IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2023

PRONOUNCED ON : 08.09.2023

CORAM

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

W.P.No.24133 of 2021
and W.M.P.Nos.25442 & 25445 of 2021

GE Power Conversation India Private Limited,
Represented by its Authorized Signatory,
Mr.Nagarajan Balakrishnan ... Petitioner

vs

1.The Additional/Joint /Deputy/Assistant Commissioner,
of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Deputy Commissioner of Income Tax,
Corporate Circle 1(1),
121, Mahamtma Gandhi Road,
Chennai 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the file of the first respondent in passing the impugned order bearing Order No.ITBA/AST/S/143(3)/2021-22/1035969025(1) dated 28.09.2021 under Section 14393) read with Section 144B of the Act for the yar 2018-2019 and quash the same.

For Petitioner : Mr.S.Sivaraman

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

O R D E R

The petitioner has challenged the Impugned Order dated 28.09.2021 passed by the respondent, Assessing Officer for the Assessment Year 2018-2019.

2. The preamble to the Impugned Order dated 28.09.2021 states that it has been passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961.

3. The preamble to the Impugned Assessment Order reads as under:-

ASSESSMENT ORDER

1. The case was selected for Complete Scrutiny assessment under the **E-Assessment Scheme, 2019** on the following issues:-

S.No.	Issues
i.	Claim of Any Other Amount Allowable as Deduction in Schedule BP
ii.	Non-Furnishing of Quantitative Details
iii.	Investment/Advances/Loans
iv.	Refund Claim
v.	Sales Turnover/Receipts

4. However, in Paragraph 5.2, the Impugned Order also states that the impugned order was a Draft Assessment Order under Section 143(3) of the Income Tax Act, 1961 read with Section 144C(1) of the Income Tax Act by proposing to add the transfer pricing adjustment of Rs.19,48,61,785/- (Rs.14,79,76,111/- + 4,68,85,673/-) to the total income of the petitioner.

5. Paragraph 5.2 of the Impugned Order dated 28.09.2021 reads as under:-

"5.2 As per Section 92C (4) of the Income

> *Tax Act, 1961 makes it mandatory for the Assessing Officer to adopt the adjustments made by the Transfer Pricing Officer. With effect from 01.10.2009, in case of any Transfer Pricing adjustments, a draft assessment order u/s 144C (1) of the IT Act, 1961 is to be sent to the assessee and the assessee has the option to file an appeal before Dispute Resolution Panel within one month from the date of receipt of the Draft Assessment Order.* ***Accordingly, this draft assessment order is being passed u/s 143(3) r.w.s. 144C(1) of the Income Tax Act, 1961 by proposing addition of the transfer pricing adjustment of*** *Rs.19,48,61,758/- (Rs.14,79,76,112/- + Rs.4,68,85,673/-) into the total income of the assessee."*

6. The specific case of the petitioner is that although in paragraph 5.2 of the Impugned Order it is stated to be a Draft Assessment Order, the Impugned Order indeed was an Assessment Order as it was passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 in as much as a Notice of Demand under Section 156 of the Income Tax Act, 1961 was also issued on the same date on 28.09.2021. Further, a Notice of Penalty under Section 274 read with Section 270A of the Income Tax Act, 1961 was also issued on the same date on 28.09.2021.

7. It is submitted that if the Impugned Assessment Order was a Draft Assessment Order as has been stated in Paragraph 5.2, question of issuance of Notice of Demand under Section 156 of the Income Tax Act, 1961 on the same day and a further notice proposing to impose penalty under Section 274 read with Section 270A of the Income Tax Act, 1961 would not arise.

8. The learned counsel for the petitioner has drawn attention to the option given to the petitioner in the Income Tax Portal wherein, it has been stated that the petitioner could only file appeal in Form 35.

9. It is therefore submitted that the Impugned Order has been passed contrary to Section 144C of the Income Tax Act, 1961 and is therefore liable to be quashed.

10. It is further submitted that once the Transfer Pricing Officer issues a notice and passes an order namely Transfer Pricing Order under Section 92CA(3) of the Income Tax Act, 1961, an assessee has to be given an option to file an objection within (30) days and thereafter the Assessing

Officer has to issue Draft Assessment Order in terms of Section 144C(1) of the Income Tax Act, 1961.

11. It is submitted that the provisions of Sub Section (2) to Section 144C of the Income Tax Act, 1961, mandate that on receipt of the draft order, an eligible assessee has to file his acceptance to the variation proposed by the Assessing Officer or file his objections, if any, to such variations with the Dispute Resolution Panel (DRP) and/or the Assessing Officer has to pass Assessment Order within a period of thirty (30) days from the date of receipt of the acceptance to variation.

12. It is submitted that the Assessing Officer has to complete the assessment only on the basis of the Draft Order, if the assessee intimates to the Assessing Officer of the acceptance of the variation or no objections are received within the period specified in Sub Section (2) to Section 144C of the Income Tax Act, 1961. It is submitted that this view has been confirmed by the learned Single Judge of this Court in **Vijay Television Private Limited** vs. **Dispute Resolution Panel and Others**, [2014] 369 ITR 113 (Mad).

13. it is submitted that the Hon'ble Division Bench of this Court in **Assistant Commissioner of Income-Tax and Another** vs. **Vijay Television Private Limited and Another**, [2018] 407 ITR 642W (Mad) has affirmed the order dated 29.04.2014 passed by the learned Single Judge of this Court in the case of **Vijay Television Private Limited** vs. **Dispute Resolution Panel and Others**, [2014] 369 ITR 113 (Mad).

14. A specific reference is made to Paragraph No.39 to 50 reads as under:-

> *"39. From the above it is unambiguously clear that the Assessing Officer is duty bound to adhere to the mandatory requirement mandated under Section 144C(1) of the Act by first passing a draft assessment order, the failure of which would invalidate the final assessment order and the consequent demand notices and penalty proceedings.*
>
> *40. Is the procedure followed by the Revenue an irregular procedure, that could be cured or an illegal procedure, which strikes at the substratum of the case and render the assessment order null and void needs to be looked into.*
>
> *41. The word "irregularity" as found in Webster's Dictionary means --*
>
> *"not conforming to established rule,*

method, usage, standard, etc.; out of the ordinary."

42. The word "illegality" as found in Webster's Dictionary means --

"prohibited by law; against the law; unlawful; illicit; also, not authorized or sanctioned, as by rules."

43. From the above, it is clear that while something not conforming to the established rule, method or usage and which is out of the ordinary is termed irregular, anything which is prohibited by law, against the law, unlawful, illicit and not authorised or sanctioned as by rules is termed illegal.

44. The materials available on record reveal that initially, vide proceedings dated 26.3.13, order of assessment u/s 143 (3) was passed by the Assessing Officer. The last date for the four year block period ended on 31.3.2013. Therefore, the initial order of assessment was passed u/s 143 (3) within the said block period. However, the order passed u/s 143 (3) of the Act is a final assessment order and the Revenue, realising the mistake committed by it, had, thereafter, issued the corrigendum, amending the Section to read as ***Section 144-C r****/w 92 CA r/w 143 (3). Curiously, demand u/s 156 of the Act has been issued and penalty has also been imposed. For all practical purposes, the order of assessment should be deemed to be one under*

Section 143 (3) of the Act, though the draft assessment order ought to have been passed u/s 144-C. On objections being raised before the DRP, the DRP has also opined that the order passed is a final order and, therefore, it has no jurisdiction to entertain the objections.

45. *Further, it is to be pointed out that even though the corrigendum has been issued indicating to read the Section 143(3) as Section 144-C r/w 92 (CA) r/w 143 (3) it does not indicate that the demand and penalty made in the Assessment Order has been withdrawn. Hence, the submission of the Revenue that the Assessment Order passed under section 143(3) read with the corrigendum issued shall be treated as Draft Assessment Order cannot be countenanced. It is not the case of the Revenue that the Assessing Officer has consciously passed the Draft Assessment Order under Section 144-C, however, indicated the Section wrongly.*

46. *The Revenue, with a view to squirm around from under wrongful act of passing the assessment order, which is prohibited by law and an unlawful one, had issued a corrigendum, amending the Section under which the order has been passed, forgetting that the content of the order that matters and not the mere quoting of the Section alone. In other words, the window dressing which has been attempted by the Revenue would not give life to an order passed without*

jurisdiction. It is to be pointed out that the order of assessment, once issued under Section 143 (3), becomes final and reopening the same is impermissible. The mistake committed by the Revenue in not following the mandatory requirement of Section 144-C by passing an order under Section 143 (3) cannot be cured by the issuance of a corrigendum. In other words, the proceedings issued in the name of corrigendum trying to correct its mistakes only by introducing a Section without realising the consequences of not following the mandatory requirement u/s 144-C will not do justice to either of the parties.

47.The necessity for the Parliament to incorporate Section 144-C is not only to safeguard the Revenue, but also the assessee and any mistake committed by any one of them, the said party is supposed to face the consequences and cannot put the hands of the clock back and start afresh.

48. Though it is the submission of the Revenue that it is a procedural irregularity, which can be corrected through issuance of a corrigendum and no prejudice would be caused to the assessee, however, it is to be pointed out that the act committed by the Revenue is an incurable illegality, which cannot stand protected by Section 292B of the Act. If the contention of the Revenue is accepted, then it would literally render all the provisions of the Income Tax Act.

subservient to Section 292B. In effect, any error or omission or mistake committed by the Revenue at any stage of a proceeding cannot be sought to be cured by taking umbrage under Section 292B. Allowing such a contention would be misreading the intention of the Parliament in enacting Section 292B and Section 144C.

49. The question of limitation raised by the Revenue would in no way save the Revenue from the non-compliance of Section 144-C of the Act. The non-compliance of the mandatory provisions of Section 144-C of the Act, being an incurable illegality, renders the assessment order null and void. Learned single Judge has taken into account all the relevant facts and laws and has given a well considered finding and we are of the considered opinion that no interference is called for with the order passed by the learned single Judge.

50. In fine, all the writ appeals, being devoid of merits, are liable to be dismissed and, accordingly, the appeals are dismissed. However, in the circumstances of the case, there shall be no order as to costs."

15. It is submitted that the decision referred to *supra* has also been followed in the petitioner's sister concern/company case vide order dated 05.01.2021 in **GE Oil and Gas India Private Limited** vs. **Assistant**

Commissioner of Income Tax, [2021] 436 ITR 168 (Mad).

16. The learned counsel for the petitioner has drawn comparison between the averment in the counter filed in **GE Oil and Gas India Private Limited** vs. **Assistant Commissioner of Income Tax,** [2021] 436 ITR 168 (Mad) and the counter filed in the present case in Paragraph No.7.

17. Paragraph No.7 of the counter of the respondent reads as follows:-

> *"It is submitted that from the above, it is clear that what was intended to be passed was a Draft Order u/s.144C of the Act only. However, due to some miscommunication and inadvertence, order u/s.143(3) of the Act was issued and therefore computation sheet, demand u/s.156 were generated and notice for penalty also issued. It is submitted that there was absolutely no intention on the part of the respondents to pass a Final Assessment Order and deny the petitioner its right/choice u/s.144C of the Act. It is only due to inadvertence, for which the respondents most sincerely apologize that in the impugned order instead of mentioning order u/s.143(3) read with Section 144B and due to this mistake, the further mistakes of generation of computation sheet, issuance of notice u/s.156 and issuance of notice of penalty also occurred."*

18. The learned counsel for the petitioner placed reliance on the following decisions: -

i) **Vijay Television P Ltd., vs. Dispute Resolution Panel and Others,**(2014)369 ITR (Mad.)
ii) **Assistant Commissioner of Income Tax and Another vs. Vijay Television Private Ltd. and Another,** (2018) 407 ITR642W (Mad.)
iii) **Ge Oil and Gas India Private Ltd., vs. Assistant Commissioner of Income Tax,** (2021) 436 ITR (Mad.)
iv) **Shl (India)Pvt.Ltd. vs. Deputy Commissioner of Income Tax and Others,** (2021) 438 ITR 317 (Bom.)
v) **Bekaert Mukand Wire Industries Pvt.Ltd., vs. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer and ors,** W. P No.2153 of 2021 dated 17.09.2021
vi) **M/s.Take Solutions Limited rep.by its Director Ms.N.S.Shobana vs. The Income Tax Officer, National E-Assessment Centre Income Tax, Department Ministry of Finance** Room No.401, 2nd Floor, E-RAMP Jawaharlal Nehru Stadium, Delhi 110 003.
vii) **Pr.Commissioner of Income Tax-2, BMTC Complex, Koramangala, Bangalore and Other vs. M/s.Cisco Systems Capital(India) Pvt.Ltd.,** Brigade South Parade, No.10, M.G.Road, Bengaluru 560 001, I.T.A.No.128 of 2021 dated 20.09.2021

19. The learned Junior Standing Counsel for the respondents on the other hand would submit that there is a material difference between the order passed by the Hon'ble Division Bench of this Court in **Assistant Commissioner of Income-Tax and Another** vs. **Vijay Television Private Limited and Another**, and also in the petitioners' sister company in **GE Oil and Gas India Private Limited** vs. **Assistant Commissioner of Income Tax,** [2021] 436 ITR 168 (Mad).

20. It is submitted that in those cases there was no reference to Section 144C of the Income Tax Act, 1961 in the Impugned Assessment Order. Whereas, in this case, in para 5.2 dated 28.09.2021 of the Impugned Assessment Order specifically states that it is a draft assessment order and therefore the order passed by the Hon'ble Division Bench of this Court in **Assistant Commissioner of Income-Tax and Another** vs. **Vijay Television Private Limited and Another**, [2018] 407 ITR 642W (Mad) and by the learned Single Judge of this Court in the petitioner's sister concern/company case in **GE Oil and Gas India Private Limited** vs. **Assistant Commissioner of Income Tax,** [2021] 436 ITR 168 (Mad) are

not relevant.

21. By way of rejoinder, the learned counsel for the petitioner referred to Paragraph Nos.6 to 8 of the counter filed in the petitioners' sister concern/company case and in the the present case. They are reproduced below:-

W.P.No.24133 of 2021	W.P.No.1575 of 2020
7. It is submitted that from the above, it is clear that what was intended to be passed was a Draft Order u/s.144C of the Act only. However, due to some miscommunication and inadvertence, order u/s.143(3) of the Act was issued and therefore computation sheet, demand u/s.156 were generated and notice for penalty also issued. It is submitted that there was absolutely no intention on the part of the respondents to pass a Final Assessment Order and deny the petitioner its right/choice u/s.144C of the Act. It is only due to inadvertence, for which the respondents most sincerely apologize that in the impugned order instead of	*6. I submit that in reply to para 8, while assessing the total income of the assessee, the Assessing Officer made additions on various issues, one of the issues being adjustment on transfer pricing. During the course of assessment proceedings under Section 143(3) of the Act, while uploading the draft order, the Assessing Officer inadvertently chose assessment order instead of draft assessment order under Section 144C(1) of the Act in the Income-tax Department software (ITBA), consequently the demand notice was automatically issued by the 'system'. This being a mere technical lapse, the assessee could have approached the Assessing Officer or the*

mentioning order u/s.143(3) read with Section 144B and due to this mistake, the further mistakes of generation of computation sheet, issuance of notice u/s.156 and issuance of notice of penalty also occurred."	*appellate authority for recourse, instead the assessee filed writ before the Hon'ble High Court.* *7. I submit that in reply to para 9, even though Section 144C(1) mandates the Assessing Officer to issue draft assessment order before issuing final assessment order in cases where transfer pricing issue involves, the assessee does not lose its right or opportunity to approach the appellate authority.* *8. I submit that in reply to para 10, the assessee without approaching the Assessing Officer or the appellate authority, directly went for writ before the Hon'ble High Court. Had the assessee approached the Assessing Officer, the Assessing Officer could have issued a corrigendum on the order.*

22. The learned Junior Standing Counsel for the respondents would submit that in case the Court is not inclined to the above decisions. Based on the facts, the petitioner shall be given an opportunity under Section

144C(2) of the Income Tax Act, 1961.

23. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. I have also perused the rerecords and case laws submitted by the learned counsel for the petitioner. I have also perused the applicable provisions of the Income Tax Act,1961 as it stood at the time of passing the Impugned Order under Section 143(3) r/w.Section 144B of the Income Tax Act, 1961.

24. The assessment was partly under the E-Assessment Scheme, 2019 as announced vide notification no 61/2019/F.No.370149/154/2019-TPL dated 12.09.2019 by the Ministry of Finance (Department of Revenue) Central Board of Direct Taxes in S.No.3264(E) and thereafter under Section 144B of the Income Tax Act, 1961 as in force with effect from 01.04.2021.

25. A reading of the Impugned Order indicates that it was meant to be a Draft Assessment Order. Para 4 to 6 of the impugned order are

reproduced below:-

5. Adjustment to Arm's Length Price:

5.1. The Deputy Commissioner of Income Tax, Transfer Pricing Officer-2(1), Chennai vide order U/s 92CA (3) of the IT Act, 1961 in DIN & letter No. ITBA/ TPO/ F/92CA3/ 2021-22/1034562253(1) Dated: 31/07/2021, made downward adjustment to Receipt of HQ services of Rs. 14,79,76,112/- towards value of the international transactions. Downward adjustment was also made to Distribution segment of Rs. 4,68,85,673/-.

5.2. As per section 92C (4) of the Income Tax Act, 1961 makes it mandatory for the Assessing Officer to adopt the adjustments made by the Transfer Pricing Officer. With effect from 01.10.2009, in case of any Transfer Pricing adjustments, a draft assessment order u/s 144C (1) of the IT Act, 1961 is to be sent to the assessee and the assessee has the option to file an appeal before Dispute Resolution Panel within one month from the date of receipt of the Draft assessment order. Accordingly, this draft assessment order is being passed u/s 143(3) r.w.s. 144C (1) of the Income Tax Act, 1961 by proposing addition of the transfer pricing adjustment of Rs.19,48,61,785/- (Rs.14,79,76,112/- + Rs.4,68,85,673) into the total income of the assessee.

[TPO proposed addition Rs. 19,48,61,785/-]

5.3. After examination of details furnished by the assessee the scrutiny assessment is adjustments of Rs. 19,48,61,785/- which is tabulated below; proposed to be completed u/s 143(3) r.w.s. 144C(1) by adopting Transfer Pricing

Total income as per ITR	NIL, loss of Rs. 20,29,35,457/- (after setting off loss of Rs. 5,05,195 from Income from other sources)
Total income after processing u/s 143(1) of the Income Tax Act, 1961	INCOME TAX DEPARTMENT NIL, loss of Rs. 18,93,12,090/- (after setting off loss of Rs. 5,05,195 from Income from other sources)
Proposed addition as per para 5.2	Rs. 19,48,61,785/-
Assessed Income	Rs. 55,49,695/-
After rounding off	Rs. 55,49,700/-

The proposed additions or disallowances made to the total income computed in accordance with Section 92CA(4) of the Act is deemed to represent the income which has proposed to be initiated herewith. been underreported. Hence penalty proceedings u/s 270A of the Income Tax Act, 1961 are proposed to be initiated herewith.

"This is a draft order passed as per the provisions of section 144C read with

> *section 144B of the Income Tax Act, 1961. Sec. 92C(4) of the Act makes it mandatory for the Assessing Officer to adopt the adjustments proposed by the Transfer Pricing Officer and there is no discretion left with the Assessing Officer. The assessee company is hereby allowed thirty days time from the date of receipt of this order to file its acceptance to the above variations made to its total income as per the return of income filed by it or to file its objections, if any before the Dispute Resolution Panel, as per the provisions of section 144C(2) of the Act, failing which the final assessment order u/s. 143(3) r.w.s 144C(13) read with section 144B of the Act shall be passed assessing the total income of the assessee company as proposed herein above."*

26. On and from 12.09.2019, E-Assessment Scheme, 2019, was issued by the Central Government in the exercise of power conferred under Section 143(3A) of the Income Tax Act, 1961. It was in place for completing the assessment electronically.

27. A notice under Section 143(2) of the Income Tax Act, 1961, r.w.s 123 of the Income Tax Rules 1961 was issued to the petitioner on 22.09.2019. Meanwhile a reference was made to the Transfer Pricing

Officer (TPO). The Transfer Pricing Officer (TPO) issued a notice dated 31.03.2021 was issued to the petitioner under Section 92CA (2) of the Income Tax Act, 1961 for computation of Arm's Length Price. The petitioner however failed to reply to the above notice dated 31.03.2021 issued under Section 92CA(2) of the Income Tax Act, 1961.

28. The petitioner was thereafter issued with another notice of penalty dated 02.07.2021 under Section 271G of the Income Tax Act, 1961 and was called upon to show cause as to why penalty under Section 271G of the Income Tax Act, 1961 should not be levied for failure to furnish information/document called for.

29. By this time, E-Assessment Scheme, 2019 that was issued and the same was replaced with Faceless Assessment under Section 144 B of the Income Tax Act, 1961 w.e.f 01.04.2021. It also coincided with the relaxation under Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 and Taxation and Other Laws (Relaxation of Certain Provisions Act, 2020 due to outbreak of Covid 19 pandemic in March 2020.

30. Since the proceedings before the Transfer Pricing Officer were not required to be conducted under E-Assessment Procedure 2019, the proceedings before the Transfer Pricing Officer, were physical. The petitioner was issued with a questionnaire on 08.07.2021 by the Transfer Pricing Officer. The said questionnaire was followed by a communication dated 12.07.2021 to the petitioner on account of the failure of the petitioner to provide any details called for in determining the Arm's Length Price.

31. A notice dated 18.07.2021 was issued by the Transfer Pricing Officer under Section 129 of the Income Tax Act,1961 and gave the petitioner an opportunity of personal hearing. However, the petitioner again failed to respond to the notice dated 18.07.2021.

32. The petitioner was called upon to file objections, if any, to the proposal and to file written submissions/information on or before

16.07.2021. The petitioner was also cautioned, the assessment proceeding would get time barred in case of delay. The petitioner was called upon to adhere to the time lines prescribed. The petitioner was also informed that the Transfer Pricing Officer may proceed to determine the Arm's Length Price after the time limit given to the petitioner expires, without any further notice.

33. The petitioner was also informed that the transfer pricing was a factual intensive exercise and therefore the petitioner was required to submit complete facts and evidences. Otherwise, the Transfer Pricing Officer had to take recourse to the information available on the record or in the public domain and complete the proceedings to the best of judgment.

34. The petitioner was also thereafter issued with a Show Cause Notice dated 25.07.2021 by the Transfer Pricing Officer to show cause as to why the Arm's Length Price of the International Transaction should not be determined as per proposal made therein. Therefore, a Show Cause Notice dated 25.07.2021 issued by the Transfer Pricing Officer which ultimately culminated to an order dated 31.07.2021 under Section

92CA(3) of the Income Tax Act, 1961 of the Transfer Pricing Officer.

35. Pursuant to the above order dated 31.07.2021 under Section 92CA(3) of the Income Tax Act, 1961 under Section 92CA(3), the respondent should have ordinarily passed a Draft Assessment Order in terms of Section 144B(1) of the Income Tax Act, 1961. Instead, in the present case the impugned order dated 28.09.2021 was formated as an order under Section 143 r.w.s 144B of the Income Tax Act, 1961.

36. In para 5 of the Impugned Order dated 28.09.2021 it has also been stated that the Impugned Order dated 28.09.2021 is a Draft Assessment Order. The Impugned Order has been forwarded to the petitioner by the National Faceless Assessment Centre, New Delhi. Obviously, a mistake has crept in, in as much the impugned order has been formatted by the National Faceless Assessment Centre, electronically under the mechanism evolved in Section 144B of the Income Tax Act, 1961.

37. The mistake is committed in formatting the preamble to the

order based on template meant for passing order under Section 143(3) and Section 144B of Income Tax Act, 1961 is not fatal. It will not render the impugned order an assessment order.

38. The Court can also take judicial notice of technical difficulties faced by both the assessees and Income Tax Department. The attempt by the Parliament to make assessment Faceless under the Income Tax Act, 1961 up to the appellate stage before the Appellate Commissioner cannot be scuttled merely because the formating of the order was improper. **Mistakes which are not fundamental are not fatal to the assessment** proceedings initiated. **Assessment proceedings cannot be allowed to abate o**n account of technical glitches in the system generated orders.

39. The impugned order is only a "Draft Assessment Order" as is evident from a reading of the impugned order. It was wrongly formated as an Assessment Order in the system. Since the formatting and disseminating of all notices and Orders are system driven, the Assessment cannot be allowed to abate.

40. Ordinarily, the period for completing the assessment would have expired on 30.09.2021 in terms of Section 153 of the Income Tax Act, 1961. However, due to disruption on account of Covid-19 and promulgation of Taxation and Other Laws (Relaxation of Certain Provisions), Ordinance, 2020 and Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 and notification issued therein, the time for completing the assessment proceeding under Section 153(1) stood extended. Since the proceeding under Section 92CA are intertwined with the time for completing the assessment proceeding, the time would get extended by 12 months in terms of Section153(4) The Income Tax Act,1961 i.e to 30.09.2022.

41. Therefore, notice of demand under Section 156 and notice of penalty under Section 274 r.w.s 270A of the Income Tax Act,1961 issued to the petitioner are liable to be quashed and for fresh reconsideration.

42. Incidentally, dealing with the petitioners own sister concern M/s.GE Oil & Gas India Private Ltd., Represented by its Authorized

Signatory Ranveer Singh Rana **in W.P No 24679 of 2021**, this Court has elaborately discussed the difficulties and complications arising out of the outbreak of Covid 19 pandemic, Promulgation of Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 and Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 and procedure under Section 144B of the Income Tax Act, 1961.

43. Therefore, the impugned order is set aside and the case is remitted back to the respondent to reformat the impugned order as a Draft Assessment Order and facilitate the petitioner to work out remedy against the Draft Assessment Order in the manner known to law under the provisions of Section 144 B of the Income Tax Act, 1961.

44. 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.

45. In view of the above discussion of the connected notice of

demand issued under Section 156 of the Income Tax Act, 1961 and notice of penalty issued under Section 274 and notices penalty r/w 270 of the Income Tax Act, 1961 also stands quashed.

46. This writ petition stands disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

08.09.2023

Index : Yes/No
Neutral citation : Yes/No
rgm/kkd

To

1.The Additional/Joint /Deputy/Assistant Commissioner,
of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.The Deputy Commissioner of Income Tax,
Corporate Circle 1(1) ,
121, Mahamtma Gandhi Road,
Chennai 600 034.

C.SARAVANAN, J.

kkd

Pre-delivery Order in
W.P.No.24133 of 2021

08.09.2023