standing Counsel

COMMON ORDER

By this common order, all the Writ Petitions are being disposed of.

2. In these Writ Petitions, the respective petitioners who are siblings have challenged the impugned assessment order dated 21.09.2021 (in W.P.No.24230 of 2021) and impugned assessment order dated 17.09.2021 (in W.P.No.24235 of 2021) passed under Section 143(3) of the InTax Act, 1961 for the Assessment year. Both the

petitioners are Non- Resident Indians NRI's).

3. The respective petitioners inherited immovable properties from the death of their father. The respective petitioners have sold these separate properties on the same date on 06.09.2018 as detailed below:-

W.P.No.	Property details	Date of Registration.	Registered Document No	Value (in Rs.)
W.P.No.24230 of 2021	Plot no B, Door no 130, new no 79/2 previous door no 6/23 & 7/23, Dr. Radhakrishnan Salai, Mylapore, Chennai.	06.09.2018	2902/2018 in the Sub Registrar's Office Mylapore	7,87,03,144
W.P.No.24235 of 2021	Plot no D, Door no 130, new no 79/4 previous door no 6/23 & 7/23, Dr. Radhakrishnan Salai, Mylapore, Chennai.	06.09.2018	2903/2018 in the Sub Registrar's Office Mylapore	7,83,29,448

4. The respective petitioners filed their Return of Income on 30.08.2019 and 31.08.2019 respectively. The assessments were not completed on account of several factors due to inaction of the respective petitioner. Ultimately the petitioners were issued with notices under Section 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and a show cause notice under Section 143(3)(SCN) of the Act on 23.08.2021. Notices which preceded the

impugned orders from the date of Return of income are detailed below:-

	Assessment year 2019- 2020 W.P. No 24230 of 2021 Havish Koorapaty v. IT officer Non-Resident		W.P. No 24235 of 2021Sivakumar Koorapaty v. IT officer Non- Resident	
S.No	**Date**	**Event**	**Date**	**Event**
1.	30.08.2019	Return of income filed by the petitioner u/s 139(1) of the IT act	31.08.2019	Return of income filed by the petitioner u/s 139(1) of the IT act
2.	31.03.2021	Notice u/s 143(2) issued for selection of the petitioner ROI for complete scrutiny	31.03.2021	Notice u/s 143(2) issued for selection of the petitioner ROI for complete scrutiny
3.	16.04.2021	Acknowledgment to the reply of notice u/s 143(2) by the petitioner	16.04.2021	Acknowledgment to the reply of notice u/s 143(2) by the petitioner
4.	13.07.2021	Notice u/s 142 (1)	13.07.2021	Notice u/s 142 (1)
5.	22.07.2021	Reply to Notice u/s 142 (1)	22.07.2021	Reply to Notice u/s 142 (1)
6.	23.08.2021	Show cause notice u/s 143(3)(SCN)	23.08.2021	Show cause notice u/s 143(3)(SCN)
7.	28.08.2021	Request for obtaining copy of notice u/s 133(6) by the Sub registrar office	28.08.2021	Request for obtaining copy of notice u/s 133(6) by the Sub registrar office
8.	08.09.2021	Reply to Show cause notice	08.09.2021	Reply to Show cause notice
9.	**21.09.2021**	**Impugned order passed u/s 143(3)**	**17.09.2021**	**Impugned order passed u/s 143(3)**

5. The specific contention of the respective petitioners is that the Finance Act, 2020 introduced a amendment to Section 144C of the Act

w.e.f 01.04.2020. It is submitted that as a result of the amendment, the respective petitioner became "eligible assessee" within the meaning of Section 144C(15)(b)(ii). It is therefore, submitted that the petitioners being "non-residents", ought to have been served with a Draft Assessment Order in accordance with the provision of Section 144C of the Income Tax Act, 1961 even though the returns filed by the respective petitioners related to the Assessment Year 2019-2020 before the date of assessment.

6. In support of the Writ Petition, the learned counsel for the petitioners has drawn attention to the Memorandum explaining the Finance Bill 2020 wherein, it has been stated that the amendment to section 144C(15)(b)(ii) will take effect from 1st April,2020 if the AO proposes to make any variation after this date and in case of an "eligible assessee," any variation prejudicial to the interest of the assessee is to be made, under Section 144C of the Income Tax Act, 1961.will be applicable.

7. It is thus submitted that if an Assessing Officer proposed any variations on or after 01.04.2020 to the returns filed by an "eligible assessee", the procedure under Section 144C of the Act was to be followed. It is submitted that the issuance of a "Draft Assessment Order" preceding to the Assessment Order was mandatory under the Scheme of the Act. By not passing a Draft Assessment Order, the substantive right to take further re-course under Section 144C(2) of the Income Tax Act,1961,against the Draft Assessment Order has been denied to the petitioners. Therefore, it is submitted that the impugned assessment order dated 21.09.2021 and 17.09.2021 were liable to be quashed.

8. In this connection, the learned counsel for the petitioners has drawn attention to the following decisions:-

(i) **Honda Cars India Ltd v Deputy Commissioner of Income Tax** [2016] 67 taxmann.com 29 (Delhi).

(ii) **SHL(India) Private Limited v Deputy Commissioner of Income Tax** in WPL 11293 of 2021 .

(iii) **Gigabyte Technology Pvt Ltd v CIT** 121 taxman 301(Bombay).

(iv) **Vijay Television Pvt Ltd v Dispute**

Resolution Panel 369 ITR 113 (Madras)

(v) **ACIT v Vijay Televisions Pvt Ltd** in WA No 1327 to 1329 of 2014 (Madras High Court)

(vi) **GR Oil India Pvt Ltd v ACIT** in WP No 1575 of 2020 (Madras High Court)

(vii) **PCIT and Others v SISCO systems Capital India Private Limited** in ITA No 128 od 2021 (Karnataka High Court)

(viii) **Durr India Pvt Ltd v ACIT** in 436 ITR 111 (Madras) "

9. The learned counsel for the respective petitioner has alluded to Circular No.5 of 2010 dated 03.06.2010 and Circular No.9 of 2013 dated 19.11.2013, Circular No.5 of 2010 dated 03.06.2010 was issued after Section 144C was first introduced to the Income Tax Act, 1961 vide Finance (No.2) Act, 2009.

10. It is submitted that by Circular No.5 of 2010 it was clarified that the amended Section 144C of the Income Tax Act, 1961 will apply only in relation to the Assessment Year 2010-2011 and for subsequent years. However, the position was later changed vide Circular No.9 of 2013 dated 19.11.2013 by stating that section 144C is applicable to any

order which proposes to make variation in income or loss returned by an "eligible assessee", on or after 1stOctober, 2009 irrespective of the assessment year to which it pertains. It is submitted that same principle is applicable to the facts of the case.

11. The learned counsel for the respondent on the other hand would submit that Section 144C of the Act was prospective in nature and therefore question of making it applicable for Returns filed earlier retrospectively for the period prior to assessment year 2021-2022 (Financial Year 2020-2021) does not arise. He also submits that the issue is also covered by a decision of a learned Single Judge of this Court in **Vedanta Ltd v Assistant Commissioner of Income Tax** rendered on 22.10.2019 in W.P. No 1729 of 2011, [2020] 422 ITR 262 (MAD).

12. The timeline for completing the assessment in response to a return filed under Section 139 of the Act is specified in Section 153(1) and 1A of the Income Tax Act,1961. Section 153(1) and 1A of the Act are as under : -

SECTION 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:
1st Proviso	**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:
2nd proviso	**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:]
3rd proviso	**Provided also** that in respect of an order of assessment relating to the assessment year commencing on [38]**[***]** 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:]
4th proviso	**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.
Sub-section 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 [41]**[twelve]** months from the end of the financial year in which such return was furnished.

13. As per Section 153(1), no order of assessment shall be madeafter the expiry of **twenty-one months** from the end of the assessment year in which the income was first assessable.

14. However, exceptions have been provided in the case of some of the Assessment Years. As per 2nd proviso to Section 153(1) in respect of an assessment order relating to the Assessment Year commencing on 01.04.2019, the assessment order has to be completed within a period of 12 months from the end of the assessment year in which the income was first assessable.

15. In other words, no assessment order can be passed after the expiry of 12 months of the assessment year in which the income was first assessable.

16. The dispute in these cases, relates to Assessment Year 2019-2020. Thus, the last date for passing the assessment order for the Assessment Year 2019-20 would be 31.03.2021. However, in these cases order were passed on 22.10.2021 & 22.10.2021 respectively.

17. The delay in passing the impugned Assessment order was due to the outbreak of Pandemic and savings under and Taxation and Other law (Relaxation and Amendment of Certain Provisions) Ordinance 2020 promulgated and Taxation and Other law (Relaxation and Amendment of Certain Provisions) Act,2020. In these writ petitions, the impugned Assessment Orders were passed on 17.09.2021 and 21.09.2021 respectively.

18. The real issue to be decided in the case of these petitioners is whether the amendment to Section 144C(15)(b)(ii) with effect from 01.04.2020 will apply to the respective petitioners or not.

19. In **Vedanta Ltd v Assistant Commissioner of Income Tax** decision was rendered in the context of the below mentioned circulars issued after Section 144C was incorporated into the Income Tax Act, 1961 in the year 2009. Relevant portion of the Circulars read as under and are reproduced below: -

Circular No.5 of 2010 dated 03.06.2010	***Circular No. 09/2013 dated 19.11.2013***
"45.5Applicability: These amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years. The Dispute Resolution Panel Rules have been notified by S.O. No. 2958 (E) dated 20th November, 2009." In the above extracted Para 45.5 there has been an inadvertent error in stating the applicability of the provisions of section 144C inserted vide Finance (No.2) Act, 2009 that amendments will apply in relation to the assessment year 2010- 11 and subsequent assessment years. Accordingly, para 45.5 is replaced with the following:	"45.5. Applicability: Section 144C has been inserted with effect from 1st April, 2009. Accordingly, the Assessing Officer is required to forward a draft assessment 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. In other words section 144C is applicable to any order which proposes to make variation in income or loss returned by an eligible assessee, on or after 1st October, 2009 irrespective of the assessment year to which it pertains. Amendments to other sections of the Income-tax Act referred to in para 45.3 of the circular 5/2010 dated 3rd June, 2010 shall also apply from 1st October, 2009"

20. It was in the context of the above circular, the Court in **Vedanta Ltd v Assistant Commissioner of Income Tax held** as under:-

> "The right that has enured to the parties in 2009 cannot be modified by a Clarification issued by the Board, three years thereafter. It appears to me quite possible that the long silence of the Board followed by the sudden Clarification issued in 2013 might itself be inspired by challenges similar to the one before me now, perhaps, even the present one. **Though the Clarificatory Circular has not been challenged, in the light of the detailed discussion as above, I am of the view that this Circular will not bind the Assessing Officer, particularly when it does not lay down the correct position of law.**"

21. The Bombay High Court in **SHL (India) Private Limited Vs. Deputy Commissioner of Income-tax**, WPL.No.11293 of 2021, held as under:

> "25. In our view, the following principles emerge from the above discussion :-
>
> (i) that the procedure prescribed under Section 144C of the IT Act is a mandatory procedure

> and not directory.
> (ii) failure to follow the procedure under Section 144C(1) would be a jurisdictional error and not merely procedural error or irregularity.
> (iii) therefore, Section 292B of the IT Act cannot save an order passed in breach of the provisions of Section 144C(1), the same being an incurable illegality."

The dispute in the above case pertained to the assessment year 2017-2018.

22. In **Vijay Television (P) Ltd., vs. Dispute Resolution Panel &Ors,** (2014) 369 ITR 113 which was affirmed by the Hon'ble Division Bench of this Court in **Assistant Commissioner of Income Tax, Media Circle-11, Chennai v. Vijay Television (P) Ltd** Assessment Order came to be passed on 26.03.2013. There the last date for completing the assessment expired on 31.03.2013.

23. The learned Single of this Court in **Vijay Television (P) Ltd., vs. Dispute Resolution Panel &Ors,** (2014) 369 ITR 113 followed the views of the Andhra Pradesh High Court in **Zuari Cements V ACIT Circle- 2(1)** Vide order dated 21.02.2013 in W.P No 5557 of 2012 and

held as under:-

> "31. ……….The decision of the Division Bench of the Andhra Pradesh High Court deals with an identical issue as that of the present case. In this case, against the order passed by the second respondent on March 26, 2013, the petitioner filed objections before the Dispute Resolution Panel, the first respondent herein and the first respondent refused to entertain it by stating that the order passed by the second respondent is a final order and it had jurisdiction to entertain objections only if it is a draft assessment order. While so, the order dated March 26, 2013, of the second respondent can only be termed as a final order and in such event it is contrary to section 144C of the Act. As mentioned supra, in and by the order dated March 26, 2013, the second respondent determined the taxable amount and also imposed penalty payable by the petitioner. According to the learned senior counsel for the petitioners, even as on this date, the website of the Department indicate the amount determined by the second respondent payable by the company in spite of issuance of the corrigendum on April 15, 2013, as a tax due amount. Thus, while issuing the corrigendum, the second respondent did not even withdraw the taxable amount determined by him or updated the status in the website. **In any event, such an order dated March 26, 2013, passed by the second respondent can only be construed as a final order passed in violation of the statutory provisions of the Act. The corrigendum dated April 15, 2013, is also beyond the period prescribed for limitation. Such a defect or**

> **failure on the part of the second respondent to adhere to the statutory provisions is not a curable defect by virtue of the corrigendum dated April 15, 2013**. By issuing the corrigendum, the respondents cannot be allowed to develop their own case. Therefore, following the order passed by the Division Bench of the Andhra Pradesh High Court, which was also affirmed by the honourable Supreme Court by dismissing the special leave petition filed thereof, on September 27, 2013, the orders, which are impugned in these writ petitions are liable to be set aside."

24. The learned Single Judge of this Court **Vijay Television (P) Ltd., vs. Dispute Resolution Panel &Ors,** had concluded that there was a violation of Section 144(C) of the Act, while passing final order of assessment and therefore such order cannot be corrected by way of corrigendum dated 15.04.2013.

25. The Court in **Vijay Television (P) Ltd., vs. Dispute Resolution Panel &Ors,** has referred to the decision of the Allahabad High Court in **Commissioner of Income Tax vs. Shital Prasad Kharag Prasad**, 280 ITR 541. The Court was influenced by Memorandum explaining the Finance Bill, 2009 which preceded to Finance (No.2) Act,

2009, wherein it was stated that Section 144C of the Act would take effect from 01.10.2009 and therefore it was held Circular No.5/10 issued by CBDT stating that Section 144C would apply only from the assessment year 2010-11 and subsequent years and not for the assessment year 2008-09 was held contrary to the express language in Section 144C(1) and therefore found the view of the Revenue unacceptable.

26. In **Vijay Television (P) Ltd.,** an order was passed by the Dispute Resolution Panel. The Dispute Resolution Panel declined to entertain the objections under Section 144C (2)(b) of the Income Tax Act against Assessment Order dated 23.12.2011 and therefore this Court took a view that corrigendum dated 15.04.2023 was issued beyond the time limit for completing the assessment under Section 153 of the Income Tax Act, 1961.

27. In **Vijay Television (P) Ltd.,** the assessment order came to be passed on 26.03.2013. Thereafter, a corrigendum was subsequently

issued on 15.04.2013 to assessment order dated 26.03.2013. The assessee had also filed application before the Dispute Resolution Panel. However, the Dispute Resolution Panel questioned the validity of the corrigendum dated 15.04.2013 issued beyond the period of limitation under section 153 of the Income Tax Act, 1961 and thus viewed it without jurisdiction.

28. The Division Bench of this Court upheld the order of the Single Judge of this Court by merely stating that the limitation under the Act came to an end and therefore this defect was incurable.

29. A Division Bench of this Court in the case of **Commissioner of Income Tax vs. Roca Bathroom Products (P)Ltd.,** (2022)140 Taxmann.com 304, has considered a similar dispute arising out of Transfer Pricing Officer under Section 92CA of the Income Tax Act and has concluded as follows:-

> 27. For the reasons set out herein before, we conclude as under:

(a) The provisions of Sections 144C and 153 are not mutually exclusive, but are rather mutually inclusive. The period of limitation prescribed under Section 153 (2A) or 153 (3) is applicable, when the matters are remanded back irrespective of whether it is to the Assessing Officer or TPO or the DRP, the duty is on the assessing officer to pass orders.

(b) Even in case of remand, the TPO or the DRP have to follow the time limits as provided under the Act. The entire proceedings including the hearing and directions have to be issued by the DRP within 9 months as contemplated under Section 144C (12) of the Income Tax Act,

(c) Irrespective of whether the DRP concludes the proceedings and issues directions or not, within 9 months, the Assessing officer is to pass orders within the stipulated time,

(d) In matter involving transfer pricing, upon remand to DRP, the Assessing officer is to pass a denova draft order and the entire proceedings as in the original assessment, would have to be completed within 12 months, as the very purpose of extension is to ensure that orders are passed within the https://www.mhc.tn.gov.in/judis WA No. 1517 of 2021 etc. batch extended period, as otherwise the extension becomes meaningless.

(e) The outer time limit of 33 months in case of reference to TPO under Section 153, would not refer to draft order, but only to final order and hence, the entire proceedings would have to be concluded within the time limits prescribed,

(f) The non-obstante clause would not exclude the operation of Section 153 as a whole. It only implies that irrespective of availability of larger time to conclude the proceedings, final orders are to be passed within one month in line with the scheme of the Act,

(g) When no period of limitation is prescribed, orders are to be passed within a reasonable time, which in any case cannot be beyond 3 years. However, when the statute prescribes a particular period within which orders are to be passed, then such period, irrespective of whether it is short or long, shall be applicable.

31. There the dispute pertained to the assessment years 2009-10 and 2010-11 and the matter went up to DRP and the orders came to be passed by DRP on 30.03.2013 & 24.03.2014.

32. Relevant para Nos. 20, 21 and 25 of the said order in **Commissioner of Income Tax vs. Roca Bathroom Products (P)Ltd.,** (2022)140 Taxmann.com 304,are reproduced below:-

20. As rightly contended by the learned senior counsels and affirmed by the Learned Judge, the DRP proceedings is a continuation of assessment proceedings. To put it further, it is a part of assessment proceedings, once the objections are filed and under section 144C (12) a period of 9 months is prescribed, within which, directions are to be issued by the DRP, failing which any directions are to be treated as otiose. As seen from the timeline discussed in the earlier paragraphs, the original assessment proceedings are to be completed within 21 months and the additional time of 12 months is granted when proceedings before TPO is pending. The TPO has to pass orders before 60 days prior to the last date. Then 30 days time is given to the assessee to file their objection before the DRP and the DRP is given 9 months time and thereafter, within one month from the end of the month of receipt of directions from DRP, the final order is to be passed. This court is not in consonance with the contention of the learned senior panel counsel for the appellants/ revenue that the time period of 33 months, provided initially is for the draft order not for the final order. A careful perusal of the timeline would indicate that the time limit is for the final assessment and not for the draft order. The anomaly in the argument is that in the present cases, no fresh draft order was passed, but the DRP had issued the notices. If the contention of the appellants / revenue was to hold some water, they must have passed the draft assessment order immediately on receipt of the order from the Tribunal, but instead, notice was issued by

the DRP. In any case, it is a far cry for the revenue as because no order has been passed for more than 5 years.

21. As held above, the assessment has to be concluded within 21 months when there is no reference and when there is a reference, it has to be concluded within 33 months. In the additional 12 months, the draft order is to be passed, the objections have to be filed, the DRP has to issue the directions and the final order is to be passed. The provisions under section 144C and section 153 are not mutually exclusive as both contain provisions relating to Section 92CA and are inter-dependant and overlapping. On remand, prior to amendment as per Section 153 (2A), the Assessing officer is given 12 months to pass a fresh assessment order. Therefore, it is incumbent on him to do so, irrespective of the fact that DRP has completed the hearing and issued the directions or not. As rightly held by the learned judge, we are of the view that the DRP ought to have concluded the proceedings within 9 months from the date of receipt of the Tribunal's order, when it had issued a notice on 19.02.2014 and conducted the hearing as early as on 10.03.2014 and on several dates. The DRP at Chennai, in fact ought to have passed orders before 19.11.2014, even if the date of receipt of the notice is taken as 19.02.2014. In that event, the assessing officer ought to have passed the order before 31.12.2014 or at the latest before 31.03.2015 considering that the order was received during the Financial year 2013-14. The transfer of the

files to Bengaluru, after the lapse of the time, will not indefinitely extend the time and can have no impact on the time lines. It is an inter-department arrangement and it cannot defeat the rights of the assessee.

25. As regards the relief sought in other appeals viz., W.A.No.1517/2021 etc. batch, the findings rendered above are equally applicable. In these cases, for the assessment year 2009-10, the order of remand to the Assessing officer was passed on 18.12.2015 and insofar as the assessment year 2010-11 is concerned, for one issue, it was passed on 18.12.2015 and for other two issues, it was passed on 23.09.2016 after the amendment, by which time, the time limit was brought down to 9 months. As such, fresh orders ought to have been passed before 31.03.2017 for the assessment year 2009-10 and for one issue relating to the assessment year 2010-11 reckoning the 12 months from the financial year 2015-16 and on or before 31.12.2017 reckoning 9 months from the financial year 2016-17. Therefore, the Assessing officer ought to have passed a draft assessment order immediately and asked the assessee to file their objections with the DRP. For the mistake and the lapse of the Assessing officer, the vested Assessee cannot be taken away. WA No. 1517 of 2021 etc. batch Assessee cannot be taken away.

33. The issues is said to be pending before the Hon’ble Supreme Court. The Revenue has filed before the Hon’ble Supreme Court with a

delay. The Hon'ble Supreme Court has condoned as is reported in (2023) 291 Taxman.com 529(SC) and the case tagged along with C.A.No.6755/2018 between **the Deputy Commissioner of Income Tax and Nokia India Private Limited** in W.P.No.1773 of 2016.

34. If the impugned Assessment Orders are treated as "draft assessment the orders" u/s.144C(1) the time for passing the assessment order would get extended the time line would be slightly different due to outbreak of Covid-19 and intervening and Taxation and Other law (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 promulgated by the Central Government and passing of the Taxation and Other law (Relaxation and Amendment of Certain Provisions) Act,2020.

35. There is a saving of limitation under the provisions of Taxation and Other law (Relaxation and Amendment of Certain Provisions), Ordinance 2020 promulgated by the Central Government and in view of enactment of Taxation and Other law (Relaxation and Amendment of Certain Provisions) Act,2020 read with notification issued therein.

36. The Andhra Pradesh High Court in **Zuari Cements V ACIT Circle- 2(1)** merely held that Assessment Order dated 23.12.2011 [also referred to as 22.12.2011] in discussion and demand notice dated 23.12.2011 were unsustainable and unenforceable. The Court has however not hold that the assessment proceedings will abate, if the order itself was passed within the period of limitation for completion of assessment mentioned under Section 153 of the Income Tax Act, 1961.

37. The impugned order would indicate that the respective petitioners were issued notices under Section 143(3) of the Act. They were also issued notices under Section 142(1) of the Act. They also issued with show cause notices dated 28.08.2021. The respective petitioners have also replied to the respective notices by their reply dated 22.07.2021 and reply dated 08.09.2021.

38. Infact, an assessment can neither abate nor be kept in a state of flux. It has to be completed one way or the other. Indeed assessment

proceedings cannot abate, if an erroneous order is passed within the period of limitation. Such order can be set aside and cases can be remitted back to the authority to pass a correct order.

39. Therefore, the impugned Orders passed on 21.09.2021 and 17.09.2021 at best could be treated as Draft Assessment Order although computation of the Tax liability under Section 156 of the Income Tax Act, 1956 accompanied than. These mistakes however are to attributable formatting of the orders in the system as assessment are partly system driven.

40. Merely because, there is a procedural infraction in formatting of the impugned orders as the impugned assessment orders under Section 143(3) of the Act, *ipso facto* will not mean that the assessment will have to abate on account of wrong formatting.

41. Therefore, merely because on the same day, the respondent had also issued notice of demand to the respective petitioner under Section 156 the Income Tax Act, 1961, *ipso facto* will not mean that the

assessment proceedings will have to abate.

42. If the impugned orders were treated as draft assessment orders, the petitioners have an option to approach the Dispute Resolution Panel (DRP). Assessments will have to be completed within a period of one month from the end of the month in which such directions are issued in accordance with Section 144C(13) of the Income Tax Act, 1961.

43. If the impugned Assessment Orders dated 17.09.2021 and 21.09.2021 are treated as draft assessment orders under Section 144C(1) the Income Tax Act, 1961, the assessment will not abate. Only if the impugned assessment orders dated 17.09.2021 and 21.09.2021 were passed beyond the ordinary period prescribed under Section 153 of the Income Tax Act, 1961, assessment proceedings will abate.

44. The time for passing the assessment orders will get extend. Limitation for passing of the assessment order is explained below in the following table:-

Covid Period	**W.P. No 24235 of 2021 Filed on**		**W.P No 24230 of 2021 Filed on**	
Date of Filing of Writ Petition.	**22.10.2021**		**22.10.2021**	
Date of Impugned Orders.	17.09.2021		21.09.2021	
30 Daystime for accepting the Draft assessment Order/ Time for filing objections before the DRP to the Draft Assessment under Section 144C(2)	Where there are no objections to the Order.	Time for filing Objections before the DRP.	Where there are no objections to the Order.	Time for filing Objections before the DRP.
	17.10.2021	**17.10.2021**	**21.10.2021**	**21.10.2021**
Assessing officer had to pass order of assessment within **30 days** from the end of the month in which the acceptance is received or period for filing objection u/s 144C(2) expires.	**30.11.2021**	N.A	**30.11.2021**	N.A
DRP had to give directions to the Assessee u/s 144C(5) r.w.s 144C(12) within a period of **9 months** from the end of the month in which the Draft Assessment Order was issued .	N.A	30.06.2022	**N.A**	30.06.2022
Assessing officer to pass assessment order within 30 days of the direction of the DRP.	N.A	**30.07.2022**	**N.A**	**30.07.2022**

45. Time taken from the date of impugned order till the date of disposal of the writ petition and its receipt shall stand excluded for the purpose of computing limitation under section 153 of the Income tax Act,

1961.

46. There is elasticity in time for passing the impugned assessment order notwithstanding the timelines under Section 153 & Section 153(B) of the Income Tax Act, 1961.

47. The respective petitioners can be given right to agitate before the Dispute Resolution Panel in terms of Section 144C(2) r/w 3 to (13) of Section 144C of the Income Tax Act, 1961.

48. In my view, the respective petitioners are therefore entitled to redress their respective greivance before the Dispute Resolution Panel (DRP) under the framework of Section 144C of the Income Tax Act, 1961.

49. The impugned orders are therefore set aside and the cases are remitted back to the respondent to reformate the impugned orders as Draft Assessment Orders to facilitate the petitioner to work out remedy against the Draft Assessment Order in the manner known to law under

the provisions of the Income Tax Act, 1961. Since the proceedings are partly system driven, this exercise of issuance of re-formatted Draft Assessment Order shall be made within 30 days of receipt of a copy of this order.

50. In the light of the above discussion, the impugned orders and the connected notice of demand issued to the respective petitioners under Section 156 of the Income Tax Act, 1961 are quashed.

51. These writ petitions stand disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

08.09.2023

Index : Yes/No
Neutral Citation : Yes/No
kkd

To

The Income Tax Officer,
International Taxation Ward 1 (2),

No.16, Greams Road,
Chennai 600 006.

C.SARAVANAN,J.

kkd

Pre-delivery Common Order in
W.P.Nos.24230 & 24235 of 2021

08.09.2023