



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

% **Judgment reserved on: 28 August 2024**

Judgment pronounced on: 02 September 2024

+ ITA 52/2023 & CM APPL. 3673/2023

PR. COMMISSIONER OF INCOME TAX -7Appellant

Through: Mr. Aseem Chawla, SSC with
Ms. Pratishtha Chaudhary,
Advocate.

versus

SUMITOMO CORPORATION INDIA (P) LTD.....Respondent

Through: Mr. Himanshu S. Sinha, Mr.
Prashant Meharchandani & Mr.
Jainender Singh Kataria, Advs

+ ITA 451/2024 & CM APPL. 47709/2024 (10 days delay in
filing)

PR. COMMISSIONER OF INCOME TAX -7Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, Mr.
Pratyaksh, JSCs

versus

WICKWOOD DEVELOPMENT LTD.Respondent

Through: Ms. Kavita Jha, Sr. Adv with
Mr. Vaibhav Kulkarni & Mr.
Himanshu Aggarwal, Advs.

+ W.P.(C) 688/2019

MICROSOFT INDIA (R&D) PVT. LTD.Petitioner

Through: Mr. Nageswar Rao & Mr.
Parth, Advocates

versus

DEPUTY COMMISSIONER OF
INCOME TAX & ANR.

.....Respondents

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr. Yojit



Pareek, JSCs for IT Deptt.

+ W.P.(C) 1009/2019

MICROSOFT INDIA (R&D) PVT. LTD.Petitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates

versus

DEPUTY COMMISSIONER
OF INCOME TAX & ANR.

.....Respondent

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 991/2019

MICROSOFT INDIA (R&D) PVT. LTD.Petitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX
& ANR.

.....Respondents

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 995/2019

MICROSOFT INDIA (R&D) PVT. LTD.Petitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates.

versus

DEPUTY COMMISSIONER OF
INCOME TAX & ANR.

.....Respondents

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 993/2019

MICROSOFT INDIA (R&D) PVT. LTD.Petitioner



Through: Mr. Nageswar Rao, Mr. Parth,
Advocates

versus

DEPUTY COMMISSIONER
OF INCOME TAX & ANR.

.....Respondents

Through: Mr. Siddharth Sinha, SSC with
Ms. Dacchita Shahi, Ms. Anuja
Pethia, JSCs, Mr. Nring
Chamwibo Zeliang, Ms. Anu
Priya Nisha Minz, Advs.

+ W.P.(C) 12462/2021

JCB INDIA LIMITED

.....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv with
Mr. Aditya Vohra & Mr.
Shashwat Dhamija, Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI
&ANR.

.....Respondents

Through: Mr. Sanjay Kumar with Ms.
Easha, Advs

+ W.P.(C) 12844/2021

SMART CUBE INDIA PVT LTD

.....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv with
Mr. Aditya Vohra, Mr. Neeraj
Jain, Mr. Shashwat, Advs.

versus

JOINT COMMISSIONER OF INCOME TAXRespondent

Through: Mr. Siddharth Sinha, SSC with
Ms. Dacchita Shahi, Ms. Anuja
Pethia, JSCs, Mr. Nring
Chamwibo Zeliang, Ms. Anu
Priya Nisha Minz, Advs.

+ W.P.(C) 3444/2021



M/S MICROSOFT INDIA R AND D PVT. LTDPetitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates

versus

PRINCIPAL COMMISSIONER OF INCOME

TAX -4 & ANR.

.....Respondents

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 3377/2021

MICROSOFT INDIA R AND D PVT LTDPetitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates.

versus

PRINCIPAL COMMISSIONER

OF INCOME TAX-4 & ANR.

.....Respondents

Through: Mr. Siddharth Sinha, SSC with
Ms. Dacchita Shahi, Ms. Anuja
Pethia, JSCs, Mr. Nring
Chamwibo Zeliang, Ms. Anu
Priya Nisha Minz, Advs.

+ W.P.(C) 3389/2021

M/S MICROSOFT INDIA (R AND D) PVT. LTD.....Petitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates

versus

PRINCIPAL COMMISSIONER OF INCOME

TAX -4 & ANR.

.....Respondents

Through: Mr. Siddharth Sinha, SSC with
Ms. Dacchita Shahi, Ms. Anuja
Pethia, JSCs, Mr. Nring
Chamwibo Zeliang, Ms. Anu
Priya Nisha Minz, Advs.



+ W.P.(C) 3472/2021

MICROSOFT INDIA (R AND D) PVT. LTD.Petitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates

versus

PRINCIPAL COMMISSIONER OF INCOME TAX - 4 & ANR.

.....Respondents

Through: Mr. Siddharth Sinha, SSC with
Ms. Dacchita Shahi, Ms. Anuja
Pethia, JSCs, Mr. Nring
Chamwibo Zeliang, Ms. Anu
Priya Nisha Minz, Advs.

+ W.P.(C) 3539/2021

M/S MICROSOFT INDIA R AND D PVT LTDPetitioner

Through: Mr. Nageswar Rao, Mr. Parth,
Advocates.

versus

PRINCIPAL COMMISSIONER
OF INCOME TAX 4 & ANR.

.....Respondents

Through: Mr. Siddharth Sinha, SSC with
Ms. Dacchita Shahi, Ms. Anuja
Pethia, JSCs, Mr. Nring
Chamwibo Zeliang, Ms. Anu
Priya Nisha Minz, Advs.

+ W.P.(C) 11896/2021

TELSTRA INDIA PRIVATE LIMITEDPetitioner

Through: Mr. Manuj Sabharwal, Mr.
Drona Negi & Mr. Ayush
Kumar, Advs

versus

NATIONAL FACELESS ASSESSMENT
CENTRE & ORS.

.....Respondents

Through: Mr. Sunil Agarwal, SSC with
Mr. Shivansh B.Pandya, Mr.



Viplav Acharya, JSCs & Mr.
Utkarsh Tiwari, Advocate.

+ W.P.(C) 11949/2021

CONTATA SOLUTIONS PRIVATE LIMITEDPetitioner

Through: Mr. Amol Sinha, Mr. Kshitiz
Garg & Mr. Sourav Verma,
Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI &
ORS.Respondents

Through: Mr. Indruj Singh Rai, SSC, Mr.
Sanjeev Menon, Mr. Rahul
Singh, JSCs, Mr. Anmol Jagga,
Advocates.

+ W.P.(C) 12204/2021 & CM APPL. 38228/2021 (Stay)

SWAROVSKI INDIA PRIVATE LIMITEDPetitioner

Through: Mr. Himanshu S. Sinha, Mr.
Prashant Meharchandani & Mr.
Jainender Singh Kataria, Advs

versus

JOINT COMMISSIONER OF
INCOME TAX OSDRespondent

Through: Mr. Sanjay Kumar with Ms.
Easha, Advs.

+ W.P.(C) 12319/2021

AXALTA COATING SYSTEMS
INDIA PRIVATE LIMITEDPetitioner

Through: Mr. Salil Kapoor, Ms. Ananya
Kapoor, Mr. Tarun Chawla, Mr.
Sumit Lal Chandani & Mr.
Utkarsa Kr. Gupta, Advocates.

Versus

NATIONAL FACELESS ASSESSMENT CENTRE, -EARLIER
KNOWN AS NATIONAL E-ASSESSMENT CENTRE



.....Respondent

Through: Mr. Sanjay Kumar, SC with
Ms. Easha, Adv.

+ W.P.(C) 4043/2022 & CM APPL. 12064/2022 (stay)

RAMTECH CONSULTING

.....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya
Kapoor, Mr. Tarun Chawla, Mr.
Sumit Lal Chandani & Mr.
Utkarsa Kr. Gupta, Advocates.

versus

NATIONAL FACELESS
ASSESSMENT CENTRE, DELHI.

.....Respondent

Through: Mr. Sanjay Kumar with Ms.
Easha, Adv.

+ W.P.(C) 5913/2022 & CM APPL. 17722/2022 (stay)

SOFTWAREONE INDIA PVT. LTD

.....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv with
with Mr. Aditya Vohra & Mr.
Shashwat Dhamija, Advocates.

versus

NATIONAL E-ASSESSMENT
CENTRE, DELHI

.....Respondent

Through: Mr. Sanjay Kumar with Ms.
Easha, Adv.

+ W.P.(C) 6365/2022 & CM APPL. 19227/2022 (stay)

SMART CUBE INDIA PVT LTD

.....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya
Kapoor, Mr. Tarun Chawla, Mr.
Sumit Lal Chandani & Mr.
Utkarsa Kr. Gupta, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 22(2)



.....Respondent

Through: Mr. Sanjay Kumar with Ms.
Easha, Advs.

+ W.P.(C) 6786/2022 & CM APPL. 20625/2022 (exemption)

ADITYA TALWAR

.....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya
Kapoor, Mr. Tarun Chawla, Mr.
Sumit Lal Chandani & Mr.
Utkarsa Kr. Gupta, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE-19,

.....Respondent

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 12735/2022 & CM APPL. 38706/2022 (stay)

SWAROVSKI INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Himanshu S. Sinha, Mr.
Prashant Meharchandani & Mr.
Jainender Singh Kataria, Advs

versus

DEPUTY COMMISSIONER
OF INCOME-TAX CIRCLE 22-2

.....Respondent

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 12784/2022 & CM APPL. 38902/2022 (stay)

SWAROVSKI INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Himanshu S. Sinha, Mr.
Prashant Meharchandani & Mr.
Jainender Singh Kataria, Advs

Versus

DEPUTY COMMISSIONER OF
INCOME-TAX CIRCLE 22.2

.....Respondent



Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 12785/2022 & CM APPL. 38904/2022 (stay)

SWAROVSKI INDIA PRIVATE LIMITEDPetitioner

Through: Mr. Himanshu S. Sinha, Mr.
Prashant Meharchandani & Mr.
Jainender Singh Kataria, Advs

versus

DEPUTY COMMISSIONER
OF INCOME-TAX CIRCLE 22.2Respondent

Through: Mr. Gaurav Gupta, SSC with
Mr. Shivendra Singh & Mr.
Yojit Pareek, JSCs for IT Deptt.

+ W.P.(C) 7547/2023

AT KEARNEY INDIA PRIVATE LIMITEDPetitioner

Through: Ms. Ishita Farsaiya, Mr. Sparsh
Bhargava, Ms. Vanshika
Taneja & Mr. Apurv Shukla,
Advocates.

versus

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

Through: Mr. Indruj Singh Rai, SSC, Mr.
Sanjeev Menon, Mr. Rahul
Singh, JSCs, Mr. Anmol Jagga,
Advocates.

+ W.P.(C) 14314/2023 & CM APPL. 56688/2023 (stay)

KARL STORZ ENDOSCOPY
INDIA PRIVATE LIMITEDPetitioner

Through: Mr. Vishal Kalra & Mr.



Saumyendra S. Tomar, Mr.
Ankit Sahni & Ms. Snigdha
Gautam, Advocates.

Versus

NATIONAL FACELESS ASSESSMENT CENTRE, NEW
DELHI & ANR.Respondents

Through: Appearance not given.

+ ITA 454/2024

PR. COMMISSIONER OF INCOME TAX -7Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, Mr.
Pratyaksh Gupta, JSCs

versus

WICKWOOD DEVELOPMENT LTD.Respondent

Through: Ms. Kavita Jha, Sr. Adv with
Mr. Vaibhav Kulkarni & Mr.
Himanshu Aggarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. This batch of writ petitions impugn the action of the Jurisdictional **Assessing Officer**¹ who had proceeded to frame a final order of assessment pursuant to directions of remand framed by the **Income Tax Appellate Tribunal**² and thus having acted in breach of the procedure prescribed by Section 144C of the **Income Tax Act, 1961**³.

2. Pursuant to the directions issued by the Court, Mr. Rao, learned

¹ AO

² Tribunal

³ Act



counsel who has led submissions on behalf of the writ petitioners, has placed on the record a chart which succinctly encapsulates the principal facts obtaining in each of the writ petitions. That collaborative chart has principally bifurcated matters into Categories A and B and is extracted hereinbelow:-

“CATEGORY A

Sr. No.	Case title and No.	Assessment Year	Brief Background	Issues involved
1	PCIT v. Sumitomo Corporation India (P) Ltd., ITA 52/2023	2003-04	- This appeal by the Revenue seeks to assail the order passed by the Income Tax Appellate Tribunal (ITAT) dated 28th September 2021 wherein the ITAT upheld the action of the CIT(A) to set aside the final assessment order passed by the assessing officer without passing a draft assessment order during remand proceedings as mandated under Section 144C of the Act. <u>Limitation</u> - The ITAT order remitting the matter back to the file of TPO was passed on 11.06.2014 and therefore, as per fourth proviso to Section 153(2A), prior to its amendment vide Finance Act, 2016, the limitation for passing a legally valid final assessment order expired on March 31, 2017.	Whether a final assessment order passed without passing a draft assessment order as mandated under Section 144C of the Act is tenable or not? Whether it is mandatory for the assessing officer to pass a draft assessment order under Section 144C of the Act during remand proceedings?
2	JCB India Limited v. NFAC W.P.(C) 12462/2021:	2018-19	- On 20.02.2020, the Petitioner filed the return of income for the subject AY declaring a total income of INR 1395,28,30,270. Petitioner's return of income was processed under section 143(1) of the Act. - On 28.07.2021, the TPO vide	Whether a final assessment order passed without passing a draft assessment order as mandated under Section 144C of the Act is tenable or not?



			its order under section 92CA(3) of the Act proposed an upward transfer pricing adjustment of INR 5,93,54,095. - On 24.08.2021, the Respondent /AO directly passed the final assessment order under section 143(3) read with section 144B of the Act along with demand notice under section 156 of the Act and penalty notice under section 274 read with section 270A of the Act. - The final assessment order passed was also accompanied by a notice of demand issued under section 156 of the Act (along with the computation sheet), and a penalty notice issued under section 274 read with section 270A of the Act, thereby resulting in violation of mandatory provisions of section 144C of the Act.	
3	Smart Cube India Pvt Ltd vs Joint Commissioner of Income-tax W.P.(C) 12844/2021	2010-11	- Income-tax return (ITR) filed by the Petitioner returning income of Rs. 3,78,120 was selected for scrutiny and notice was issued under section 143(2) of the Act. - Assessing Officer (AO) passed draft assessment order (DAO) dated 21.03.2014 under section 143(3) read with section 144C, making addition of Rs.4,70,99,145, which included transfer pricing adjustment of Rs.1,91,52,594 and disallowance of deduction under section 10B of the Act of Rs.2,79,46,551. - Objections were filed by the Petitioner against the DAO before the DRP, which issued directions dated 24.12.2014 under section 144(5), confirming the additions. Pursuant to the same, the AO	In the 2nd round of proceedings pursuant to remand by the ITAT, despite the Petitioner qualifying as 'eligible assessee' in terms of section 144C(15), draft assessment order was not passed by the Respondent, instead, assessment was straightaway finalized by way of final assessment order, which was accompanied by notice of demand and notice for initiating penalty proceedings No opportunity was provided to the Petitioner to file



			passed the final assessment order dated 14.01.2015 under section 143(3) assessing the total income at Rs.4,74,77,270. - Said final assessment order was challenged before the ITAT, which remanded the issue of transfer pricing adjustment to the TPO and the issue of disallowance of deduction under section 10B of the Act to the AO vide order dated 27.04.2018. - In set aside proceedings, TPO passed order dated 05.01.2021 under section 92CA(3), proposing to make transfer pricing adjustment of Rs.1,80,69,890. The AO passed the final assessment order dated 29.09.2021 under section 143(3) read with section 254, assessing the total income of the Petitioner at Rs.4,63,94,561, after making revised transfer pricing adjustment as proposed by the TPO and disallowance of deduction claimed under section 10B of the Act. - Said final assessment order was accompanied by notice of demand issued under section 156 and notice issued under section 274 read with section 271(1)(c) of the Act for initiating penalty proceedings.	objections before the DRP, even though the Respondent was mandated by law to first forward draft assessment order to the Petitioner under section 144C(1), thereby violating the substantive rights of the Petitioner as codified under section 144C of the Act.
4	Telstra India Private Limited v.NFAC. W.P.(C) 11896/2021	2018-19	- That AO has passed a final assessment order dated 18.09.2021 against the petitioner without issuing the Draft Assessment Order as per mandatory provisions of s. 144C(1). The said action is jurisdictionally flawed. To clarify, there is no corrigendum in the matter. - Notice of demand under s. 156	Whether the AO could have passed final assessment order without adherence to the mandatory provisions of Section 144C?



			was also issued on 18.09.2021. On the basis of Supreme Court decision in <i>Kalyan Kumar Ray v. CIT</i> [1991] 191 ITR 634 (SC), the process of assessment has culminated	
5	Contata Solutions Private Limited v. NFAC W.P.(C) 11949/2021	2010-11	12.10.2010- Petitioner Company filed its original ITR. 29.08.2011- The case was selected for scrutiny assessment through CASS. 24.01.2014- On reference of the Assessing Officer, TPO passed an order u/s 92CA(3) of the Act. 10.03.2014- Draft Assessment Order under Section 143(3) r/w Section 144C of the Act, was passed by the AO. 16.12.2014- Aggrieved by the Draft Assessment Order, the Petitioner filed objections before the Dispute Resolution Panel ['DRP']. The DRP issued directions. 29.01.2015- The TPO proposed upwards adjustment of INR 52,25,570/- and arrived at the arm's length price of INR 9,90,41,626/- (Rs.9,38,16,056/- +52,25,570/-) in the arm's length price for the international transaction. 30.01.2015- Final Assessment Order was passed by the Assessing Officer. 15.01.2019- In the appeal preferred by the Petitioner against the final Assessment Order, dated 30.01.2015, passed by the Assessing Officer, the Income Tax Appellate Tribunal ('ITAT') granted some relief to the Petitioner by directing inclusion/exclusion of some comparables. Further, ITAT	The final Assessment Order passed by the AO is without jurisdiction. This Hon'ble High Court has held that the failure by the AO to first pass a draft assessment order would result in invalidation of the final assessment order and the consequent demand notices and penalty proceedings. {Turner International India (P.) Ltd. v. Dy. CIT [2017] 82 taxmann.com 125/398 ITR 177 (Delhi) & Headstrong Services India Pvt. Ltd.} Limitation has expired since A.Y is 2010-11.



			also directed to TPO to carry out fresh comparability analysis as per Rule 10D(2) of the Income-Tax Rules, 1963 and also to carry out FAR Analysis in respect of some comparables rejected by merely applying filters by the TPO. 21.01.2021- TPO passed a fresh order under section 92CA(3) of the Act, proposing even higher upwards adjustment of INR 1,16,23,102/- and arrived at the arm's length price of INR 10,54,39,158/- (Rs.9,38,16,056/- + 1,16,23,102/-). 09.09.2021- Without passing the Draft Assessment Order contrary to the mandate of Section 144C(1) of the Act, the AO passed final Assessment Order under section 254/143(3)/144C(13) r/w Section 92CA(4) of the Act.	
6	Swarovski India Private Limited v. DCIT, W.P.(C) 12204/2021	2010-11	- Present writ petition has been filed challenging the assessment order dated 29th September 2021 passed by the assessing officer in remand proceedings and the consequent demand and penalty notices without passing a draft assessment order as mandated under Section 144C of the Act. - The petition was filed on the ground that the assessing officer erred in issuing a demand notice u/s 156 despite the fact that the addition made in the final assessment order was protective in nature. - This Hon'ble Court vide its order dated 28th October 2021, restrained the Respondent from taking any action pursuant to the impugned assessment	Whether a final assessment order passed without passing a draft assessment order as mandated under Section 144C of the Act is tenable or not? Whether it is mandatory for the assessing officer to pass a draft assessment order under Section 144C of the Act during remand proceedings?



			orders, notice of demand and penalty notices. <u>Limitation</u> The order of ITAT remitting the matter was passed on April 02, 2018, and therefore, the limitation of passing a legally valid final assessment order expired on December 31, 2020, as per Section 153(3) r.w. Section 153(4) of the Act. The assessment order was passed on September 29, 2021, which is beyond limitation.	
7	Axalta Coating Systems India Private Limited v. NFAC W.P.(C) 12319/2021	2018-19	The Respondents have illegally proceeded to pass the final assessment order (Annexure P-3). The TPO passed the order on 31.07.2021 (Annexure P-2) and the Respondents instead of following the binding mandate of Section 144C and instead of issuing the draft assessment order, have directly proceeded to pass the impugned final assessment order and have raised the demand as well and initiated penalty proceedings.	
8	Ramtech Consulting v. NFAC W.P.(C) 4043/2022	2017-18	The Respondents have illegally proceeded to pass the final assessment order (Annexure P-7). The TPO passed the order on 29.01.2021 (Annexure P-1) and the Respondents instead of following the binding mandate of Section 144C and instead of issuing the draft assessment order, have directly proceeded to pass the impugned final assessment order and have raised the demand as well and initiated penalty proceedings. The Respondents in the first round had passed the draft assessment order and also final assessment order which was set-aside by this Hon'ble Court on 14.07.2021 (P-5).	



			Subsequently, the Respondents have not followed the mandate of law and have not passed any draft assessment order. • Thereafter the Petitioner has also filed a CM application for amendment of writ for raising issue of DIN which Hon'ble Court has taken on record vide order dated 13.12.2023.	
9	Software one India Pvt. Ltd v. NeAC W.P.(C) 5913/2022	2017-18	• The Respondents have illegally proceeded to pass the final assessment order (Annexure P-3). The TPO passed the order on 30.01.2021 (Annexure P-2) and the Respondents instead of following the binding mandate of Section 144C and instead of issuing the draft assessment order, have directly proceeded to pass the impugned final assessment order and have raised the demand as well and initiated penalty proceedings.	
10	Smart Cube India Pvt Ltd v. JCIT W.P.(C) 6365/2022	2011-12	• Income-tax return (ITR) filed by the Petitioner returning income of Rs.3,19,590 was selected for scrutiny and notice was issued under section 143(2) of the Act. • Assessing Officer (AO) passed draft assessment order (DAO) dated 27.02.2015 under section 143(3) read with section 144C, making addition of Rs.7,34,36,867, which included transfer pricing adjustment of Rs.5,52,01,139 and disallowance of deduction under section 10B of the Act of Rs.1,82,35,728. • Objections were filed by the Petitioner against the DAO before the DRP, which issued directions dated 14.09.2015 under section 144(5), confirming the additions.	In the 2nd round of proceedings pursuant to remand by the ITAT, despite the Petitioner qualifying as 'eligible assessee' in terms of section 144C(15), draft assessment order was not passed by the Respondent, instead, assessment was straightaway finalized by way of final assessment order, which was accompanied by notice of demand and notice for initiating penalty proceedings. No opportunity was



			Pursuant to the same, the AO passed the final assessment order dated 19.10.2015 under section 143(3) assessing the total income at Rs.7,37,56,457. • Said final assessment order was challenged before the ITAT, which remanded the issue of transfer pricing adjustment to the TPO and the issue of disallowance of deduction under section 10B of the Act to the AO vide order dated 29.07.2020. • In set aside proceedings, TPO passed order dated 29.03.2022 under section 92CA(3), proposing to make transfer pricing adjustment of Rs.1,43,77,827. The AO passed the final assessment order dated 30.03.2022 under section 143(3) read with section 254, assessing the total income of the Petitioner at Rs. 3,29,33,145, after making revised transfer pricing adjustment as proposed by the TPO and disallowance of deduction claimed under section 10B of the Act. • Said final assessment order was accompanied by notice of demand issued under section 156 and notice issued under section 274 read with section 271(1)(c) of the Act for initiating penalty proceedings.	provided to the Petitioner to file objections before the DRP, even though the Respondent was mandated by law to first forward draft assessment order to the Petitioner under section 144C(1), thereby violating the substantive rights of the Petitioner as codified under section 144C of the Act
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11	Aditya Talwar vs. DCIT- W.P.(C) 6786/2022	2017-18	The Respondents have illegally proceeded to pass the final assessment order (Annexure P-3). The Petitioner is admittedly a non-resident and the Respondents instead of following the binding mandate of Section 144C and instead of issuing the draft assessment order, have directly proceeded to pass the impugned final assessment order and have raised the demand as well and initiated penalty proceedings.	
12	Swarovski India Private Limited v. DCIT, W.P.(C) 12735/2022	2008-09	Present writ petitions have been filed challenging the assessment orders dated 22nd March 2022 for the Assessment Years 2008-09 & 2009-10 and 23rd March 2022 for the Assessment Year 2007-08, passed by the assessing officer in remand proceedings and the consequent demand and penalty notices without passing a draft assessment order as mandated under Section 144C of the Act.	Whether a final assessment order passed without passing a draft assessment order as mandated under Section 144C of the Act is tenable or not?
13	Swarovski India Private Limited v. DCIT, W.P.(C) 12784/2022	2007-08	This Hon'ble Court vide its order dated 5th September 2022, restrained the Respondent from taking any coercive action pursuant to the impugned assessment orders, notice of demand and penalty notices.	Whether it is mandatory for the assessing officer to pass a draft assessment order under Section 144C of the Act during remand proceedings?
14	Swarovski India Private Limited v. DCIT, W.P.(C) 12785/2022	2009-10	<u>Limitation</u> For AY 2007-08 The order of ITAT remitting the matter was passed on July 25, 2019, and therefore, the limitation of passing a legally valid final assessment order expired on March 31, 2022, as per Section 153(3) r.w. Section 153(4) of the Act. The final assessment order was passed on March 23, 2022.	



			For AY 2008-09 - The order of ITAT remitting the matter was passed on July 25, 2019, and therefore, the limitation of passing a legally valid final assessment order expired on March 31, 2022, as per Section 153(3) r.w. Section 153(4) of the Act. The final assessment order was passed on March 23, 2022. For AY 2009-10 - The order of ITAT remitting the matter was passed on July 25, 2019, and therefore, the limitation of passing a legally valid final assessment order expired on March 31, 2022, as per Section 153(3) r.w. Section 153(4) of the Act. . The final assessment order was passed on March 23, 2022.	
15	Karl Storz Endoscopy India Private Limited v. NFAC W.P. (C) No. 14314/2023	2020-21	- On 08.01.2021, the Petitioner filed the return of income for the subject year declaring total income of INR 26,27,44,510. - On 30.07.2023, the TPO vide its order under section 92CA(3) of the Act, proposed an upward adjustment on account of AMP expenditure of INR 18,61,30,041. - On 30.07.2023, the Respondent No.1, instead of passing a draft assessment order as mandated by the provisions of section 144C(1) of the Act, straightaway passed the final assessment order dated 30.07.2023 under section 143(3) read with section 144B of the Act, confirming the additions made by the TPO. - The final assessment order dated 30.07.2023 was accompanied by a notice of demand issued under section	Whether a final assessment order passed without passing a draft assessment order as mandated under Section 144C of the Act is tenable or not?



			156 of the Act (along with the computation sheet), and a penalty notice issued under section 274 read with section 270A of the Act, thereby resulting in violation of mandatory provisions of section 144C of the Act.	
16	PCIT vs Wickwood Development Limited ITA 451/2024	2008-09	• The assessee is company incorporated in BVI on 13.05.1991. • A search and seizure operations under section 132 of the Act was conducted on 22.03.2012 in M/s Focus Energy group. • Thereafter, a notice under section 153C of the Act was issued to the assessee on 18.11.2013. • The assessing officer made reference to the Transfer Pricing Officer vide letter dated 20.12.2013. In order to verify the correctness of the exploration expenses paid by the assessee for AY 2006-07 to 2012-13. • The assessee filed detailed objections to the assumption of jurisdiction vide letter dated 05.03.2014. • The assessee in response to notice under section 153C filed income-tax return ('ITR') on 18.03.2014 returning income of Rs.1,55,91,116. • Assessing Officer (AO) passed final assessment order dated 28.03.2014 under section 153C read with section 144, making addition of Rs. 29,82,57,118. • The final assessment order was challenged before the CIT(A) , which allowed the appeal filed by the assessee vide order	Whether on the facts and circumstances of the case and in law the Ld. ITAT is justified in allowing the objection filed by the assessee despite the fact that section 144C(1) of the Act is not applicable in the case of the assessee as the income earned during the assessment year only because of underlying assets or source of income is in India? Whether on the facts and circumstances of the case and in law the Ld. ITAT is justified in allowing the cross objection filed by the assessee despite the fact that the section 144C(1) of the Act is not applicable in the case of the is eligible assessee as defined under section 144C(15) (b) of the Income Tax Act,



			dated 26.02.2015. • The order dated 26.02.2015 was assailed by the Revenue before the ITAT on merits and the assessee also filed Cross Objections being CO No. 360/Del/2015. • The ITAT, following the decision of this Hon'ble Court in the case of Turner International India Pvt. Ltd. vs DCIT: W.P.(C) 4260/2015 held that it was obligatory on the part of the assessing officer to pass the draft assessment order in the first instance before passing of the final assessment order and no adjudication was required and done on the merits of the matter.	1961.
17	PCIT vs Wickwood Development Limited ITA 454/2024	2009-10	• The assessee is company incorporated in BVI on 13.05.1991. • A search and seizure operations under section 132 of the Act was conducted on 22.03.2012 in M/s Focus Energy group. • Thereafter, a notice under section 153C of the Act was issued to the assessee on 18.11.2013. • The assessing officer made reference to the Transfer Pricing Officer vide letter dated 20.12.2013. In order to verify the correctness of the exploration expenses paid by the assessee for AY 2006-07 to 2012-13 • The assessee filed detailed objections to the assumption of jurisdiction vide letter dated 05.03.2014. • The assessee in response to notice under section 153C filed income-tax return ('ITR') on 18.03.2014 returning income of Rs.6,12,64,160.	Whether on the facts and circumstances of the case and in law the Ld. ITAT is justified in allowing the objection filed by the assessee despite the fact that section 144C(1) of the Act is not applicable in the case of the assessee as the income earned during the assessment year only because of underlying assets or source of income is in India? Whether on the facts and circumstances of the case and in law the Ld. ITAT is justified in allowing the cross objection filed by the assessee



			- Assessing Officer (AO) passed final assessment order dated 28.03.2014 under section 153C read with section 144, making addition of Rs. 1,82,53,79,696. - The final assessment order was challenged before the CIT(A), which allowed the appeal filed by the assessee vide order dated 26.02.2015. - The order dated 26.02.2015 was assailed by the Revenue before the ITAT on merits and the assessee also filed Cross Objections being CO No. 361/Del/2015. - The ITAT, following the decision of this Hon'ble Court in the case of Turner International India Pvt. Ltd. vs DCIT: W.P.(C) 4260/2015 held that it was obligatory on the part of the assessing officer to pass the draft assessment order in the first instance before passing of the final assessment order and no adjudication was required and done on the merits of the matter.	despite the fact that the section 144C(1) of the Act is not applicable in the case of the is eligible assessee as defined under section 144C(15) (b) of the Income Tax Act, 1961.
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CATEGORY B

Sr. No.	Case Title and No.	AY
6	Swarovski India Private Limited v. DCIT, W.P.(C) 12204/2021	2010-11
Event		Date
Date of ITAT order (remanding for re-adjudication)		02.04.2018
Expiry of Limitation [21 months from end of 31.03.2019 as per Section 153(3) r.w.s 153(4)]		31.12.2020
Date of TPO order in remand proceedings (Beyond Limitation)		31.01.2021



Date of Final Assessment Order in remand proceedings (Beyond Limitation)	29.09.2021
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MICROSOFT INDIA (R&D) PRIVATE LIMITED

		WP (C) 1009/2019	WP (C) 993/2019	WP (C) 688/2019	WP (C) 991/2019	WP (C) 995/2019
S. No.	Particulars	AY 2006-07	AY 2007-08	AY 2008-09	AY 2009-10	AY 2010-11
1	Original Assessment order	16.09.2010 Annexure P-4 on pg. 40 of WP	21.10.2011 Annexure P-4 on pg. 33 of WP	Undated AO but notice of demand is dated 19-11-2012 Annexure P-4 on pg. 41	28.02.2014 Annexure P-4 on pg. 43 of WP	27.02.2015 Annexure P-4 on pg. 75 of WP
2	ITAT order	28.06.2016 Annexure P-5 on pg. 47 of WP	28.06.2016 Annexure P-5 on pg. 43 of WP	28.06.2016 Annexure P-5 on pg. 53	28.06.2016 Annexure P-5 on pg. 55 of WP	28.06.2016 Annexure P-5 on pg. 108 of WP
3	Consequential order passed u/s 254/143(3) rws 144C of the Act recomputing taxable income	31.08.2016 Annexure P-6 on pg. 70 of WP Address: 807, New Delhi House, Barakhamba Road, Delhi 110001	31.08.2016 Annexure P-6 on pg. 66 of WP Address: 807, New Delhi House, Barakhamba Road, Delhi 110001	31.08.2016 Annexure P-6 on pg. 76 of WP Address: 807, New Delhi House, Barakhamba Road, Delhi 110001	31.08.2016 Annexure P-6 on pg. 78 of WP Address: 807, New Delhi House, Barakhamba Road, Delhi 110001	31.08.2016 Annexure P-6 on pg. 131 of WP Address: 807, New Delhi House, Barakhamba Road, Delhi 110001
4	Revised TPO order passed u/s 92CA rws 254 of the Act	31.10.2018 Annexure P-13 on pg. 83 of WP	31.10.2018 Annexure P-11 on pg. 78 of WP	31.10.2018 Annexure P-11 on pg. 88 of WP	31.10.2018 Annexure P-11 on pg. 90 of WP	October 2018 Annexure P-11 on pg. 143 of WP
5	Notice u/s 142(1) of the Act issued by AO	20.11.2018 Annexure P-14 on pg. 138 of WP	20.11.2018 Annexure P-12 on	20.11.2018 Annexure P-12 on pg. 156 of WP	20.11.2018 Annexure P-12 on pg. 158 of WP	20.11.2018 Annexure P-12 on pg. 211 of WP



			pg. 143 of WP			
6	Due date for passing assessment order u/s 153 pursuant to remand back	31.12.2018	31.12.2018	31.12.2018	31.12.2018	31.12.2018
7	Final assessment order u/s 143(3) rws 254 of the Act	20.11.2018 Annexure P-1 on pg. 24 of WP	Nov 2018 (Undated) Annexure P-1 on pg. 24 of WP	28.12.2018 Annexure P-1 on pg. 25 of WP	30.12.2018 Annexure P-1 on pg. 25 of WP	25.12.2018 Annexure P-1 on pg. 24 of WP
8.1	Demand notice u/s 156 of the Act	20.12.2018 Annexure P-2 on pg. 29 of WP	20.12.2018 Annexure P-2 on pg. 26 of WP	28.12.2018 Annexure P-2 on pg. 30 of WP	30.12.2018 Annexure P-2 on pg. 31 of WP	25.12.2018 Annexure P-2 on pg. 30 of WP
8.2	Address to which demand notice u/s 156 has been sent in Round II of litigation	F-40, NDSE - 1, New Delhi 110049 Pg. 29 of WP	F-40, NDSE - 1, New Delhi 110049 Pg. 26 of WP	F-40, NDSE - 1, New Delhi 110049 Pg. 26 of WP	807, New Delhi House, Barakhamba Road, New Delhi - 110001 Pg. 31 of WP	F-40, NDSE - 1, New Delhi 110049 Pg. 26 of WP
9.1	Date of Dispatch of order u/s 254/143(3) of the Act to incorrect old address of Andrewganj by AO	22.12.2018	22.12.2018	30.12.2018	-	27.12.2018
9.2	Date of Dispatch of order u/s 254/143(3) of the Act to correct address of Barakhamba Road by AO				01.01.2019	



10	Date of Letter filed with AO requesting for true copy of the final assessment order.	07.01.2019	07.01.2019	07.01.2019	-	07.01.2019
11	Date of receipt of final assessment order	07.01.2019 Para 18-19 pg. 16 of WP	07.01.2019 Para 18-19 on pg. 16 of WP	07.01.2019 Para 18-19 on pg. 16-17 of WP	07.01.2019 Para 19 on pg. 17 of WP	07.01.2019 Para 19 on pg. 16 of WP
12.1	Date of filing Writ Petition	23.01.2019	23.01.2019	19.01.2019	23.01.2019	25.01.2019
12.2	Limitation expired on	31.12.2018	31.12.2018	31.12.2018	31.12.2018	31.12.2018
12.3	Grounds in Writ Petition filed by assessee	Pg. 17-19 of WP	Pg. 17-20 of WP	Pg. 18-21 of WP	Pg. 17-21 of WP	Pg. 17-20 of WP
12.4	Writ Petition-submission made by assessee on: date of dispatch and address of dispatch	Para 19 on pg. 16 of WP	Para 18-19 on pg. 16 of WP	Para 18-19 on pg. 16-17 of WP	Para 19 on pg. 17 of WP Courier tracking Screenshot- 13 on pg. 159 of WP	Para 19 on pg. 16 of WP
13.1	Date of filing Counter Affidavit	19.11.2019	28.11.2019	19.11.2019	19.11.2019	19.11.2019
13.2	Counter affidavit of deparment does not deny date of dispatch and address of dispatch	The Revenue dept in para 2 on pg. 6 of the counter affidavit have mentioned that these are statement of facts and need no reply.	The Revenue dept in para 2 on pg. 6 of the counter affidavit have mentioned that these are statement of facts and need no reply.	The Revenue dept in para 2 on pg. 8 of the counter affidavit have mentioned that these are statement of facts and need no reply.	The Revenue dept in para 2 on pg. 6 of the counter affidavit have mentioned that these are statement of facts and need no reply.	The Revenue dept on pg. 6 of the counter affidavit have mentioned that these are statement of facts and need no reply.



14.1	Date of filing rejoinder	17.11.2020	17.11.2020	17.11.2020	17.11.2020	17.11.2020
14.2	Rejoinder-Submissions made by assessee on - date of dispatch and address of dispatch	Para 6 on pg. 3 - Though final assessment order- Round II was passed on 20.11.2018. Only after assessee filed submission dated 18.12.2018 (Annexure R-1 of rejoinder), the order was made available to assessee on 07.01.2019. This fact has not been denied by Revenue dept. in their counter affidavit.	Para 6 on pg. 2-3 - Though final assessment order- Round II was undated of November 2018, assessee filed submission on 18.12.2018 and impugned order has been passed only after it. The FAO - Round II is antedated and the same was made available to the assessee only on 07.01.2019. This fact has not been denied by Revenue dept. in	Para 6 on pg. 2-3 - Though final assessment order- Round II was passed on 28.12.2018, the same was made available to the assessee only on 07.01.2019. This fact has not been denied by Revenue dept. in their counter affidavit.	Para 6 on pg. 3-final assessment order- Round II passed on 30.12.2018, however the same was neither dispatched nor received within the statutory time limit. This fact has not been denied by the Revenue Dept in their counter affidavit.	Para 6 on pg. 2-3 - Though final assessment order- Round II was passed on 25.12.2018, the same was made available to the assessee only on 07.01.2019. This fact has not been denied by Revenue dept. in their counter affidavit.



			their counter affidavit.			
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MICROSOFT INDIA (R&D) PRIVATE LIMITED

		W.P. (C) 3377/2021	W.P. (C) 3472/2021	W.P.(C) 3444/2021	W.P. (C) 3389/2021	W.P. (C) 3539 of 2021
S. No.	Particulars	AY 2006-07	AY 2007-08	AY 2008-09	AY 2009-10	AY 2010-11
1	Original Assessment order	16.09.2010 Annexure P-4 on pg. 101 of WP	21.10.2011 Annexure P-3 on pg. 37 of the WP	19.11.2012 Annexure P-4 on pg. 210 of WP	28.02.2014 Annexure P-4 on pg. 113 of WP	27.02.2015 Annexure P-4 on pg. 160 of WP
2	Notice u/s 274 rws 271 of the Act issued by AO	16.09.2010	21.10.2011	19.11.2012	28.02.2014	27.02.2015
3	Response to sec 274 notice filed by the Petitioner before AO	20.12.2010 Annexure P-5 on pg. 108 of WP	30.11.2011 Annexure P-4 on pg. 47 of WP	21.12.2012 Annexure P-5 on pg. 222 of WP	26.03.2014 Annexure P-5 on pg. 125 of WP	26.03.2015 Annexure P-5 on pg. 193 of WP
4	Notice u/s 271(1)(c) of the Act issued by AO	07.02.2011 Annexure P-6 on pg. 116 of WP	03.04.2012 Annexure P-5 on Pg. 49 of WP	-	-	05.08.2015 Annexure P-6 on pg. 197 of WP
5	Application filed by Petitioner before AO for keeping penalty proceedings in abeyance	17.03.2011 Annexure P-7 on pg. 117 of WP	12.04.2012 Annexure P-6 on Pg. 50 of WP	-	-	26.08.2015 Annexure P-7 on pg. 198 of WP
6	ITAT Order	28.06.2016 Annexure P-8 on pg. 118 of WP	28.06.2016 Annexure P-7 on Pg. 53 of WP	28.06.2016 Annexure P-6 on pg. 225 of WP	28.06.2016 Annexure P-6 on pg. 129 of WP	28.06.2016 Annexure P-8 on pg. 199 of WP
7	Consequential order passed u/s 254/143(3) rws 144C of the Act recomputing taxable income	31.08.2016 Annexure P-9 on pg. 141	31.08.2016 Annexure P-8 on pg. 76 of WP	31.08.2016 Annexure P-7 on pg. 248 of WP	31.08.2016 Annexure P-7 on pg. 152 of WP	31.08.2018 Annexure P-9 on pg. 222 of WP
8	Revised TPO order passed u/s 92CA rws 254 of the Act	31.10.2018 Annexure P-10 on pg. 145	31.10.2018 Annexure P-9 on Pg. 80 of WP	31.10.2018 Annexure P-8 on pg. 252 of WP	31.10.2018 Annexure P-8 on pg. 156 of WP	31.10.2018 Annexure P-10 on pg. 226 of WP
9	Final assessment order u/s 143(3) rws 254 of the Act	20.11.2018 Annexure P-11 on pg. 200 of WP	November 2018 (undated) Annexure P-	28.12.2018 Annexure P-9 on pg. 320 of WP	30.12.2018 Annexure P-9 on pg. 224 of WP	25.12.2018 Annexure P-11 on pg. 294 of WP



			11 on pg. 146 of WP			
10	Notice u/s 274 rws 271(1)(c) of the Act issued by AO	17.06.2019 Annexure P-12 on pg. 205 of WP	17.06.2019 Annexure P-12 on pg. 151 of WP	17.06.2019 Annexure P-10 on pg. 329 of WP	17.06.2019 Annexure P-10 on pg. 233 of WP	17.06.2019 Annexure P-12 on pg. 299 of WP
11	Response to sec 274 notice dated 17.06.2019 filed by the Petitioner before AO	27.06.2019 Annexure P-13 on pg. 206 of WP	28.06.2019 Annexure P-13 on pg. 152 of WP	27.06.2019 Annexure P-11 on pg. 330-347	28.06.2019 Annexure P-11 on pg. 234 of WP	28.06.2019 Annexure P-13 on pg. 300 of WP
12	Notice u/s 263 of the Act issued by the AO	04.03.2021 Annexure P-1 on pg. 30 of WP	04.03.2021 Annexure P-1 on pg. 31 of WP	04.03.2021 Annexure P-1 on pg. 29 of WP	04.03.2021 Annexure P-1 on pg. 30 of WP	04.03.2021 Annexure P-1 on pg. 30 of WP
13	Date of filing of Writ Petition	10.03.2021	16.03.2021	15.03.2021	11.03.2021	16.03.2021
14	Grounds in Writ Petition filed by assessee	Pg. 20-25 of WP	Pg. 20-26 of WP	Pg. 19-24 of WP	Pg. 19-25 of WP	Pg. 20-25 of WP
15	Date of filing of Counter Affidavit	Counter Affidavit filed in AY 2010-11, adopted for this year.	Counter Affidavit filed in AY 2010-11, adopted for this year.	Counter Affidavit filed in AY 2010-11, adopted for this year.	Counter Affidavit filed in AY 2010-11, adopted for this year.	20.05.2021
16	Date of filing of rejoinder	Rejoinder filed in AY 2010-11, adopted for this year.	Rejoinder filed in AY 2010-11, adopted for this year.	Rejoinder filed in AY 2010-11, adopted for this year.	Rejoinder filed in AY 2010-11, adopted for this year.	14.07.2021

3. While Category A comprises of matters where the solitary question which is raised is whether the AO was justified in proceeding to frame a final order of assessment and thus short circuiting the requirement of a draft assessment order being drawn in accordance with the requirement of Section 144C(1), the cases placed in Category B raise an additional challenge to the final orders of assessment with it being contended that the same came to be framed after the time prescribed under Section 153 of the Act had expired and thus being liable to be quashed on that ground additionally.



4. Although the facts have been duly captured in the chart which has been submitted by and on behalf of the writ petitioners jointly, we deem it appropriate to notice the following skeletal facts as they obtain in W.P.(C) 688/2019 (the principal writ petition on which arguments were addressed by learned counsels appearing for the writ petitioners) and W.P.(C) 11896/2021 (which was referred to by learned counsels representing the respondents).

5. Microsoft India (R&D) Pvt. Ltd., the writ petitioner in W.P.(C) 688/2019, is stated to have filed its Return of Income pertaining to **Assessment Year**⁴ 2008-09 on 30 September 2008. The said return is stated to have been selected for scrutiny assessment and pursuant to which the AO made a reference to the **Transfer Pricing Officer**⁵ in terms contemplated under Section 92CA of the Act.

6. On 27 October 2011, the TPO passed an order recommending an upward adjustment to the total income of the petitioner. Pursuant to the aforesaid, a draft assessment order came to be framed on 27 December 2011. Assailing the proposed additions, the petitioner filed objections before the **Dispute Resolution Panel**⁶ in terms envisaged under Section 144C(2) of the Act. The aforenoted objections did not find favour with the DRP which and in terms of its directions dated 28 September 2012 affirmed the additions which were proposed in the draft assessment order. Pursuant to those directions, a final assessment order came to be framed on 19 November 2012.

7. Aggrieved by the aforesaid, the petitioner approached the Tribunal. The Tribunal in terms of its order dated 28 June 2016 allowed

⁴ AY

⁵ TPO

⁶ DRP



the appeal and framed the following operative directions: -

“19. However, in the present case, it is an admitted fact that the said Circular was not in existence when the TPO passed the impugned orders for the respective assessment years i.e. assessment years 2007-08 to 2009-10, under consideration. However, he admitted while passing the orders u/s 92CA of the Act for the assessment year 2010-11 that TNMM is most appropriate method for determining the Ann's Length Price. We, therefore, deem it appropriate to set aside this issue relating to the assessment years 2007-08 to 2009-10 to the file of the TPO/ AO to decide as to what is the most appropriate method by considering the facts and the guidelines available in the form of circular. As regards to the issue relating to the comparables for which the information u/s 133(6) of the Act were obtained by the TPO and which were not confronted to the assessee, we are of the view that this issue also deserves to be set aside to the file of the TPO/ AO for fresh adjudication in accordance with law after providing due and reasonable opportunity of being heard to the assessee. In the present case, it was also the common contention of both the parties that the corporate issues if involved in any of the aforesaid assessment years those should also be decided by the TPO/ AO along with the issues relating to the application of most appropriate method and the selection of the comparables and the additional ground relating to deduction u/s 10A of the Act. We order accordingly.

20. As regards to the assessment year 2010-11 is concerned, the Id. Counsel for the assessee admitted that there is no dispute relating to the application of most appropriate method. However, the additional ground relating to deduction u/s 10A of the Act was not before the TPO/ AO. The said grounds are purely legal grounds and raised first time before the Tribunal, so this issue raised in the additional grounds is remanded to the file of the TPO/ AO to be decided along with another assessment years under consideration. Since the issue relating to the deduction u/s 10A of the Act is restored to the file of the TPO/ AO, the another issues relating to corporate matters should also be decided by the TPO/ AO afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

21. As regards to the issues raised on the transfer pricing all matters in the grounds of appeal relating to assessment year 2010-11, the contentions of both the parties were similar as were in respect of the similar grounds in another appeals relating to the other assessment years 2007-08 to 2009-10 which we have already adjudicated in former part of this order. Therefore, our findings given therein shall apply with the same force for this assessment year i.e. 2010-11 also.”



8. Pursuant to the aforesaid order of the Tribunal, the TPO is stated to have issued a notice in the second round of proceedings which ensued on 09 November 2016. On 31 October 2018, the TPO passed its final order referable to Section 92CA computing the total upward adjustment of income at INR 106,07,00,458/-. Although the AO is thereafter stated to have issued a notice on 20 November 2018 under Section 142(1) of the Act, it proceeded to frame a final order on 28 December 2018. The writ petition was entertained by us on 22 January 2019 and an interim order passed restraining the respondents from enforcing the consequential demand.

9. **Telstra India Private Limited**⁷ is the writ petitioner in the second matter which had been selected by us for the purposes of chronicling the facts as they obtained. Its challenge pertains to AY 2018-19 and in connection with which it submitted its Return of Income on 30 November 2018. During the course of examination of that return, a notice referable to Section 143(2) came to be issued on 22 September 2019. This was followed by an intimation under Section 143(1) making aggregate disallowances of INR 113,88,283/-. This was assailed by Telstra before the **Commissioner of Income Tax (Appeals)**⁸ which ultimately allowed the challenge and deleted the disallowances. On 07 April and 28 July 2021, the petitioner was served with notices under Section 92CA intimating it of a reference having been made to the TPO. The TPO issued a show cause notice on 03 September 2021 apprising the writ petitioner of various adjustments which were proposed to be made. Since the additions proposed would have been binding on the AO in terms of Section 92CA(4), the

⁷ Telstra

⁸ CIT(A)



petitioner chose not to make any further submissions. This led to a final order of assessment being passed on 18 September 2021. This was assailed by way of a writ petition before this Court. On 16 December 2021, interim orders came to be passed with it being provided that the assessment orders as well as consequential demand notices and penalty proceedings would remain stayed.

10. Since the arguments have revolved around Sections 144C and 153 of the Act, we deem it appropriate to extract those two provisions hereunder: -

“Reference to Dispute Resolution Panel.

144C.

(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation [* * *] which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(a) file his acceptance of the variations to the Assessing Officer;
or

(b) file his objections, if any, to such variation with,—

(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in subsection (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153 [or section 153B], pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) the acceptance is received; or



- (b) the period of filing of objections under sub-section (2) expires.
- (5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
- (6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—
- (a) draft order;
 - (b) objections filed by the assessee;
 - (c) evidence furnished by the assessee;
 - (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
 - (e) records relating to the draft order;
 - (f) evidence collected by, or caused to be collected by, it; and
 - (g) result of any enquiry made by, or caused to be made by, it.
- (7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—
- (a) make such further enquiry, as it thinks fit; or
 - (b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.
- (8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.
- [*Explanation.*— For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.]
- (9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.
- (10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.
- (11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the



assessee or the interest of the revenue, respectively.

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

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 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.

[(14A) 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 144BA.]

[(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.

(14C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14B), 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]

(14D) Every notification issued under sub-section (14B) and sub-section (14C) 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 [Principal Commissioners or] 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 92CA; and
- [(ii) any non-resident not being a company, or any foreign company.]

Time limit for completion of assessment, reassessment and recomputation.

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

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

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

- (i) the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words “twenty-one months”, the words “twelve months” had been substituted;
- (ii) the 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words “twenty-one months”, the words “eighteen months” had been substituted:]]

[**Provided also** that in respect of an order of assessment relating to the assessment year commencing on [* * *] the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words “twenty-one months”, the words “nine months” had been substituted:]

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

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

(2) No order of assessment, reassessment or recomputation shall be



made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

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

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

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

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

- (a) in a case where such search is initiated under section 132 or such requisition is made under section 132A;*
- (b) in the case of an assessee, to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to;*
- (c) in the case of an assessee, to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to,*

be extended by twelve months.]

(4) Notwithstanding anything contained in *[sub-sections (1), (1A),*



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

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

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

[Provided further] that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).]

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

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

(i) where the assessment, reassessment or recomputation is made



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

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

(7) Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.

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

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

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

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

- (i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-



heard under the proviso to section 129; or

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

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

(iv) the period commencing from the date on which the Assessing

Officer directs the assessee to get his accounts audited [*or inventory valued*] under sub-section (2A) of section 142 and—

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

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

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

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

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

(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings [*or before the Board for Advance Rulings*] under sub-section (1) of section



- 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or
- (ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings [or before the Board for Advance Rulings] under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or
 - (x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or
 - (xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the [Assessing Officer; or
 - (xii) the period (not exceeding one hundred and eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee,—
 - (a) in whose case such search is initiated under Section 132 or such requisition is made under Section 132-A; or
 - (b) to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or
 - (c) to whom any books of account or documents seized or requisitioned pertains or pertains to, or any information contained therein, relates to; or]
 - [(xiii) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of Section 10 or clause (ii) or clause (iii) of sub-section (4) of Section 12-AB, as the case may be, is received by



the Assessing Officer,]

shall be excluded:

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

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

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

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

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

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

- (a) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for



another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or

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

11. It becomes pertinent to note that the issue of whether the AO could ignore the requirement of drawing up a draft assessment order and pass a final order and the same being in violation of the procedure contemplated under Section 144C appears to have arisen before our Court on previous occasions also. The consistent view which this Court appears to have taken in that respect was that a failure to frame an assessment order in draft would clearly be violative of the mandatory prescriptions of Section 144C and the final order of assessment framed in violation thereof liable to be viewed as a nullity.

12. This view stands duly expressed in numerous decisions of this Court including those in **JCB India Ltd. v. Deputy Commissioner of Income-tax and Another**⁹, **Turner International India Pvt. Ltd. v. Deputy Commissioner of Income-tax 25(2), New Delhi**¹⁰, **Nokia India Private Limited v. Additional Commissioner of Income Tax**¹¹, **Control Risks India Pvt. Ltd. v. Deputy Commissioner of Income Tax**¹², **PR. Commissioner of Income Tax v. CITI Financial**

⁹ 2017 SCC OnLine Del 10424

¹⁰ 2017 SCC OnLine Del 8441

¹¹ 2017 SCC OnLine Del 13027

¹² W.P.(C) 5722/2017



Consumer Finance India Pvt. Ltd.¹³ as well as Principal Commissioner of Income Tax v. Headstrong Services India Pvt. Ltd.¹⁴.

13. The decision of *Headstrong India*, while examining the scheme of Section 144C in paragraphs 17 and 18 had held as follows: -

“17. In the opinion of this court, section 144C is a self contained provision which carves out a separate class of assessee, i. e., "eligible assessee", i. e., any person in whose case the variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA. For this class of assessee, it prescribes a collegium of three commissioners, once objections are preferred. The Dispute Resolution Panel's powers are coterminous with the Commissioner of Income-tax (Appeals), including the power to confirm, reduce or enhance the variation proposed and to consider the issues not agitated by the assessee in the objections. In fact, under section 144C, the Dispute Resolution Panel can issue directions as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and the Dispute Resolution Panel can confirm, reduce or enhance the variations proposed in the draft order. It is specifically stipulated in section 144C that every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer. This is akin to the Assessing Officer giving effect to an order passed by the appellate authority or the courts.

18. Consequently, section 144C envisages a change of forum and it leads to complete cessation of the jurisdiction of the Assessing Officer on passing of the draft order. Thereafter the Assessing Officer is to give effect to either the direction of the Dispute Resolution Panel or pass an order on acceptance by the assessee.

The expression "in the first instance" has been used in section 144C to signify the first step to be taken by the Assessing Officer in a series of acts contemplated by the said section. To accept the appellant's argument would be to permit the Assessing Officer to decide the objections filed by the assessee— which power has been specifically denied by the statute.”

14. It appears that the respondents in *Headstrong India* had contended that the expression “*in the first instance*” as appearing was

¹³ 2015 SCC OnLine Del 14678

¹⁴ 2020 SCC OnLine Del 1709



suggestive of the requirement of framing a draft assessment order being obviated in a situation where the assessment proceedings are to be renewed consequent to a remit by the Tribunal.

15. This submission came to be rejected with the Court in *Headstrong India* observing thus:-

“19. The expression “in the first instance” has been used in section 144C to signify the first step to be taken by the Assessing Officer in a series of acts contemplated by the said Section while dealing with the case of an eligible assessee. This Court is further of the view that if the Assessing Officer under Section 144C can prepare a draft assessment order only, then by virtue of a remand order which directs the Assessing Officer to decide the matter de novo, the Assessing Officer cannot get the power to pass an assessment order, when there is an objection by the Assessee like in the present case, without reference of the Dispute Resolution Panel which comprises of three Principal Commissioners or Commissioners of Income Tax constituted by the Board.

20. Now to accept the appellant’s argument would be to permit the Assessing Officer to decide the objections filed by the Assessee – which power has been specifically denied by the statute.

It is settled law that when a power is given to do certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are forbidden”

16. The argument of an obligation to frame a draft assessment order and a failure to abide by that process being a mere irregularity came to be stoutly rejected by the Court in *Headstrong India* as would be evident from the following observations which came to be rendered: -

“22. The appellant has also contended that the failure to follow the procedure under section 144C of the Act, at the highest, was a procedural irregularity and not an illegality. This issue is no longer res integra. It is now settled law that failure to adhere to the mandatory procedure prescribed under section 144C of the Act would vitiate the entire proceedings and the same cannot be treated as an irregularity/curable defect.

23. In *ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of India* [2016] 388 ITR 383 (Delhi) this court, after discussing the judgments of the Andhra Pradesh High Court, High Court of Bombay as well as the Madras High Court in *Vijay Television Pvt. Ltd. v. DRP* [2014] 369 ITR 113 (Mad) has held that failure to pass



a draft assessment order under section 144C(1) of the Act would render the final assessment order without jurisdiction, null and void and unenforceable. The said view was reiterated by this court in *Turner International India Pvt. Ltd. v. Dy. CIT* [2017] 398 ITR 177 (Delhi) W. P. (C) Nos. 4260 and 4261 of 2015 as well *Nokia India Pvt. Ltd. v. Addl. CIT WP (C) No. 3629 of 2017*. The relevant portion of the judgment in *Turner International India Pvt. Ltd. (supra)* is reproduced hereinbelow (page 180 of 398 ITR) :

“The question whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of first passing draft assessment order in terms of section 144C(1) of the Act is no longer res integra. There is a long series of decisions to which reference would be made presently.

In *Zuari Cement Ltd. v. Asst. CIT* (decision dated February 21, 2013 in W. P. (C) No. 5557 of 2012), the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under section 144C(1) of the Act would result in rendering the final assessment order 'without jurisdiction, null and void and unenforceable'. In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) (CC No. 16694 of 2013) on September 27, 2013.

In *Vijay Television P. Ltd. v. DRP* [2014] 369 ITR 113 (Mad), a similar question arose. There, the Revenue sought to rectify a mistake by issuing a corrigendum after the final assessment order was passed. Consequently, not only the final assessment order but also the corrigendum issued thereafter was challenged. Following the decision of the Andhra Pradesh High Court in *Zuari Cement Ltd. v. Asst. CIT (supra)* and a number of other decisions, the Madras High Court in *Vijay Television P. Ltd. v. DRP (supra)* quashed the final order of the Assessing Officer and the demand notice. Interestingly, even as regards the corrigendum issued, the Madras High Court held that it was beyond the time permissible for issuance of such corrigendum and, therefore, it could not be sustained in law.

Recently, this court in *ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of India* [2016] 388 ITR 383 (Delhi), following the decision of the Andhra Pradesh High Court in *Zuari Cement Ltd. v. Asst. CIT (supra)*, the Madras High Court in *Vijay Television P. Ltd. v. DRP (supra)* as well as the Bombay High Court in *International Air Transport Association v. Deputy CIT* [2016] 7 ITR-OL



227 (Bom) ; [2016] 290 CTR (Bom) 46, came to the same conclusion.

Mr. Dileep Shivpuri, learned counsel for the Revenue sought to contend that the failure to adhere to the mandatory requirement of issuing a draft assessment order under section 144C(1) of the Act would, at best, be a curable defect. According to him the matter must be restored to the Assessing Officer to pass a draft assessment order and for the petitioner, thereafter, to pursue the matter before the Dispute Resolution Panel.

The court is unable to accept the above submission. The legal position as explained in the above decisions is unambiguous. The failure by the Assessing Officer to adhere to the mandatory requirement of section 144C(1) of the Act and first pass a draft assessment order would result in invalidation of the final assessment order and the consequent demand notices and penalty proceedings.”

17. The Court ultimately opined as follows: -

“24. Consequently, in the present case, in complete contravention of section 144C, the Assessing Officer wrongfully assumed the jurisdiction and passed the final assessment order without passing a draft assessment order and without giving the respondent-assessee an opportunity to raise objections before the Dispute Resolution Panel.

25. Keeping in view the aforesaid, this court is of the opinion that no question of law, let alone a substantial question of law, arises in the present appeal.

26. This court is of the view that till the Income-tax Department ensures that the Assessing Officers follow the mandate of law, in particular, the binding provisions like section 144C and eschew filing of unnecessary appeals rather than in nearly all matters where the Assessing Officer has taken a view against the assessee, the assessments will not achieve finality for a number of years like in the present case where the case of assessment year 2007-08 stands remanded and restored to the file of the Assessing Officer.”

18. We note that the legal position as enunciated by this Court also finds resonance in the decisions rendered by the Madras, Gujarat and Bombay High Courts in the decisions rendered in **Vijay Television P.**



Ltd. v. Dispute Resolution Panel and Others¹⁵, Commissioner of Income-tax v. C-Sam (India) Pvt. Ltd.¹⁶ and Principal Commissioner of Income-tax v. Andrew Telecommunications P. Ltd.¹⁷ respectively.

19. The relevant extracts from those decisions are reproduced hereinbelow: -

Vijay Television P. Ltd. v. Dispute Resolution Panel and Others:

“22. As mentioned supra, as per section 144C(1) of the Act, the second respondent-Assessing Officer has no right to pass a final order pursuant to the recommendations made by the Transfer Pricing Officer. In fact, the second respondent-Assessing Officer himself has admitted by virtue of the corrigendum dated April 15, 2013, that the order dated March 26, 2013, is only a final order and it was directed to be treated as a draft assessment order. In this context, it is worthwhile to refer to the decision of the honourable Supreme Court in the decision reported in (Deepak Agro Foods v. State of Rajasthan reported in (2008) 16 VST 454 (SC) wherein in paragraph 10, the honourable Supreme Court discussed as to when an order could be construed as a final order (page 458):

"Shri Rajiv Dutta, learned senior counsel appearing on behalf of the appellant, submitted that in the light of its afore-extracted observations and a clear finding that the assessment order for the assessment year 1995-96 had been anti-dated, the order was null and void. It was urged that assessment proceedings after the expiry of the period of limitation being a nullity in law, the High Court should have annulled the assessment and there was no question of a fresh assessment. Thus, the nub of the grievance of the appellant is that in remanding the matter back to the Assessing Officer, the High Court has not only extended the statutory period prescribed for completion of assessment, it has also conferred jurisdiction upon the Assessing Officer, which he otherwise lacked on the expiry of the said period."

23. It is evident from the above decision of the honourable Supreme Court that if an order is passed beyond the statutory period prescribed, such order is a nullity and has no force of law. In that case before the honourable Supreme Court, the period for assessment proceedings expired and, thereafter, fresh assessment

¹⁵ 2014 SCC OnLine Mad 12885

¹⁶ 2017 SCC OnLine Guj 2651

¹⁷ 2018 SCC OnLine Bom 21360



orders have been issued by anti-dating it. In those circumstances, it was held that the High Court ought not to have remanded the matter back to the Assessing Officer and by doing so, the statutory period prescribed for completion of the assessment has been extended by conferring jurisdiction upon the Assessing Officer, which he otherwise lacked on the expiry of the said period. In that case, the honourable Supreme Court also held that there is a distinction between an order which is a nullity and an order which is irregular and illegal. Where an authority making order lacks inherent jurisdiction, such an order will be null and void ab initio, as the defect of jurisdiction goes to the root of the matter and strikes at his very authority to pass any order and such a defect cannot be cured even by consent of the parties.

24. This decision squarely applies to the facts of this case. In this case, the order passed by the second respondent lacks jurisdiction especially when it is beyond the period of limitation prescribed by the statute. When there is a statutory violation in not following the procedures prescribed, such an order cannot be cured by merely issuing a corrigendum.

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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 March 26, 2013, the petitioner filed objections before the Dispute Resolution Panel, the first respondent herein and the first respondent refused to entertain it by stating that the order passed by the second respondent is a final order and it had jurisdiction to entertain objections only if it is a draft assessment order. While so, the order dated March 26, 2013, of the second respondent can only be termed as a final order and in such event it is contrary to section 144C of the Act. As mentioned supra, in and by the order dated March 26, 2013, the second respondent determined the taxable amount and also imposed penalty payable by the petitioner. According to the learned senior counsel for the petitioners, even as on this date, the website of the Department indicate the amount determined by the second respondent payable by the company in spite of issuance of the corrigendum on April 15, 2013, as a tax due amount. Thus, while issuing the corrigendum, the second respondent did not even withdraw the taxable amount determined by him or updated the status in the website. In any event, such an order dated March 26, 2013, passed by the second respondent can only be construed as a final order passed in violation of the statutory provisions of the Act. The corrigendum dated April 15, 2013, is also beyond the period prescribed for limitation. Such a defect or failure on the part of the second respondent to adhere to the statutory provisions is not a curable defect by virtue of the corrigendum dated April 15, 2013. By issuing the corrigendum, the respondents cannot be allowed to



develop their own case. Therefore, following the order passed by the Division Bench of the Andhra Pradesh High Court, which was also affirmed by the honourable Supreme Court by dismissing the special leave petition filed thereof, on September 27, 2013, the orders, which are impugned in these writ petitions are liable to be set aside.

34. Accordingly, the orders, which are impugned in these writ petitions are set aside and both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.”

Commissioner of Income-tax v. C-Sam (India) Pvt. Ltd.:

“5. Section 144C of the Act refers to the Dispute Resolution Panel. Sub-section (1) of section 144C provides that in case of an eligible assessee, the Assessing Officer shall notwithstanding anything to the contrary contained in the Act forward a draft of the proposed order of assessment to the assessee if he proposes to make on or after the 1st day of October, 2009 any variation in the income or loss returned which is prejudicial to the interest of the assessee. Under sub-section (2) of section 144C, the assessee gets an opportunity to file his objections within thirty days of such variation before the Dispute Resolution Panel as well as before the Assessing Officer. As per sub-section (3) of section 144C, the Assessing Officer would complete the assessment on the basis of the draft order if the assessee either intimates his acceptance of the variation or does not raise objections within the time prescribed. Under sub-section (5) of section 144C, the Dispute Resolution Panel could issue such directions to the Assessing Officer as it thinks fit for his guidance to enable him to complete the assessment in case the assessee has raised an objection. Under sub-section (7) of section 144C, it is open for the Dispute Resolution Panel to make further inquiries or have such inquiries made before issuing the directions referred to in sub-section (5). Sub-section (8) of section 144C recognizes wide powers of the Dispute Resolution Panel to confirm, reduce or enhance the variations proposed in the draft order subject to the limitation that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further inquiry. As per sub-section (10) of section 144C, every direction issued by the Dispute Resolution Panel would be binding on the Assessing Officer. Sub-section (13) of section 144C further provides that upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5), the Assessing Officer shall in conformity with the directions complete the assessment without providing any further opportunity of being heard to the assessee.

6. These statutory provisions make it abundantly clear that the procedure laid down under section 144C of the Act is of great importance and is mandatory. Before the Assessing Officer can make variations in the returned income of an eligible assessee, as



noted, sub-section (1) of section 144C lays down the procedure to be followed notwithstanding anything to the contrary contained in the Act. This non obstante clause thus gives an overriding effect to the procedure "notwithstanding anything to the contrary contained in the Act. Sub-section (5) of section 144C empowers the Dispute Resolution Panel to issue directions to the Assessing Officer to enable him to complete the assessment. Sub-section (10) of section 144C makes such directions binding on the Assessing Officer. As per sub-section (13) of section 144C, the Assessing Officer is required to pass the order of assessment in terms of such directions without any further hearing being granted to the assessee.

7. The procedure laid down under section 144C of the Act is thus of great importance. When an Assessing Officer proposes to make variations to the returned income declared by an eligible assessee he has to first pass a draft order, provide a copy thereof to the assessee and only thereupon the assessee could exercise his valuable right to raise objections before the Dispute Resolution Panel on any of the proposed variations. In addition to giving such opportunity to an assessee, decision of the Dispute Resolution Panel is made binding on the Assessing Officer. It is therefore not possible to uphold the Revenue's contention that such requirement is merely procedural. The requirement is mandatory and gives substantive rights to the assessee to object to any additions before they are made and such objections have to be considered not by the Assessing Officer but by the Dispute Resolution Panel. Interestingly, once the Dispute Resolution Panel gives directions under sub-section (5) of section 144C, the Assessing Officer is expected to pass the order of assessment in terms of such directions without giving any further hearing to the assessee. Thus, at the level of the Assessing Officer, the directions of the Dispute Resolution Panel under sub-section (5) of section 144C would bind even the assessee. He may of course challenge the order of the Assessing Officer before the Tribunal and take up all contentions. Nevertheless at the stage of assessment, he has no remedy against the directions issued by the Dispute Resolution Panel under sub-section (5). All these provisions amply demonstrate that the Legislature desired to give an important opportunity to an assessee who is likely to be subjected to upward revision of income on the basis of transfer pricing mechanism. Such opportunity cannot be taken away by treating it as purely procedural in nature."

Principal Commissioner of Income-tax v. Andrew Telecommunications P. Ltd.:

"5. Since the appeal raises a question relating to section 144C of the Income-tax Act, a brief overview of this provision is necessary. Section 144C lays down a scheme for reference to Dispute Resolution Panel. The Assessing Officer at the first instance



forwards a draft of the proposed order of assessment to the eligible assessee if he proposes to make any variation in the income or loss which is prejudicial to the interest of the assessee. Once such a draft order is received, the assessee can, within 30 days accept the variations or file his objections to the Dispute Resolution Panel. If the assessee accepts the variations or no objections are received within a period specified, the Assessing Officer proceeds to complete the assessment on the basis of draft order. When an objection is lodged with the Dispute Resolution Panel, the Dispute Resolution Panel issues necessary directions for the guidance of the Assessing Officer. Before passing any directions, the Dispute Resolution Panel takes into consideration the draft order, the objections, evidence furnished by the assessee, report of the Transfer Pricing Officer, the Assessing Officer or Valuation Officer as the case may be, the record relating to the draft order, the evidence collected by the Panel, and the result of the enquiry. The Dispute Resolution Panel may confirm, reduce or enhance the variations. Direction issued by the Dispute Resolution Panel is binding on the Assessing Officer. Before issuing any directions, the Dispute Resolution Panel is required to give opportunity of hearing. After such directions are received from the Dispute Resolution Panel, the Assessing Officer proceeds to complete the assessment under section 144C(13) of the Act. If the Assessing Officer proceeds to complete the assessment pursuant to the directions issued by the panel under section 144C(13), he is not required to give further opportunity of hearing to the assessee. This is broadly the scheme of section 144C.

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17. In the case of *International Air Transport Association*, the Division Bench of this court has held that the order passed by the Assessing Officer without there being any draft assessment order is illegal and without jurisdiction. The same view has been reiterated in the case of *Zuari Cement Ltd. v. Asst. CIT W. P. (C) No. 5557 of 2012*, dated February 21, 2013 (AP) by the Division Bench of the Andhra Pradesh High Court which also held that the failure to pass a draft assessment order under section 144C(1) of the Act would result in rendering the final assessment as one without jurisdiction. This position of law is settled.

18. Now to consider whether after remand, it was necessary to issue a draft assessment order. Firstly, the issuance of a draft assessment order is not an empty formality. When a draft assessment order is passed and copy is given to the assessee, the assessee can raise objections before the Dispute Resolution Panel on any of the proposed variations. There is a right given to the assessee to object, and to have the objections considered not by the Assessing Officer, but by the Dispute Resolution Panel.



19. The Tribunal, by order dated October 1, 2012, set aside the entire exercise and the matter was relegated to the Assessing Officer. Once the matter was sent back to be decided afresh it went back to the stage of section 144C(1) of the Act. Since the Tribunal set aside the proceedings on the ground of violation of principles of natural justice, the first exercise was void and without jurisdiction. Therefore, nothing remained on the record, including the draft assessment order. Therefore, issuance of a draft assessment order was necessary. We do not find from the scheme of section 144C that if the proceedings were to be started afresh on remand, the draft assessment order is not required to be given. Non-issuance of the draft assessment order has thus vitiated the final assessment order.

20. In the case of JCB India, the Division Bench of the Delhi High Court in identical circumstances has held that after the remand on facts, the draft assessment order was necessary.”

20. While we would have thought that the string of decisions rendered on the subject would have laid to rest the issue which is sought to be agitated, the respondents have vehemently urged us to review and revisit the consistent position which emerges from past precedents seeking to draw sustenance principally from the decision of this Court in **Sarabjit Singh v. Commissioner of Income-tax**¹⁸.

21. The challenge in *Sarabjit Singh* emanated from a failure on the part of the AO to comply with Section 144B (4) and which required it to forward a draft of the order proposed along with the objections of the assessee to the Deputy Commissioner. As per the scheme of Section 144B, as it existed at the relevant time, in case the AO was proposing any variation in the income or loss returned by the assessee and which would be prejudicial, it was obliged to forward a draft of the proposed order of assessment to the assessee concerned.

22. The assessee in terms of sub-section (2) was entitled to submit objections in respect of the proposed variations. In case such objections were filed, the assessee was required to forward the draft order along

¹⁸ 1998 SCC OnLine Del 975



with those objections to the Deputy Commissioner in terms of Section 144B(4). That provision empowered the Deputy Commissioner to frame such directions as it thought fit for the guidance of the AO to enable it to complete the assessment. A direction issued by the Deputy Commissioner was made binding on the AO by virtue of sub-section (5) of Section 144B.

23. The appeal in *Sarabjit Singh* originally came to be placed before a Division Bench of the Court and which saw the learned Judges differing on whether a failure to comply with Section 144B(4) would amount to a procedural irregularity or would render the final order of assessment null and void.

24. B.N. Kirpal, J., expressed the view that non-compliance with that provision would be a mere irregularity and that any final order passed as a consequence thereof would not be a nullity. Mahinder Narain, J., on the other hand, expressed the opinion that an assessment framed contrary to the procedure prescribed in Section 144B(4) would render the same void and liable to be viewed as having been passed without jurisdiction.

25. This led to the appeal being referred for the opinion of a third learned Judge. D.K. Jain, J., in his opinion, ultimately ruled with B.N. Kirpal, J. and came to hold that an infraction of Section 144B(4) would be a mere procedural irregularity.

26. As noted hereinbefore, *Sarabjit Singh* was rendered in the context of the erstwhile Section 144B which was duly extracted in paragraph 13 of the report and is reproduced hereinbelow:-

“13. Section 144B was inserted by the Taxation Laws (Amendment) Act, 1975, and was brought into force from January 1, 1976. It thus,



applied to all assessments completed after January 1, 1976. The relevant portion of the section, as it existed at the relevant time, reads:

- “(1) Notwithstanding anything contained in this Act, where, in an assessment to be made under sub-section (3) of section 143, the Assessing Officer proposes to make, before the 1st day of October, 1984, any variation in the income or loss returned which is prejudicial to the assessee and the amount of such variation exceeds the amount fixed by the Board under sub-section (6), the Assessing Officer shall, 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 assessee.
- (2) On receipt of the draft order, the assessee may forward his objections, if any, to such variation to the Assessing Officer within seven days of the receipt by him of the draft order or within such further period not exceeding fifteen days as the Assessing Officer may allow on an application made to him in this behalf.
- (3) If no objections are received within the period or the extended period aforesaid, or the assessee intimates to the Assessing Officer the acceptance of the variation, the Assessing Officer shall complete the assessment on the basis of the draft order.
- (4) If any objections are received, the Assessing Officer shall forward the draft order together with the objections to the Deputy Commissioner and the Deputy Commissioner shall, after considering the draft order and the objections and after going through (wherever necessary) the records relating to the draft order, issue, in respect of the matters covered by the objections, such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment:
- Provided that no directions which are prejudicial to the assessee shall be issued under this sub-section before an opportunity is given to the assessee to be heard.
- (5) Every direction issued by the Deputy Commissioner under subsection (4) shall be binding on the Assessing Officer....””

27. While dealing with the issue of whether such a transgression would render the assessment illegal or be a mere irregularity, D. K. Jain, J. in *Sarabjit Singh* held as follows:-

“18. It is well settled that a proceeding is a nullity when an authority taking it has no jurisdiction either because of want of pecuniary jurisdiction or of territorial jurisdiction or of jurisdiction over the subject-matter of the proceeding. A proceeding is a nullity when the



authority taking it has no power to have seisin over the case (see *Sant Baba Mohan Singh v. CIT*, [1973] 90 ITR 197 (All)).

19. In the present case, it is not the stand of the assessee nor can it be said that the Income-Tax Officer lacked pecuniary or territorial jurisdiction or was not competent to have seisin over the assessee's case. The assessee's only grievance is that the Income-Tax Officer having not complied with the provisions of section 144B, the assessment order passed by him was rendered void and, therefore, should have been annulled by the appellate authorities. Having come to the conclusion that section 144B is procedural in nature, I am unable to persuade myself to agree with learned counsel for the assessee that failure on the part of the Income-Tax Officer to follow the procedure laid down therein renders the order passed by him void. There is no dispute with the proposition that an assessment order passed without complying with the provisions of section 144B cannot be regarded as a valid order but it cannot follow as a necessary corollary that such an order passed without following the procedural requirements must be regarded as a nullity. Non-compliance with the procedural law is merely a procedural irregularity, which can be cured unlike the defect of inherent lack of jurisdiction in an authority to pass an order which of course will be a nullity. Support for this view is lent by a catena of decisions of various High Courts. It would, however, suffice to refer to *Banarsidas Bhanot and Sons v. CIT*, [1981] 129 ITR 488 (MP), *G.R. Steel and Alloys P. Ltd. v. CIT*, [1985] 152 ITR 220 (Kar), *Ashok Kumar (K.) v. CIT*, [1986] 162 ITR 543 (Kar), *Joseph Kuruvila v. CIT*, [1989] 179 ITR 139 (Ker), *Des Raj Kul Bhushan v. CIT*, [1989] 180 ITR 297 (P&H) and *Vishwanath Prasad v. Bhagwati Prasad v. CIT*, [1993] 202 ITR 469 (All).

20. As for the decisions relied on by learned counsel for the assessee, the decision of the Supreme Court in the case of *Dhadi Sahu*, [1993] 199 ITR 610 is clearly distinguishable in that it deals with altogether a different situation and does not advance the case of the assessee. The observations of the court that no litigant has any vested right in the matter of procedural law in fact support the stand of the Revenue. In that case the issue involved was whether on account of amendment in section 274(2) of the Act, with effect from April 1, 1971, the Inspecting Assistant Commissioner was divested of the jurisdiction to levy penalty because the amount of concealed income did not exceed Rs. 25,000 as stipulated in the amended section 274 (2) as against the unamended condition of minimum imposable penalty exceeding Rs. 1,000, which he had validly acquired on a reference made by the Income-Tax Officer prior to April 1, 1971. The apex court observed that where the question is of change of forum, it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right



becomes vested when the proceedings are initiated in the Tribunal or the court of first instance and, unless the Legislature has, by express words or by necessary implication, clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the Tribunals or forums. It was, therefore, held that since a valid reference had been made to the Inspecting Assistant Commissioner before the amendment took effect, he continued to have jurisdiction to impose the penalty. As noticed above, the procedure prescribed under section 144B (forwarding of the draft assessment order with objections by the assessee to the Inspecting Assistant Commissioner), does not change the forum of assessment. Jurisdiction to pass the assessment order under section 143(3) of the Act continues to vest in the Income-Tax Officer. Thus, the ratio of the decision in *Dhadi Sahu's* case, [1993] 199 ITR 610 (SC) does not apply to the issue in hand. The decisions of the Punjab and Haryana High Court in *Mohinder Lal's* case, [1987] 168 ITR 101 [FB] and this court in *Sudhir Sareen's* case, [1981] 128 ITR 445 merely say that the provisions of section 144B are mandatory, with which proposition there is no quarrel. I am, therefore, of the considered opinion that section 144B of the Act is only a procedural provision and the assessment order passed by ignoring the said provisions cannot be regarded as null and void.”

28. According to Mr. Agarwal, learned counsel who led submissions on behalf of the respondents, the decision in *Sarabjit Singh* since rendered in the context of a *pari materia* provision, the principles enunciated therein should guide the interpretation that we accord upon Section 144C. Viewed in that light, it was argued that a failure on the part of the AO to frame a draft assessment order is a curable infraction and cannot be viewed as a complete nullity.

29. Mr. Agarwal while seeking to sustain the contention of Section 144B being *pari materia*, drew our attention firstly to the decision of the Supreme Court in **Panchmahal Steel Ltd. v. ITO**¹⁹. *Panchmahal Steel* had dealt with a situation where the AO was served with a revised return after the draft assessment order had already been forwarded to the Inspecting Assistant Commissioner in terms of Section 144B. The

¹⁹ 1996 SCC OnLine SC 8



revised return came to be rejected by the AO who held that once the draft along with objections of the assessee had been referred to the Inspecting Assistant Commissioner, no revised return could have been preferred or entertained. The decision of the AO was upheld by the High Court. In appeal the Supreme Court in *Panchmahal Steel* while affirming the view so taken held as follows: -

“9. A reading of Section 144-B shows that once a draft order is made and the matter is referred to the Inspecting Assistant Commissioner on receiving the objections of the assessee, the function of the Income Tax Officer practically comes to an end. Thereafter, the only remaining thing to do by him is to pass a final order of assessment pursuant to and in accordance with the directions given by the Inspecting Assistant Commissioner. He cannot vary or depart from the directions given by the Inspecting Assistant Commissioner. If the assessee's contention is accepted and if it is held that even after making such a reference, the assessee is entitled to file a revised return, it may mean redoing the entire exercise over again. It may also happen that as a result of such redoing, the reference already made to the Inspecting Assistant Commissioner may become unnecessary and has to be called back. The Act, however, does not provide for such a situation.

10. Sub-section (5) has to be construed and understood in the context of Section 139, indeed in the context of the entire enactment. It has to be construed and understood in a reasonable manner. Once the Income Tax Officer has done all that he has to do under the Act and makes a draft order and then refers to the Inspecting Assistant Commissioner as required by Section 144-B, permitting the assessee to file a revised return would involve duplication of work and multiplicity of proceedings. By saying so, we are not rendering sub-section (5) nugatory. All that it means is that the said right has to be exercised before the making of draft assessment order in cases where Section 144-B was applicable”

30. Mr. Agarwal then cited for our consideration the decision of the Supreme Court in **Commissioner of Income Tax, Gujarat Central v. Saurashtra Cement and Chemical Industries Ltd.**²⁰ and where the ambit of Section 144B was explained in the following terms:-

²⁰ (2016) 11 SCC 762



“9. Section 144-B of the Act deals with a situation where ITO intends to pass an assessment order which is in variation to the income or loss that is shown in the return of the assessee and the amount of such variation exceeds the amount that can be fixed by the Board under sub-section (6) thereof. In such a situation, ITO is under obligation to first forward a draft of the proposed order of assessment to the assessee who can file his objections within 7 days thereof and if the objections are received, ITO is to forward the draft order together with the objections to IAC. IAC, after considering the draft order and the objections, is empowered to issue such directions as he thinks fit for the guidance of ITO to complete the assessment.”

31. In view of the aforesaid, Mr. Agarwal submitted that the procedure as contemplated under Section 144B (4) is similar to that which obtains under Section 144C. According to learned counsel, *Sarabjit Singh* while construing an identical provision had come to the conclusion that a failure to refer the matter to the Deputy Commissioner would be a mere procedural irregularity and would not taint the order of assessment with an invalidity which would be beyond repair.

32. According to learned counsels for the respondents, the judgment of the Court in *Sarabjit Singh* is an authority for the proposition that Section 144B (4) is merely procedural and since the act of the AO cannot be said to suffer from an inherent lack of jurisdiction, the Court would be justified in upholding the final order of assessment. They argued that since Section 144C proceeds along identical lines, the view as expressed above would merit acceptance.

33. We note that *Sarabjit Singh* apart from having come to the conclusion that the provisions of Section 144B were merely procedural, had also found that the inherent jurisdiction of the AO to assess could not be doubted. It was thus observed that in the absence of a change of forum, a failure to abide by the procedure prescribed would be a mere procedural irregularity.



34. It was then contended by the respondents that even if the Court were to come to the conclusion that the final orders of assessment would not sustain, it would be well within the realm of its jurisdiction to remand the matter to the AO for passing an order afresh. It was contended in this respect that it would be open for the Court to adopt the aforesaid process notwithstanding the ordinary time frames constructed by Section 153 being breached bearing in mind sub-section (6) thereof. It was submitted that no statutory prescription would preclude the Court from exercising its extraordinary powers so as to enable the AO to draw proceedings afresh and notwithstanding the prescription of limitation which applied.

35. To buttress the aforesaid contention, Mr. Agarwal drew our attention to the following observations as rendered by the Supreme Court in **Grindlays Bank Limited v. Income Tax Officer, Calcutta and Others**²¹:-

“7. The next point is whether the High Court possessed any power to make the order directing a fresh assessment. The principal relief sought in the writ petition was the quashing of the notice under Section 142 (1) of the Income Tax Act, and inasmuch as the assessment order dated March 31, 1977 was made during the pendency of the proceeding consequent upon a purported non-compliance with that notice, it became necessary to obtain the quashing of the assessment order also. The character of an assessment proceeding, of which the impugned notice and the assessment order formed part, being quasi-judicial, the “certiorari” jurisdiction of the High Court under Article 226 was attracted. Ordinarily, where the High Court exercises such jurisdiction it merely quashes the offending order and the consequential legal effect is that but for the offending order the remaining part of the proceeding stands automatically revived before the inferior court or tribunal with the need for fresh consideration and disposal by a fresh order. Ordinarily, the High Court does not substitute its own order for the order quashed by it. It is, of course, a different case where the adjudication by the High Court establishes a complete want of

²¹ (1980) 2 SCC 191



jurisdiction in the inferior court or tribunal to entertain or to take the proceeding at all. In that event on the quashing of the proceeding by the High Court there is no revival at all. But although in the former kind of case the High Court, after quashing the offending order, does not substitute its own order it has power nonetheless to pass such further orders as the justice of the case requires. When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. The present case goes further. The appellant would not have enjoyed the advantage of the bar of limitation if, notwithstanding his immediate grievance against the notice under Section 142(1) of the Income Tax Act, he had permitted the assessment proceeding to go on after registering his protest before the Income Tax Officer, and allowed an assessment order to be made in the normal course. In an application under Section 146 against the assessment order, it would have been open to him to urge that the notice was unreasonable and invalid and he was prevented by sufficient cause from complying with it and therefore the assessment order should be cancelled. In that event, the fresh assessment made under Section 146 would not be fettered by the bar of limitation. Section 153(3)(i) removes the bar. But the appellant preferred the constitutional jurisdiction of the High Court under Article 226. If no order was made by the High Court directing a fresh assessment, he could contend as is the contention now before us, that a fresh assessment proceeding is barred by limitation. That is an advantage which the appellant seeks to derive by the mere circumstance of his filing a writ petition. It will be noted that the defect complained of by the appellant in the notice was a procedural lapse at best and one that could be readily corrected by serving an appropriate notice. It was not a defect affecting the fundamental jurisdiction of the Income Tax Officer to make the assessment. In our opinion, the High Court was plainly right in making the direction which it did. The observations of this Court in Director of Inspection of Income Tax (Investigation) New Delhi v. Pooran Mall & Sons are relevant. It said : (SCC p. 572, para 6)

The Court in exercising its powers under Article 226 has to mould the remedy to suit the facts of a case. If in a particular case a court takes the view that the Income Tax Officer while passing an order under Section 132(5) did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion



arrived at by the Income Tax Officer was correct or dismissing the petition because otherwise the party would get an unfair advantage. The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But in the circumstances of a case the court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice the court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its case. Otherwise, it would mean that where a court quashes an order because the principles of natural justice have not been complied with, it should not while passing that order permit the tribunal or the authority to deal with it again irrespective of the merits of the case.

The point was considered by the Calcutta High Court in *Cachar Plywood Ltd. v. ITO* and the High Court, after considering the provisions of Section 153 of the Income Tax Act, considered it appropriate. while deposing of the writ petition, to issue a direction to the Income Tax Officer to complete the assessment which, but for the direction of the High Court, would have been barred by limitation.”

36. Having noticed the principal submissions which were addressed, we at the outset find that the argument of Section 144B being *pari materia* to Section 144C is fundamentally misconceived and untenable for the following reasons. It is pertinent to note that Section 144B as it stood, constructed an additional check and an oversight mechanism in respect of variations or additions which were proposed by the AO in a draft order of assessment. It thus required the AO to forward the record pertaining to a proposed variation or addition along with any objections preferred by the assessee to the Deputy Commissioner. It was the proposed additions or variations which consequently fell for scrutiny of the Deputy Commissioner in light of the objections preferred by the



assessee.

37. The power of the Deputy Commissioner was, despite being binding upon the AO, principally contemplated to be a check upon the adjudicatory function assigned to the AO. The power of the Deputy Commissioner was quasi-judicial provided it be proposed to be exercised prejudicial to the interest of the assessee. The power of that authority was thus essentially confined to an examination of the tentative decision of the AO to vary the return or propose additions. The power of the Deputy Commissioner was neither co-terminus nor intended to be co-equal to that of the AO. The Deputy Commissioner was essentially contemplated to exercise a power of review, supervise and aid the process of assessment.

38. In contrast to the above, the powers of the DRP under Section 144C are not only corrective but extend to a power to enhance or reduce the proposed variation subject to the rider that it is not empowered to set aside a proposed variation. Mr. Vohra, learned senior counsel, rightly underscored the distinction between the extent of the power that stood conferred under Section 144B and 144C by pointing out that the Deputy Commissioner assumed a quasi-judicial role only if it were proposing to pass an order prejudicial to the assessee. It was rightly pointed out by learned senior counsel that the DRP under the Section 144C regime also stands conferred with the power to call for additional evidence, take into consideration additional material that may be introduced by the assessee, collate further evidence or undertake such further enquiries as may be warranted. The extent of jurisdiction which stands conferred upon the DRP by virtue of sub-sections (6), (7) and (8) of Section 144C are thus clearly distinct and



different from those conferred upon the Deputy Commissioner under the erstwhile Section 144B.

39. The power entrusted in the DRP also cannot be recognised to be one which seamlessly transformed into one which did not envisage a change of forum. In *Sarabjit Singh*, the Court bearing in mind the limited power of review which stood conferred upon the Deputy Commissioner, had ultimately come to observe that there was no change of forum and that the power to assess remained with the AO.

40. While perhaps that may not be wholly sustainable in light of what the Supreme Court observed in *Panchmahal Steel*, we are in this batch essentially concerned with evaluating whether the respondents are correct in their submission that Sections 144B and 144C are *pari materia*.

41. We for reasons assigned hereinafter find ourselves unable to recognise a basic or fundamental common thread which may be countenanced to stitch or construct those two provisions. Section 144C erects a special mechanism of assessment in respect of eligible assesseees. It essentially entails two separate components coming to be merged to form a composite assessment. This since it would incorporate the power of computation and assessment conferred upon the TPO under Section 92CA as well as the power of the AO to rule upon other segments of income earned in a particular assessment year. It thus constructs a separate and distinct regime of assessment which would, hypothetically speaking, constitute an amalgam of decisions taken by the TPO and the AO.

42. Undisputedly, the adjudication rendered in the context of Arm's Length Pricing by the TPO binds the AO in terms of Section 92CA. The



view that the AO may take with respect to aspects other than an international transaction constitute a separate and independent exercise. Since the ultimate assessment made under Section 144C is a fusion of two views, comprising of decisions taken by two separate authorities and is a composite blend and merger, it clearly stands on a pedestal distinct and distinguishable from Section 144B.

43. That Section 144C constitutes a distinct and special assessment mechanism cannot possibly be disputed. It is multi-tiered and comprises of various in-built corrective and revisory components which work together to forge an ultimate order of assessment recognised under the Act. This in light of the view taken by the AO being recognised to be a draft which is subject to challenge, the view of the TPO being binding upon the AO and the directions of the DRP compelling the AO to frame an order of assessment in terms thereof.

44. Thus, the Section 144C assessment cannot possibly be countenanced to be one which does not constitute a change of forum and which aspect formed the bedrock of *Sarabjeet Singh*. That decision proceeded on the premise that the reference to the Deputy Commissioner did not fundamentally alter the hierarchy of the adjudicatory function since and notwithstanding the guidance provided by the superior, the assessment remained an order made by the AO.

45. To the contrary, the draft of the assessment order under Section 144C is subject to challenge before the DRP or liable to be assailed in appellate proceedings. Our view of the Section 144C assessment being unique and distinct is also fortified by the various decisions rendered in its context. The limited review which the Deputy Commissioner was enabled to exercise under Section 144B is liable to be contrasted with



the independent enquiry that the DRP is empowered to undertake under the **Income Tax (Dispute Resolution Panel) Rules, 2009²²**, an aspect which was duly highlighted by Mr. Vohra.

46. As is manifest from a reading of Section 144C as well as the Rules aforementioned, the DRP is independently empowered to admit evidence, call for reports or even direct further enquiries. Its powers extend to confirming, reducing or even enhancing the variations proposed in the draft order. Of equal significance is the Explanation to sub-section (8) of Section 144C which clarifies that the jurisdiction of the DRP would extend to considering any aspect arising out of the assessment proceedings and the draft order irrespective of whether the assessee chose to raise that issue or not.

47. The Deputy Commissioner on the other hand was enabled by Section 144B to merely review the draft order alongside the objections preferred and frame a direction for the guidance of the AO. The power under sub-sections (4) and (5) of Section 144B thus constituted an additional tier of internal review in respect of proposed variations when crossing a particular monetary limit.

48. We also find ourselves unable to view Section 144B as enabling the Deputy Commissioner to enhance the variation proposed since the expression “.....*prejudicial to the assessee*” as appearing in the Proviso to sub-section (4) was only intended to imbue a quasi-judicial flavour to the proceedings and to deal with contingencies where the Deputy Commissioner were inclined to reject the objections preferred by the assessee. We thus find ourselves unable to construe the Proviso as empowering the Deputy Commissioner to enhance the proposed

²² DRP Rules



variation. This too is a facet which carves out a distinction between Sections 144B and 144C.

49. Regard must also be had to Section 144A and which independently empowers the superior authority to intervene and guide ongoing assessments. This, as Mr. Vohra rightly argued, was a power which always inhered in the supervising authority and existed alongside Section 144B as it stood at the relevant time. The guidance of the Deputy Commissioner, which was spoken on in Section 144B, as noticed hereinabove, though binding on the AO, was more in the nature of an internal safeguard created by the statute as opposed to the challenge and corrective procedure constructed by Section 144C.

50. We thus find ourselves to construe or countenance Sections 144B and 144C as being *pari materia* or similar. *Sarabjit Singh*, thus not only fails to sustain the contentions which were addressed, it also leaves us unconvinced to doubt the correctness of the unfluctuating position which precedents have taken with respect to Section 144C.

51. We on an independent analysis, find ourselves equally unable to view or accept Section 144C when mandating a draft assessment order being framed as being a mere procedural requirement. As is manifest from a reading of that section, it not only adopts remedies that may be pursued to assail an order rendered on adjudication, but the decision is itself made subject to internal review at more than one level and a hierarchy of authorities. It creates a right to challenge a decision at multiple levels be it before the DRP, CIT(A) or the Tribunal. It is in that sense a self-contained code for assessment in respect of eligible assesseees.

52. A failure to frame a draft order of assessment not only curtails



the right of the assessee to adopt corrective measures, it also deprives it of a salutary right to challenge the draft in terms of the statutory mechanism laid in place. We thus find that the imperative of framing an order in draft was correctly propounded by *JCB India Ltd.*, *Nokia India*, *C-Sam* as well as the host of precedents noticed above as being mandatory, a legal imperative and not merely a procedural irregularity as was contended at the behest of the respondents.

53. It would thus be wholly incorrect to accept the contention of Section 144C being similar or akin to the statutory provision which formed the subject matter of consideration in *Sarabjit Singh*. Thus, we have no hesitation in holding that the decision in *Sarabjit Singh*, fails to cast a cloud or shadow of doubt on the decisions rendered in the context of Section 144C.

54. That then takes us to evaluate the validity of the submission of the respondents that the Court would be justified in framing a direction remanding the matter to the AO so as to enable it to draw proceedings afresh and from the stage of infraction. The acceptance of that submission, however, hits a serious and perhaps insurmountable roadblock in light of the statutory prescriptions of limitation created by Section 153. Undisputedly, the assessment consequent to remand would be regulated by sub-sections (3) and (4) of Section 153. When read together and bearing in mind the admitted fact of the Tribunal having remitted the matter to the desk of the TPO, the assessment was liable to be concluded within nine months coupled with the additional period of twelve months as provided. Learned counsels for the respondents fairly conceded that the said period is no longer available today and has come to an end by efflux of time. It was in the aforesaid light that Mr.



Agarwal sought to draw sustenance from sub-section (6) of Section 153 to contend that the same would enable the AO to carry out an assessment by virtue of the “finding or direction contained in.....an order or direction of any court...”.

55. We find ourselves unable to sustain that submission since Section 153(6) essentially seeks to override and overcome the statutory prescription of limitation created by sub-sections (1), (1A) and (2) thereof. This is evident from the section itself proclaiming that nothing contained in those sub-sections would apply to the classes of assessments specified therein. That power is further cabined with sub-section (6) stipulating that the invocation of that provision would be subject to the provisions of sub-sections (3), (5) and (5A). The provision on a plain reading thus neither lifts the period of limitation prescribed by sub-sections (3) and (4) nor does it extend the period which would otherwise be available to the AO to conclude the assessment.

56. More fundamentally, a direction, in terms as commended for our consideration by learned counsels appearing for the Revenue, would also not be a finding or direction as contemplated therein. Mr. Vohra, in this context, invited our attention to the judgment of the Constitution Bench in **Income Tax Officer, A Ward, Sitapur v. Murlidhar Bhagwan Das**²³ where the expression “finding” and “direction” was explained in the following words: -

“9. Now, let us scrutinize the expressions on which strong reliance is placed for the contrary conclusion. The words relied upon are “section limiting the time”, “any person”, “in consequence of or to give effect to any finding or direction”. Pointing out that before the amendment the word “sub section” was in the proviso but it was

²³ 1964 SCC OnLine SC 18



replaced by the expression “section”, it is contended that this particular amendment will be otiose if it is confined to the assessment year under appeal, for it is said that under no circumstances the Income-tax Officer would have to initiate proceedings for the said year pursuant to an order made by an Appellate Assistant Commissioner. This contention is obviously untenable. The Appellate Assistant Commissioner or the Appellate Tribunal may set aside the notice itself for one reason or other and in that event the Income-tax Officer may have to initiate the proceedings once again in which case Section 34(1) will be attracted. The expression “finding or direction”, the argument proceeds, is wide enough to take in at any rate a finding that is necessary to dispose of the appeal or directions which Appellate Assistant Commissioners have in practice been issuing in respect of assessments of the years other than those before them in appeal. What does the expression “finding” in the proviso to sub-section (3) of Section 34 of the Act mean? “Finding” has not been defined in the Income-tax Act. Order 20 Rule 5 of the Code of Civil Procedure reads:

“In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.”

Under this Order, a “finding” is, therefore, a decision on an issue framed in a suit. The second part of the rule shows that such a finding shall be one which by its own force or in combination with findings on other issues should lead to the decision of the suit itself. That is to say, the finding shall be one which is necessary for the disposal of the suit. The scope of the meaning of the expression “finding” is considered by a Division Bench of the Allahabad High Court in *Pt. Hazari Lal v. Income-tax Officer, Kanpur*. There, the learned Judges pointed out:

“The word ‘finding’, interpreted in the sense indicated by us above, will only cover material questions which arise in a particular case for decision by the authority hearing the case or the appeal which, being necessary for passing the final order or giving the, final decision in the appeal, has been the subject of controversy between the interested parties or on which the parties concerned have been given a hearing.”

We agree with this definition of “finding”. But a Full Bench of the same High Court in *Lakshman Prakash v. CIT* construed the word “finding” in a rather comprehensive way. Desai, C.J., speaking for the Court, observed:

“A finding is nothing but what one finds or decides and a decision on a question even though not absolutely necessary or not called for is a finding.”



If that be the correct meaning, any finding on an irrelevant or extraneous matter would be a finding. That certainly cannot be the intention of the Legislature. The Madras High Court also in *A.S. Khader Ismail v. Income-tax Officer, Salem* gave a very wide interpretation to that word, though it did not go so far as the Full Bench of the Allahabad High Court. Ramachandra Iyer J., as he then was, speaking for the Court, observed that the word "finding" in the proviso must be given a wide significance so as to include not only findings necessary for the disposal of the appeal but also findings which were incidental to it. With respect, this interpretation also is inconsistent with the well-known meaning of that expression in the legal terminology. Indeed, learned counsel for the respondent himself will not go so far, for he concedes that the expression "finding" cannot be any incidental finding, but says that it must be a conclusion on a material question necessary for the disposal of the appeal, though it need not necessarily conclude the appeal. This concession does not materially differ from the definition we have given, but the difference lies in the application of that definition to the finding given in the present case. A "finding", therefore, can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The Appellate Assistant Commissioner may hold, on the evidence, that the income shown by the assessee is not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that that income does not belong to the relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question. The expression "direction" cannot be construed in vacuum, but must be collated to the directions which the Appellate Assistant Commissioner can give under Section 31. Under that section he can give directions, inter alia, under Section 31 (3) (b), (c) or (e) or s. 31 (4). The expression "directions" in the proviso could only refer to the directions which the Appellate Assistant Commissioner or other tribunals can issue under the powers conferred on him or them under the respective sections. Therefore, the expression "finding" as well as the expression "direction" can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is, empowered to give under the sections mentioned therein. The words "in consequence of or to give effect to" do not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. If the scope is limited as aforesaid, the said words also must be related to the scope of the findings and directions."

57. As is manifest from the above, a finding was explained to mean a



conclusion arrived at on a material question necessary for the disposal of a cause laid before an appellate authority and essential for according relief in an assessment year. A direction was defined as one which the appellate authority was empowered to issue under the Act.

58. However, a direction in terms as suggested by the respondents would clearly not fall within either of those two expressions since what we are essentially invited to do is to extend the period of limitation that otherwise stands prescribed under the Act. The finding that we have arrived at is that it was imperative for the AO to frame an order in draft as opposed to a final order of assessment. Any consequential direction that could be framed would have to be in consonance with the aforesaid finding. That direction would additionally and necessarily have to be in accordance with the scheme of the Act and the statutory prescriptions comprised therein. The same would clearly not warrant or justify the Court enlarging the period of limitation as statutorily prescribed. As is well settled, while courts may, where legally permissible, consider condonation of delay, they are not entitled to expand or enlarge a period of limitation as statutorily prescribed.

59. It becomes relevant to note that *Grindlays Bank* was a decision where the Explanation to Section 153 applied and the court was mandated to exclude the period during which a stay order operated. That is not the position which obtains in these matters since the only injunction which operated was with respect to the consequential demands which stood created. There was no interim order which restrained the AO from proceeding with assessment.

60. We thus find ourselves unable to accede to the submission addressed by the respondents on this score. Once it is conceded that the



period for completion of the assessment exercise in terms of sub-sections (3) and (4) of Section 153 has expired, it would be wholly impermissible for us to expand or enlarge the period prescribed for completion of assessment. Concededly, these are also not cases where the Explanation to Section 153 was asserted to be applicable.

61. In view of our conclusions on the aforesaid aspects, we find it unnecessary and inexpedient to either examine or rule upon the additional challenges which were raised to the final orders of assessment including that of those orders as framed not being compliant with the time frames created by Section 153 of the Act.

62. Accordingly, and for all the aforesaid reasons, we allow the instant writ petitions and quash the impugned final orders of assessment of 28 December 2018 [W.P.(C) 688/2019], 20 November 2018 [W.P.(C) 1009/2019], 30 December 2018 [W.P.(C) 991/2019], 25 December 2018 [W.P.(C) 995/2019], November 2018 (undated) [W.P.(C) 993/2019], 30 September 2021 [W.P.(C) 12462/2021], 29 September 2021 [W.P.(C) 12844/2021], 28 December 2018 [W.P.(C) 3444/2021], 20 November 2018 [W.P.(C) 3377/2021], 30 December 2018 [W.P.(C) 3389/2021], November 2018 (undated) [W.P.(C) 3472/2021], 25 December 2018 [W.P.(C) 3539/2021], 18 September 2021 [W.P.(C) 11896/2021], 09 September 2021 [W.P.(C) 11949/2021], 29 September 2021 [W.P.(C) 12204/2021], 29 September 2021 [W.P.(C) 12319/2021], 14 February 2022 [W.P.(C) 4043/2022], 31 March 2021 [W.P.(C) 5913/2022], 30 March 2022 [W.P.(C) 6365/2022], 31 March 2022 [W.P.(C) 6786/2022], 22 March 2022 [W.P.(C) 12735/2022], 22 March 2022 [W.P.(C) 12784/2022], 23 March 2022 [W.P.(C) 12785/2022], 26 March 2021 [W.P.(C) 7547/2023], 20 September 2023 [W.P.(C)



14314/2023] and all consequential notices issued pursuant thereto. The petitioners shall be entitled to all consequential reliefs.

63. For reasons assigned hereinabove, we uphold the view taken by the Tribunal which stands impugned in ITA Nos. 52/2023, 451/2024 and 454/2024. Those appeals in consequence shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 02, 2024/neha