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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 15381/2022

LOUIS DREYFUS COMPANY INDIA PRIVATE LIMITED ..... Petitioner

Through: Mr. S. Vasudevan, Mr. Karanjot Singh and Mr. Snehal Ranjan Shukla, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 13(1), DELHI & ORS. ..... Respondents

Through: Mr. Shailender Singh, Ms. Anuja Pethia, Ms. Dachhita Shahi and Mr. Rishabh Nigam, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**ORDER**

**%** **30.01.2024**

1. This writ petition has been preferred seeking quashing of the impugned assessment order dated 24 August 2022 passed by the jurisdictional **Assessing Officer**[1], Circle 13(1), New Delhi – the first respondent herein issued under Section 143(3) read with Section 144C (13) of the **Income Tax Act, 1961**[2] for the **Assessment Year**[3] **2018-19**. The writ petitioner has also sought quashing of the impugned penalty show cause notice for the said AY issued under Section 270A read with Section 274 of the Act and the quashing of the impugned directions dated 20 June 2022 issued by the **Dispute Resolution**

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[1] AO
[2] Act
[3] AY

**Panel**[4] under Section 144C(5) of the Act.

2. The primary challenge advanced by the writ petitioner to the aforenoted assessment order is on the ground of it being contrary to the provisions contained in Section 144C(13) of the Act. The petitioner questions the jurisdiction assumed by the respondents in framing that order of assessment beyond the mandatory time frame as embodied in sub-section (13) of the aforenoted provision. The petitioner contends that once a direction is framed by the DRP, it is incumbent upon the AO to frame an order of assessment in conformity with those directions within one month from the end of the month in which such a direction is received.

3. According to the writ petitioner, the DRP framed its order dated 20 June 2022 in accordance with Section 144C(5) of the Act and which came to be uploaded on the official portal in terms of the **E-assessment scheme, 2019**[5] on 24 June 2022. According to learned counsel, the period of one month as contemplated in Section 144C(13) of the Act would thus have to be computed from 30 June 2022, being the last day of the month and which constitutes the starting point for computation of 30 days. Viewed in that light, learned counsel submitted that an order of assessment could have been framed only up to 31 July 2022.

4. However, and undisputedly, the order of assessment came to be made on 24 August 2022. It is in the aforesaid backdrop that the petitioner assails that assessment order and the consequential proceedings initiated in terms thereof. For the purposes of disposal of the instant writ petition, we deem it apposite to take note of the

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[4] DRP

[5] E-as, 2019

following salient facts.

5. On 26 July 2021, the **Transfer Pricing Officer**[6]– the third respondent, while examining the return as submitted by the petitioner, proposed adjustments amounting to Rs.25,82,66,995/- to the income of the petitioner. Pursuant to that order, a draft assessment order came to be drawn up in accordance with the procedure as contemplated under Section 144C of the Act. That order reiterated the adjustments that were proposed by the TPO. Aggrieved by the aforesaid, the petitioner filed objections before the DRP – the second respondent herein on 22 October 2021. Those objections were remitted to the DRP in terms of Section 144C(5) of the Act. The DRP ultimately passed an order on 20 June 2022 affirming the aforenoted transfer price additions made to the income of the petitioner. The said directive of the DRP is stated to have been uploaded on the **Income Tax Business Application**[7] portal on 24 June 2022.

6. It was contended before us that Section 144C(10) of the Act prescribes that every direction issued by the DRP would be binding on the AO. However, and in the facts of the present case, the matter appears to have been remitted to the TPO, who by an order of 25 July 2022 gave effect to the directions as framed and revised the transfer pricing additions to Rs.20,24,76,678/-. It was after the aforesaid order had been made by the TPO, that the jurisdictional AO proceeded to draw up an assessment order for the concerned AY on 24 August 2022. Simultaneously, the first respondent also issued a notice referable to Sections 274 and 270A of the Act calling upon the petitioner to show cause why penalty not be imposed. It was these

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[6] TPO

[7] ITBA

actions of the respondents which constrained the writ petitioner to approach this Court.

7. Pursuant to notice being issued by this Court on 10 November 2022 in the instant writ petition, the respondents have filed a counter affidavit. It, however becomes pertinent to note that the factum of the directive of the DRP having been uploaded on the ITBA portal on 24 June 2022 is not disputed. What the respondents however contend is that the period of one month as prescribed in Section 144C(13) of the Act is liable to be computed from 25 July 2022 when the TPO passed an order giving effect to the directions framed by the DRP. It is their case that the period of one month when computed from that date, would place the assessment order dated 24 August 2022 within the period as prescribed under Section 144C(13) of the Act.

8. Assailing the aforesaid stand, Mr. Vasudevan, learned counsel for the petitioner, drew our attention to the provisions comprised in the E-as, 2019 and submitted that the moment the order of the DRP came to be uploaded, the jurisdictional AO and all other authorities would be deemed to have been duly served and made aware of the making of that order. It was submitted that the uploading of the directive on the ITBA portal was sufficient compliance with the requirements placed under the Act and the fact that the order of the TPO came to be communicated to the jurisdictional AO thereafter would be wholly irrelevant. In fact, learned counsel submitted that once the DRP had framed a direction referable to Section 144C(5) of the Act, there existed no requirement of the matter being considered or examined by the TPO.

9. According to learned counsel, that directive of the DRP bound the AO and who was thus mandatorily required to frame an

assessment order in terms thereof.

10. According to learned counsel, the issue which stands raised here is no longer res integra and stands conclusively settled by the decision of the Bombay High Court in **Vodafone Idea Limited v. Central Processing Centre & Ors**[8]. Our attention was drawn to the following passages of that decision:

> "**15.** Annexed to the affidavit of Mr. Satish Sharma is a screenshot of the CHN-Case History Notings of the Dispute Resolution Panel proceedings uploaded on the Income-tax Business Application portal. The screenshot is of the page as it appears on the Income-tax Business Application portal. A perusal of the screenshot of Case History Notings of the Dispute Resolution Panel read with the affidavit filed by Mr. Satish Sharma, the Chief Commissioner of Income-tax and Ms. Anne Varghese, the Joint Commissioner of Income-tax, clearly indicate that once the Dispute Resolution Panel directions are uploaded and the Document Identification Number ("DIN") is generated, which is also visible on the first page of the hard copy of the Dispute Resolution Panel directions, the said document is visible to the Assessing Officer of the Faceless Assessment Unit ("FAU") having jurisdiction over the permanent account number of the assessee concerned. Thus, both the affiants agree that the Dispute Resolution Panel directions once uploaded on the Income-tax Business Application portal are automatically visible to the Faceless Assessing Officer, if any assessment work item is pending related to a particular permanent account number. Admittedly assessment proceedings of the petitioner were pending. Thus, undoubtedly the Dispute Resolution Panel directions uploaded on the Income-tax Business Application portal were readily and clearly visible and accessible to the Faceless Assessing Officer of the assessee.
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> **16.** A reply affidavit in sur-rejoinder dated September 14, 2023 filed by Shri L. A. Janbandhu, the Deputy Commissioner of Income-tax-5(2)(1), Mumbai also affirms that the Dispute Resolution Panel directions were uploaded on the Income-tax Business Application portal on March 25, 2021. In fact Mr. Singh, in fairness admitted the directions of the Dispute Resolution Panel were available on the Income-tax Business Application portal. The defense of the respondents, however, was that the direction of the Dispute Resolution Panel under section 144C(5) of the Act were noted in the Case History Notings of the Faceless Assessing Officer only on August 23, 2023, and hence, that is the day he should be

[8] 2023 SCC Online Bom 2464

deemed to have received it. On the court putting a question to Mr. Singh as to how and under what mechanism are the directions of the Dispute Resolution Panel noted in the Case History Notings of the Faceless Assessing Officer, Mr. Singh candidly stated that was entered by the Faceless Assessing Officer. The fact remains that the Dispute Resolution Panel directions were always visible and accessible to the Faceless Assessing Officer on the Income-tax Business Application portal.

**17.** Mr. Singh made all attempts to persuade us that despite the Income-tax Business Application portal displaying the Dispute Resolution Panel directions and the same being accessible to the Faceless Assessing Officer, it was only on August 23, 2023, that the same were received by the Faceless Assessing Officer. We cannot accept this because, the E-assessment Scheme itself provides that all communication is deemed to have been received by the assessment units concerned once received through the National e-Assessment Centre. Thus, once the e-assessment Centre is in receipt of the Dispute Resolution Panel directions, the period of limitation runs from that day. There is no requirement of a deep dive in an analysis of the phrase "upon receipt of directions" as it appears in section 144C(13) of the Act. The fundamental principle of interpretation is to assign words their natural, original and precise meaning, provided that the words are clear and take into account the purpose of the statute. It is settled law that a provision should be interpreted in its literal sense and given its natural effect. This is the elementary golden rule of interpretation of statutes. Since there is no ambiguity pertaining to the phrase "upon receipt of the directions issued under sub-section (5) of section 144C of the Act, the Assessing Officer shall. . ." there is no requirement of delving in a further in-depth analysis of the clear provision..”

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**20.** Section 144C of the Act is a self contained provision which carves out a separate class of assessees, i.e., "eligible assessee". Section 144C of the Act was inserted in the Finance Act of 2009, and came into effect from October1, 2009. In the Notes on Clauses to the Finance Bill, 2009 (Budget 2009-10) ([2009] 314 ITR (St.) 57 ), the reason for insertion of section 144C is given as under (page 160 of 314 ITR (St.)) :

> "The subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The correction of such view takes very long time with the existing appellate structure.
>
> With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative dispute

resolution mechanism within the Income-tax Department and accordingly, section 144C has been proposed to be inserted so as to provide inter alia the Dispute Resolution Panel as an alternative dispute resolution mechanism."

**21.** Thus, if the provisions of section 144C as mandated by the statute are not strictly adhered to the entire object of providing for an alternate redressal mechanism in the form of Dispute Resolution Panel stand defeated. That is not the intention of the Legislature when the provision was introduced in the Act. Section 144C(10) of the Act provide that the directions of Dispute Resolution Panel are binding on the Assessing Officer. By failing to pass any order in terms of the provision, the Assessing Officer cannot be permitted to defeat the entire exercise and render the same futile. When a statute prescribes the power to do a certain thing in a certain way, then the thing must be done in that way and other methods of performance are forbidden. Once the statute has prescribed a limitation period for passing the final order, it is expected that the internal procedure of the Department should mould itself to give meaning to and act in aid of the provision. Any procedural defect (there is none in this case) in the internal mechanism of the working of E-assessment Scheme, cannot operate against the interest of the assessee. Hence, the Faceless Assessing Officer cannot be believed that the Dispute Resolution Panel direction was received by him only on August 23, 2023 despite being uploaded on the Income-tax Business Application portal on March 25, 2021. The failure on the part of Department to follow the procedure under section 144C of the Act is not merely a procedural irregularity, but is an illegality and vitiates the entire proceeding."

11. Learned counsel appearing for the respondents while seeking to controvert the aforesaid submissions has essentially reiterated the averments contained in the counter affidavit and has alluded to the order passed by the TPO on 25 July 2022 and thus the AO having proceeded to frame an order of assessment only upon its receipt.

12. Having heard learned counsels for parties, we find ourselves unable to sustain the stand as taken by the respondents for the following reasons.

13. As we construe the scheme underlying Section 92CA read along with Section 144C of the Act, the following position emerges. Section 92CA pertains to a situation where a person being an assessee

has entered into an international or specified domestic transaction to submit a return. On receipt thereof and where the AO considers it necessary or expedient so to do, it may refer the same for the purposes of computation of the **Arm's Length Price**[9] to the TPO. The TPO thereafter upon affording an opportunity of hearing to all concerned proceeds to determine the ALP in relation to the international or specified domestic transaction and transmits that order to the concerned AO in terms of Section 92CA(3) of the Act. Further, in terms of sub-section (4) to Section 92 CA of the Act, the AO is obliged to compute the total income of the assessee in conformity with the determination made by the TPO.

14. The determination which the AO makes in the first instance is recognized to be a draft of the proposed order of assessment by virtue of section 144C(1) of the Act. If the assessee be aggrieved by the proposed order of assessment, it is entitled to file objections before the DRP in accordance with Section 144C(2) of the Act. The power of the AO to complete the assessment on the basis of the draft order stands interdicted in case objections have come to be preferred within the 30 day period as contemplated in Section 144C(2) of the Act. It is the DRP which thereafter proceeds to decide the objections and frame directions to enable the AO to complete the assessment in accordance with Section 144C(5) of the Act.

15. In terms of sub-section (13) of Section 144C of the Act, the AO is mandated to complete the assessment "*in conformity with the directions*" as framed by the DRP. That very provision commands the AO to complete the assessment within one month from the end of the month in which such a direction is received.

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[9] ALP

16. This is evident from Section 144C of the Act which is extracted hereinbelow:-

> "**144-C. Reference to Dispute Resolution Panel**.—(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation which is prejudicial to the interest of such assessee.
>
> (2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—
>
> (*a*) file his acceptance of the variations to the Assessing Officer; or
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> (*b*) file his objections, if any, to such variation with,—
>
> (*i*) the Dispute Resolution Panel; and
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> (*ii*) the Assessing Officer.
>
> (3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—
>
> (*a*) the assessee intimates to the Assessing Officer the acceptance of the variation; or
>
> (*b*) no objections are received within the period specified in sub-section (2).
>
> (4) The Assessing Officer shall, notwithstanding anything contained in Section 153 or Section 153-B, pass the assessment order under sub-section (3) within one month from the end of the month in which,—
>
> (*a*) the acceptance is received; or
>
> (*b*) the period of filing of objections under sub-section (2) expires.
>
> (5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
>
> (6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—
>
> (*a*) draft order;

(*b*) objections filed by the assessee;

(*c*) evidence furnished by the assessee;

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

(*e*) records relating to the draft order;

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

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

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

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

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

(8) <u>The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order</u>.

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

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

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

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

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

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in Section 153 or Section 153-B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(14-A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in sub-section (12) of Section 144-BA.

(14-B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

(*a*) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;

(*b*) optimising utilisation of the resources through economies of scale and functional specialisation;

(*c*) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

(14-C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14-B), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2024.

(14-D) Every notification issued under sub-section (14-B) and sub-section (14-C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

(15) For the purposes of this section,—

(*a*) "Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income tax constituted by the Board for this purpose;

(*b*) "eligible assessee" means,—

(*i*) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of Section 92-CA; and

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

17. As is manifest from a reading of sub-section (13) of Section 144C of the Act, the AO is not accorded any discretion in the framing of an order of assessment once directions have come to be framed by the DRP. In fact, the provision requires the AO to frame an order of assessment in conformity with those directions and without providing any further opportunity of hearing to the assessee. This principle of law has been affirmed by the Bombay High Court in the aforenoted paragraphs of *Vodafone Idea* and in **Shell India Markets Private Limited v. Additional Commissioner of Income Tax Officer, National Faceless Assessment Centre & Ors**[10]. The relevant paragraph of the decision in *Shell India* are extracted hereinbelow:

"**10**. Sub-section (13) of Section 144C, therefore, is very clear inasmuch as the Assessing Officer shall, upon receipt of the directions issued under sub-section (5), in conformity with the directions, complete the assessment within one month from the end of the month in which such direction is received. Sub-section (13) also provides that the Assessing Officer can complete the assessment without providing any further opportunity of being heard to the assessee. This means that the moment the Assessing Officer receives the directions under sub-section (5), he has to straightaway complete the assessment and he does not even have to hear the assessee. The Assessing Officer shall simply comply with the directions received from the DRP within one month from the end of the month in which such direction is received."

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[10] Judgment dated 14 February 2022 in WP No. 3298/2021

18. In this backdrop, we note that both the judgments of the Bombay High Court in *Shell India* and *Vodafone Idea* construe the time lines as provided in Section 144C to be mandatory in character. In our considered opinion, this interpretation is in accord with the intent behind insertion of that provision and the bare text and spirit of that section. Thus, we accord our approval to the interpretation as set out in the aforenoted decisions of the Bombay High Court.

19. Further, the procedure of assessment as provided under Section 144C does not envisage or contemplate the interdiction or involvement of the TPO once a directive has been framed by the DRP. The role of the TPO comes to an end once an order as contemplated under Section 92 CA(4) of the Act has come to be framed and remitted to the AO. There was thus no occasion for the TPO having resumed proceedings post the passing of the direction by the DRP on 20 June 2022.

20. Undisputedly, the directive of the DRP came to be uploaded on the ITBA portal on 24 June 2022. It is additionally stated to have been dispatched through Speed Post to the third respondent (TPO) and the fourth respondent (Additional/Joint/Deputy/Assistant Commissioner of Income Tax, National Faceless Assessment Centre, New Delhi) on 27 June 2022. It is thereafter that the TPO appears to have passed the order dated 25 July 2022.

21. We, however note that paragraph 4(2) of the E-as, 2019 makes the following salient provisions:-

> "4(2). All communication among the assessment unit, review unit, verification unit or technical unit or with the assesse or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making an assessment under this Scheme shall be through the National e-

assessment Centre."

22. It is thus manifest that as per the provisions of E-as, 2019, all orders, notices and decisions have to be necessarily uploaded on the ITBA portal and as part of the larger faceless assessment regime which now holds the field. The uploading of the directive of the DRP on the ITBA portal would thus constitute valid and sufficient service and the period of limitation as prescribed in Section 144C(13) of the Act would be liable to be computed bearing that crucial date in mind. Once the aforesaid position becomes clear, it is evident that the order of assessment, if at all could have been framed lastly by 31 July 2022. There has thus been an abject failure on the part of the first respondent to comply with the mandatory timelines as incorporated in the aforenoted provisions. Accordingly, the writ petition is liable to be allowed and the impugned order of assessment and the consequential penalty proceedings are thus liable to be set aside on this short score alone.

23. The writ petition is allowed. The order of assessment dated 24 August 2022 as well as the penalty show cause notice dated 24 August 2022 are quashed and set aside. For reasons aforenoted and consequent to a failure on the part of the respondents to implement the directives of the DRP, the return as submitted by the petitioner would be deemed to have been accepted and the tax liability worked accordingly.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**JANUARY 30, 2024/**RW