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W.P.Nos.24357, 24363, 24367, 24374,  
24380, 24384, 24386 & 24388 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                                   |                                     |
|-----------------------------------|-------------------------------------|
| <b>Reserved on:</b><br>07.08.2023 | <b>Pronounced on:</b><br>08.09.2023 |
|-----------------------------------|-------------------------------------|

CORAM

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

W.P.Nos.24357, 24363, 24367, 24374,  
24380, 24384, 24386 & 24388 of 2021  
and

W.M.P.Nos.25664, 25666, 25670, 25672, 25674, 25676, 25692, 25694,  
25680, 25681, 25683, 25685 & 25687 to 25690 of 2021

**W.P.No.24357 of 2021:**

Ahmed Buhari

.. Petitioner

**Vs.**

Deputy Commissioner of Income Tax,  
Central Circle 1(1), Chennai  
New No.46, Mahatma Gandhi Road,  
Nungambakkam,  
Chennai – 600 034.

.. Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent and quash the impugned assessment order passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 in DIN: ITBA/AST/M/147/2021-22/1036085237(1) dated 28.09.2021 for the AY 2010-11 as arbitrary, illegal and without jurisdiction.



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For Petitioner : Mr.N.V.Balaji

For Respondent : Mr.A.N.R.Jayaprathap  
Junior Standing Counsel for  
Mr.A.P.Srinivas  
Senior Standing Counsel

### **COMMON ORDER**

By this common order, these eight Writ Petitions are being  
disposed of as detailed below:-

| Sl. No. | W.P.No.       | Assessment Year | Provision                                                       | Date       |
|---------|---------------|-----------------|-----------------------------------------------------------------|------------|
| 1.      | 24357 of 2021 | 2010-11         | u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961              | 28.09.2021 |
| 2.      | 24363 of 2021 | 2011-12         | u/s. 143(3) r.w.s. 153A r.w.s. 153C of the Income Tax Act, 1961 | 28.09.2021 |
| 3.      | 24367 of 2021 | 2012-13         | u/s. 143(3) r.w.s. 153A r.w.s. 153C of the Income Tax Act, 1961 | 28.09.2021 |
| 4.      | 24374 of 2021 | 2013-14         | u/s. 153C of the Income Tax Act, 1961                           | 30.09.2021 |
| 5.      | 24380 of 2021 | 2014-15         | u/s. 153C of the Income Tax Act, 1961                           | 30.09.2021 |
| 6.      | 24384 of 2021 | 2015-16         | u/s. 143(3) r.w.s. 153A r.w.s. 153C of the Income Tax Act, 1961 | 28.09.2021 |
| 7.      | 24386 of 2021 | 2016-17         | u/s. 153C of the Income Tax Act, 1961                           | 30.09.2021 |
| 8.      | 24388 of 2021 | 2017-18         | u/s. 143(3) of the Income Tax Act, 1961                         | 30.09.2021 |

2.The petitioner herein is a Non Resident Indian (NRI). The  
premises of M/s. Coastal Energy Pvt. Ltd. and M/s.Coastal Energen Pvt.



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Ltd., were searched on 15.02.2017 under Section 132 of the Income Tax Act, 1961. Search led to parallel proceedings for the respective assessment years under Section 148 of the Act, 1961, against the petitioner which have culminated in the impugned order dated 28.09.2021 for the Assessment Year 2010-2011 under Section 143(3) read with Section 147 of the Income Tax Act, 1961.

3.For the rest of the assessment years, the assessments were completed on the dates mentioned above at Sl.Nos.2 to 8 in the above table under Section 153A r.w.s. 153C of the Income Tax Act, 1961.

4.The petitioner and the two companies attempted to settle the dispute under Chapter XIX-A of the Income Tax Act, 1961. The applications were rejected and are subject matter of W.P.Nos 10375 & 10509 of 2020.

5.It is an admitted position on the date when the petitioner had filed return of income under Section 139 of the Income Tax Act, 1961 and revised return of income pursuant to the notice issued under Section 148 of the Income Tax Act, 1961 and notices issued under Section 153A



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of the Income Tax Act, 1961, the petitioner was not an eligible assessee.

The definition of “eligible assessee” in Section 144C of the Income Tax Act, 1961 was amended by Finance Act, 2020 with effect from 01.04.2020, by virtue of which a NRI's also became an “eligible assessee” within the meaning sub clause (15)(b) of Section 144C of the Income Tax Act, 1961.

6. Prior to 01.04.2020, during the period when the petitioner had filed regular return of income and return of income pursuant to notice issued under Section 153C of the Income Tax Act, 1961, the petitioner was not an “eligible assessee” within the meaning of the Section 144C(15)(b)(ii) of the Act, 1961. The definition of an “eligible assessee” prior to 01.04.2020 and after 01.04.2020 reads as under:

| <b>144C.(1). Reference to dispute resolution panel.</b>                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>144C.(1).</b> 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 <b>eligible assessee</b> 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. |                                                                                                                                                                   |
| <b>Prior to 01.04.2020</b>                                                                                                                                                                                                                                                                                                                                                                                                 | <b>After 01.04.2020*</b>                                                                                                                                          |
| (15) For the purposes of this section—                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                   |
| (b) "eligible assessee" means,—<br>(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the                                                                                                                                                                                                                                                                                | (b) "eligible assessee" means,—<br>(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer |



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| 144C.(1). Reference to dispute resolution panel.                                                                            |                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and<br><b>(ii) any foreign company.</b> | Pricing Officer passed under sub-section (3) of section 92CA; and<br><b><del>(ii) any non-resident not being a company*, or any foreign company.</del></b> |

7.The impugned assessment orders have been passed pursuant to re-opening of the assessment under Sections 148, 153C read with Section 153A of the Income Tax Act, 1961. The impugned assessment orders are primarily challenged on the ground that the respondent should have passed a “Draft Assessment Order” under Section 144C of the Income Tax Act, 1961, as the petitioner became an “**eligible assessee**”. It is the case of the petitioner that the remedy available to the petitioner to approach the Dispute Resolution Panel under Section 144C of the Income Tax Act, 1961 has been denied by directly passing the impugned assessment orders.

8.It is submitted that the assessment proceeding in case of an “eligible assessee” under Section 144C of the Income Tax Act, 1961 can be completed only after a “Draft Assessment Order” is passed in accordance to Section 144C (1) of the Income Tax Act, 1961 after 01.04.2020.



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9.It is submitted that as no “Draft Assessment Order” was passed after the petitioner became an “eligible assessee”, the impugned order is liable to be quashed.

10.It is submitted that the respondent has exceeded in his jurisdiction as the respondent failed to consider the provisions of Section 144C of the Act, 1961 with effect from 01.04.2020. It is submitted that in case of a non-resident, viz., an “eligible assessee”, an Assessing Officer was duty bound to complete the assessment as is contemplated under Section 144C of the Act, 1961.

11.In support of these Writ Petitions, the learned counsel for the petitioner relied on the following decisions:-

- (i) **Durr India Pvt Ltd Vs. ACIT**, [2021] 436 ITR 111 (Madras);
- (ii) **Gigabyte Technology (India) (P.) Ltd., Vs. Commissioner of Income Tax, Panaji, Goa**, [2021] 276 Taxman 104 (Bombay);
- (iii) **Vijay Television (P) Ltd., Vs. Dispute Resolution Panel & Ors.**, (214) 369 ITR 113 (HC-MADRAS);
- (iv) **Assistant Commissioner of Income-tax, Media Circle-11, Chennai Vs. Vijay Television (P.) Ltd.**, in W.A.Nos.1327



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to 1329 of 2014;

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- (v) **GE Oil & Gas India Pvt. Ltd., Vs. Assistant Commissioner of Income Tax** in W.P.No.1575 of 2020 and
- (vi) **Principal Commissioner of Income Tax and another Vs. M/s.CISCO Systems Capital (INDIA) Pvt. Ltd.,** in ITA.No.128 of 2021.

12.The learned counsel for the petitioner has also drawn attention to the memorandum explaining the Finance Bill 2020, wherein it has been clarified as follows:

**“Amendment in Dispute Resolution Panel (DRP).**

Section 144C of the Act provides that in case of certain eligible assessee, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act, the Assessing Officer (AO) is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income-tax. DRP has nine months to pass directions which are binding on the AO.

It is proposed that the provisions of section 144C of the Act may be suitably amended to:-



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- (A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of section 144C;
- (B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.

This amendment will take effect from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.”

13.The learned counsel for the petitioner has drawn attention to the preamble to the impugned orders, wherein it has been categorically admitted that the petitioner is a “non resident” and since the petitioner is a “non-resident”, the petitioner is an “eligible assessee” and therefore it was incumbent on the part of the respondent to pass a “Draft Assessment Order”, as is contemplated under Section 144C(1) of the Income Tax Act, 1961.

14.The learned counsel for the petitioner has also drawn attention to the circular issued in the background to insertion of Section 144C of the Income Tax Act, 1961 in the year 2009 after



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Finance (No.2) Act, 2009 was passed. A reference was made in the explanatory notice to the provisions of the Finance Bill, 2009 and two circulars which were issued by the Central Board of Direct Taxes as detailed as below:-

| Sl.No. | Date       | Circular Number                               |
|--------|------------|-----------------------------------------------|
| 1.     | 03.06.2010 | Circular No.5/2010/[F.No.142/13/2010-SO(TPL)] |
| 2.     | 19.11.2013 | Circular No.9/2013 [FILE No.142/20/2013-TPL]  |

15. Specifically, it is submitted that when the first mentioned circular was issued, it was clarified that the insertion of Section 144C of the Income Tax Act was with effect from 01.10.2009 and would apply only in relation to assessment year 2010-2011 and subsequent assessment years. However, noting the difficulties and the mistakes, Circular No.9/2013 dated 19.11.2013 was issued subsequently rectifying the mistakes.

16. Relevant portion of the respective verifications in the two mentioned circulars reads as under:

| Circular No.5/2010 dated 03.06.2010                                                | Circular No.9/2013 dated 19.11.2013                                                                |
|------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <b>45.5 Applicability</b> – These amendments have been made applicable with effect | <b>45.6. Applicability:</b> Section 144C has been inserted with effect from 1 <sup>st</sup> April, |



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| <b>Circular No.5/2010 dated 03.06.2010</b>                                                                                                                                                                                                             | <b>Circular No.9/2013 dated 19.11.2013</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| from 1 <sup>st</sup> 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 20 <sup>th</sup> November, 2009. | 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 1 <sup>st</sup> 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 1 <sup>st</sup> 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 3 <sup>rd</sup> June, 2010 shall also apply from 1 <sup>st</sup> October, 2009. |

17.While issuing the second mentioned clarification, it is stated as follows:

**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.**

18.On behalf of the respondent, the learned Standing Counsel for the respondent submits that these Writ Petitions are without any merits. It is submitted that the petitioner was not an “eligible



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assessee” within the meaning of Section 144C(15)(b)(ii) of the Income Tax Act, 1961, at the time when the returns were filed or at any time after notice under Section 148 and 153A were issued to the petitioner.

19.The learned Standing Counsel for the respondent has placed reliance on the decision of this Court in **M/s.Vedanta Ltd., Vs. ACIT**, reported in (2020) 422 ITR 262, wherein this Court had considered the very same provisions and came to the following conclusion as follows:-

“9.In the present case, the provision specifically states that it shall be applicable only with effect from 01.10.2009 and the Finance Act under which it has been inserted also does not state that the provision was to be applied retrospectively. Thus the 2013 clarification that has been relied upon by the Department in the counter to the Supplementary affidavit filed is incorrect in its appreciation and interpretation of the settled position of law.”

20.I have considered the decisions referred to by the learned counsel for the petitioner and by the learned Standing Counsel for the respondent. The challenge to the impugned order is inspired from the decision of the Division Bench of the Andhra Pradesh High Court in



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**Zuari Cement Limited vs. Assistant Commissioner of Income Tax,**

**Circle 2 (1)** passed in WP No. 5557 of 2012 dated 21.02.2013 and of this  
Court in **Vijay Television (P) Ltd., Vs. Dispute Resolution Panel &  
Ors.,** (214) 369 ITR 113 (HC-MADRAS).

21.In the present case, a search was conducted at the premises of the two companies of which the petitioner is the Director, namely M/s.Coastal Energy Pvt. Ltd. and M/s.Coastal Energen Pvt. Ltd.on 04.01.2017 under Section 132 of the Income Tax Act, 1961. A parallel search was also conducted at the residential premises of Shri Syed Ameer Ali, between 04.01.2017 and 15.02.2017.

22.During the course of the search proceedings, certain incriminating materials were seized from the said Shri Syed Ameer Ali. Based on the information received from the investigation wing, the assessment of the petitioner was re-opened for the assessment year 2010-2011 under Section 147 of the Income Tax Act, 1961 and for the rest of the assessment year under Section 153C read with Section 153A of the Income Tax Act, 1961.



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23.In this connection, a notice under Section 148 of the Income Tax Act, 1961 was issued to the petitioner for the assessment year 2010-2011. The petitioner filed a return of income on 07.04.2014 admitting the total income of Rs.1,83,357/-. Thereafter, a notice under Section 143(2) of the Income Tax Act, 1961 was issued on 11.08.2017, in response to which the petitioner's representative appeared from time to time and produced the information.

24.The proposals for variation were made with the issuance of a notice under Section 148 on 30.03.2017 for assessment year 2010-2011. For the rest of the assessment years are concerned, the notice issued under Section 153C or 153A of the Income Tax Act, 1961 were issued.

25.In light of the above, the Competent Authority referred the matter to Indonesia, UAE and Singapore Competent Authorities for exchange of information under Section 90/90A of the Income Tax Act, 1961 vide letter dated 27.12.2017 for the assessment years starting from 2010-2011 to 2017-2018.



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26.Since, the information was not received within the period of one year from the date of reference from the said Competent Authorities, the period of one year was to be excluded from the date of reference for exchange of information for the purpose of computing the limitation.

27.Thus, the period of one year between 28.12.2017 to 26.12.2018 stood excluded. After excluding the aforesaid period, the period of limitation available to the Assessing Officer was less than 60 days and therefore, the remaining period was extended to another 60 days as per proviso to Section 153(1). Thus, the period got extended up to 24.02.2019.

28.Meanwhile, the petitioner had filed a settlement application before the Income Tax Settlement Commission (for short ITSC) Additional Bench, Chennai vide SA No:TN/CN 51/2018-19/64/IT on 12.12.2018 for the Assessment Years 2010-11 to 2017-18. The ITSC had rejected the petitioner's Application vide order under Section 245D(1) of the Act. dated 19/12/2018.



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29.Subsequently, the petitioner had filed another Settlement Application before the ITSC, Additional Bench, Chennai vide SA No. TN/CN 51/2018-19/122/IT on 14/02/2019 for the Assessment Years 2010-11 to 2017-18. The ITSC has rejected the petitioner's Settlement Application vide order under Section 245D(1) of the Income Tax Act, 1961 dated 21.02.2019.

30.Subsequently, the petitioner had filed another Settlement Application before the ITSC, Additional Bench, Chennai vide SA No. TN/CN 51/2018-19/12-IT on 16.04.2019. This Application was treated as defective by the Hon'ble ITSC vide its letter in F.No.TN/CN 52/2019-20/10-12/1T dated 25.04.2019.

31.The petitioner had filed another Settlement Application before the ITSC, Additional Bench, Chennai vide SA No: TN/CN 51/2019-20/45/IT on 13.12.2019 which was treated as invalid and was rejected by the ITSC, Additional Bench, Chennai, vide order dated 07.02.2020 under Section 245D(2C) of the Income Tax Act, 1961.

32.Since, the petitioner's Application was rejected by the ITSC



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vide the order dated 07.02.2020, four different times the petitioner had approached the Settlement Commission under Chapter XIX-A and the applications filed by the petitioner were dismissed or rejected on various grounds as detailed below:

| Sl.No. | Application date | Date of Rejection |
|--------|------------------|-------------------|
| 1.     | 12.12.2018       | 19.12.2018        |
| 2.     | 14.02.2019       | 21.02.2019        |
| 3.     | 16.04.2019       | 25.04.2019        |
| 4.     | 13.12.2019       | 07.02.2022        |

33.Consequently, the time to complete the assessment extended upto 28.02 2021 in terms of section 245HA read with proviso 3 to Explanation 1 to section 153 of the Act. Thus, the pending assessment proceedings under Section 148 and 153C read with Section 153A of the Income Tax Act, 1961 were revived in terms of section 245HA of the Income Tax Act, 1961.

34.This period got further extended up to 30.09.2021 as per The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and Notification issued therein.

35.The impugned assessment orders are dated 28.09.2021. In view



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of the operation of the The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the Notification issued therein, the time to complete the assessment by 30.09.2021 got further extended by Notification No.74/2021/F.No.370142/35/2020-TPL in S.O.2580(E).

36.Since, the proceedings before the Income Tax Settlement Commission abated, the Assessing Officer before whom the proceedings at the time of making the application before the ITSC was pending was required to dispose of the case in accordance with the provisions of the Act as if no application under Section 245(C) of the Income Tax Act, 1961 had been made by the petitioner in terms of Section 245HA(2) of the Income Tax Act, 1961.

37.As per (3) to Section 245HA of the Income Tax Act, 1961, the Assessing Officer is entitled to use all the material and other information produced by the petitioner before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the



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Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.

**38.In Zuari Cement Limited vs. Assistant Commissioner of Income Tax, Circle 2 (1)** passed in WP No. 5557 of 2012 dated 21.02.2013, the Division Bench of the Andhra Pradesh High Court held as under:-

“A reading of the above section shows that if the assessing officer proposes to make, on or after 01.10.2009, any variation in the income or loss returned by an assessee, then, notwithstanding anything to the contrary contained in the Act, he shall first pass a draft assessment order, forward it to the assessee and after the assessee files his objections, if any, the assessing officer shall complete assessment within one month. The assessee is also given an option to file objections before the Dispute Resolution Panel in which event the latter can issue directions for the guidance of the Assessing Officer to enable him to complete the assessment.

In the case of the petitioner, admittedly the TPO suggested an adjustment of Rs.52.14 crores u/s.92CA of the Act on 20.09.2011 and forwarded it to the Assessing Officer and to the assessee under subsection (3) thereof. The assessing officer accepted the variation submitted by the TPO without giving the petitioner any opportunity to object to it and passed the impugned assessment order. As this has occurred after 01.10.2009, the cut off date



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prescribed in sub-section (1) of S.144C, the Assessing Officer is mandated to first pass a draft assessment order, communicate it to the assessee, hear his objections and then complete assessment. Admittedly, this has not been done and the respondent has passed a final assessment order dated 22.12.2011 straight away. Therefore, the impugned order of assessment is clearly contrary to S.144C of the Act and is without jurisdiction, null and void.

The contention of the Revenue that the circular No.5/2010 of the CBDT has clarified that the provisions of S.144C shall not apply for the assessment year 2008-09 and would apply only from the assessment year 2010-2011 and later years is not tenable in as much as the language of Sub-section (1) of Section 144C referring to the cut off date of 01.10.2009 indicates an intention of the legislature to make it applicable, if there is a proposal by the Assessing Officer to make a variation in the income or loss returned by the assessee which is prejudicial to the assessee, after 01.10.2009. Therefore, this particular provision introduced by Finance (No.2) Act, 2009, would apply if the above condition is satisfied and other provisions, in which similar contrary intention is not indicated, which were introduced by the said enactment, would apply from 01.04.2009 i.e., from the assessment year 2010-2011.

It is not disputed that the memorandum explaining the Finance Bill and the Notes and clauses accompanying the Finance Bill which preceded the Finance (No.2) Act, 2009 clearly indicated that the amendments relating to S.144C would take effect from 01.10.2009. In our view, the circular No.5/2010 issued by the CBDT stating that S.144C(1) would apply only from the assessment year 2010-2011 and



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subsequent years and not for the assessment year 2008-09 is contrary to the express language in S.144C(1) and the said view of the Revenue is unacceptable. The circular may represent only the understanding of the Board/Central Government of the statutory provisions, but it will not bind this Court or the Supreme Court. It cannot interfere with the jurisdiction and power of this Court to declare what the legislature says and take a view contrary to that declared in the circular of the CBDT (Ratan Melting and Wire Industries Case (1 Supra), Indra Industries (2 supra). The Revenue has not been able to persuade us to take a contra view by citing any authority.

In this view of the matter, we are of the view that the impugned order of assessment dated 23.12.2011 passed by the respondent is contrary to the mandatory provisions of S.144C of the Act and is passed in violation thereof. Therefore, it is declared as one without jurisdiction, null and void and unenforceable. Consequently, the demand notice dated 23.12.2011 issued by the respondent is set aside.”

39. Against the above decision of the Division Bench of the Andhra Pradesh High Court, the Revenue went on appeal before the Honourable Supreme Court. The Hon'ble Supreme Court however dismissed the Special Leave Petition on 27.09.2013.

40. The Andhra Pradesh High Court in **Zuari Cements V ACIT**



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**Circle-2(1)** vide order dated 21.02.2013 in W.P No 5557 of 2012, merely held that Assessment Order dated 22.12.2011 passed by the assessing officer therein and the demand notice dated 23.12.2011 were unsustainable and unenforceable.

41.The Court has not held that the assessment proceedings will abate if the Assessment Order itself was passed within the limitation period for completion of assessment mentioned under Section 153 of the Income Tax Act, 1961.

42.In **Vijay Television (P) Ltd., Vs. Dispute Resolution Panel & Ors.**, (214) 369 ITR 113 (HC-MADRAS), the learned Single Judge has also taken a similar view which reads as under:

“33. 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 26.03.2013, the petitioner filed objections before the DRP, 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 26.03.2013 of the second respondent can only be termed as a final order and in such



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event it is contrary to Section 144C of the Act. As mentioned supra, in and by the order dated 26.03.2013, 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 inspite of issuance of the corrigendum on 15.04.2013 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 26.03.2013 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 15.04.2013 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 15.04.2013. By issuing the corrigendum, the respondents cannot be allowed to develop their own case.”

43.The learned Single Judge of this Court **Vijay Television (P) Ltd., vs. Dispute Resolution Panel &Ors**, has concluded that there is a violation of Section 144C of the Act, while passing final order of assessment and therefore such order cannot be cured by way of corrigendum dated 15.04.2013 as it is issued only after the limitation period for completing assessment under Section 153 of the Income Tax



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Act, 1961 has expired where as this is not the case here.

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44.This Court in **Vijay Television (P) Ltd., vs. Dispute Resolution Panel &Ors**, has also 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 passing of 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 the view of the Revenue was found unacceptable.

45.In the present case, the impugned assessment orders have been passed under Sections 143(3) r/w Section 153A & 153C of the Act, 1961 on the dates mentioned in table 1 of the Impugned order. Normally, circulars of the Boards are not binding on Courts as held by the Hon'ble Supreme Court in **Commissioner of Central Excise, Bolpur Vs. M/s.Ratan Melting & Wire Industries**, 2008 taxmann.com 1649 (SC).



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However, they are relevant and are to be considered as *contemporanea*

*expositio est optima et fortissinia in lege*, which means it is the best and strongest in law. It is said to be treated as the best exposition of the statute or any other document which is received from a contemporary authority.

46.However, the petitioner would have got a further period of 30 days to file the objection after the Draft Assessment Order was passed. The petitioner also had an option to approach the Dispute Resolution Panel in terms of Section 144C(2) of the Income Tax Act, 1961 where the time for completing the assessment could have extended by 10 months.

47.Since, the petitioner became an “**eligible assessee**” with effect from 01.04.2020 by operation of law in view of the amendment to Section 144C(15)(b)(ii) of the Income Tax Act, 1961, the assessment has to be completed in the manner known to law. The petitioner has to be given 30 days time to given his objection under Section 144C(2) of the Income Tax Act, 1961. The petitioner has to either accept or object to the same, within a period of 30 days from the service of Draft Assessment



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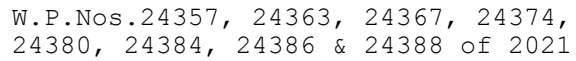
Order.

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48.In this case, instead of Draft Assessment Order, the impugned assessment orders have been passed by mistake. It has to be construed that this mistake has occurred on account of change in the law. However, assessments cannot abate merely there is an infraction of one of the procedure prescribed under amended Section 144(C) of the Income Tax Act, 1961.

49.Court is therefore of the view that the impugned order has to be set aside and the case has to be remitted back to the respondent to pass a Draft Assessment Order to facilitate the petitioner to exercise the above under Section 144C(2) of the Income Tax Act, 1961.

50.Thereafter, assessment has to be completed subject to the petitioner accepting the Draft Assessment Order or object to it before Dispute Resolution Panel in accordance with Section 144C(2) of the Income Tax Act, 1961, in which case the Dispute Resolution Panel has to pass an order / direction within a period of nine (9) months from the date in which the Draft Assessment Order is forwarded to the petitioner



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54. These Writ Petitions shall stand disposed of with the above observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.



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**08.09.2023**

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Index : Yes / No  
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To

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**C.SARAVANAN, J.**

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