IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10403 OF 2025

Danfoss Fluid Power Private Limited .. Petitioner

Versus

1. Union of India & Other .. Respondents

Mr. Sivaraman a/w Mr. Ankit Trivedi i/b. Mr. Tarak Shah, Advocates for the Petitioner.

Mr. Arjun Gupta, Advocate for Respondents/Revenue.

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: SEPTEMBER 29, 2025

P. C.

1. The above Writ Petition is filed challenging the final assessment order dated 28th March 2025 passed by Respondent No. 2. The primary ground on which the aforesaid impugned assessment order is challenged, is that in the facts of the present case, the Petitioner is an eligible Assessee as contemplated under Section 144C (15) of the Income Tax Act, [for short "IT Act"] and the transaction entered into by the Petitioner was for purchasing 98% shareholding

of a company called “Danfoss Systems Limited” [formally known as “Eton Fluid Power Limited”]. This share purchase took place because of a global corporate restructuring, and for this purpose, the Petitioner entered into share purchase agreements with third parties, namely, “Eaton Technologies Private Limited, India” and “ETN Holding 2 Limited, Mauritius,” to acquire the 98% shareholding of “Danfoss Systems Limited”. This share purchase transaction was referred by the Assessing Officer to the Transfer Pricing Officer to determine the Arm’s Length Price. The Transfer Pricing Officer gave certain recommendations by increasing the Arm’s Length Price of the share transaction entered into by the Petitioner with the entities referred to above.

2. The Assessing Officer, instead of passing a draft assessment order as contemplated under Section 144C(1), passed a final assessment order. According to the Petitioner, this is fatal because under the provisions of Section 144C(1), once there is any variation proposed which is prejudicial to the interest of the Assessee, then the Assessing Officer has to, in the first instance, forward a draft of the proposed order of the assessment to the eligible Assessee. In the present case, since no draft assessment

order has been forwarded to the Petitioner, and straight away a final assessment order dated 28th March 2025 has been passed, according to the Petitioner, the same is contrary to the provisions of Section 144C and has to be quashed and set aside.

3. The learned Counsel appearing on behalf of the Revenue, fairly conceded that in the facts of the present case, though the transaction is an International Transaction and the Petitioner is an eligible Assessee, no draft assessment order has been passed and served upon the Petitioner. He, therefore submitted that appropriate orders and directions be passed by this Court.

4. We have heard the learned Counsel for the parties. We have also perused the papers and proceedings in the present Writ Petition. It is not in dispute that in the present case, the shares of Danfoss Systems Limited were sought to be purchased by the Petitioner *inter alia* from a Company in Mauritius, at the price of Rs. 363.10 per share. When the Assessing Officer referred the above matter to Transfer Pricing Officer, the Transfer Pricing Officer made a variation to the Arm’s Length Price and valued the transaction at Rs. 517.82 per share. In other words, he recommended a variation in

the Arm's Length Price. In these circumstances, the Petitioner would certainly be an eligible Assessee as contemplated under Section 144C(15)(b)(i) of the IT Act. Since this variation was prejudicial to the interest of the eligible Assessee, it was mandatory for the Assessing Officer, in the first instance, to forward to the Petitioner a draft of the proposed order of assessment as contemplated under Section 144C(1). Only once this draft assessment order was served upon the Petitioner could it then choose, either to file its objections [to the draft assessment order] before the Dispute Resolution Panel (DRP), as contemplated under Section 144C(2), or choose to go by the normal route, i.e. to ask the Assessing Officer to pass a final assessment order and thereafter challenge the same before the CIT [Appeals]. By directly passing a final assessment order without serving a draft assessment order on the Petitioner clearly flies in the teeth of Section 144C. Once this is the case, we find that the assessment order dated 28th March 2025 cannot be allowed to stand and has to be quashed and set aside.

5. In the view that we take, we are supported by a decision of a Division Bench of this court in the case of ***SHL (INDIA) PVT. LTD. V. DEPUTY COMMISSIONER OF INCOME-TAX AND***

OTHERS, [2021] 438 ITR 317 (Bom). The relevant portion of this decision reads thus :-

> *"27. Applying the aforesaid principles to the facts of this case, we are of the view that the failure on the part of the Assessing Officer to follow the procedure under Section 144C(1) is not a merely procedural or inadvertent error, but a breach of a mandatory provision. We are also not impressed with the arguments of the Revenue that the Assessing Officer was under pressure of two charges, as there were timelines to adhere to, since the said timelines from time to time have been extended, the most recent one being to September 30, 2021. The Revenue ought to have appreciated that the requirement under Section 144C(1) to first pass a draft Assessment Order and to provide a copy thereof to the assessee is a mandatory requirement which gave substantive right to the assessee to object to any variation, that is prejudicial to it. In this case, the order under Section 92CA(3) of the Income-tax Act, proposed to make an adjustment of Rs.107,454,337/- to the arm's length price considered as Nil by Petitioner and to that extent the said adjustment was evidently prejudicial to the interest of the Petitioner. Depriving Petitioner of this valuable right to raise objection before Dispute Resolution Panel would be denial of substantive rights to the assessee, for which, in our view, the Assessing Officer has no power under the statute, as the provision clearly mandates the Assessing Officer to pass and furnish a draft Assessment Order in the first instance in such a case. The Legislature, in our view, has intended to give an important opportunity to the Petitioner, who is an eligible assessee, which in our view, has been taken away. In our view, failure to follow the procedure under Section 144C(1) would be a jurisdictional error and not merely procedural error or a mere irregularity. The Assessment Order has not been passed in accordance with the provisions of Section 144C of the Income-tax Act. This is not an issue, which involves a mistake in the said order, but it involves the power of the Assessing Officer to pass the order. By not following the procedure laid*

down in Section 144C(1) to pass and furnish a draft Assessment Order to the Petitioner and directly passing a final Assessment Order and without giving the Petitioner an opportunity to raise objections before the Dispute Resolution Panel, there is a complete contravention of Section 144C, the Assessing Officer having wrongly assumed jurisdiction to straight away pass the final order. This is not a mere irregularity but an incurable illegality. Even the provisions of Section 292B of the Income-tax Act would not protect such an order as Section 292B of the Income-tax Act cannot be read to confer jurisdiction on the Assessing Officer, where none exists. The Supreme Court decision in the case of ITO Vs. M. Pirai Choodi; [2011] 334 ITR 262 (SC) referred to in the Revenue's reply is also not applicable to the issue at hand as that was a case where the assessee was not given an opportunity to cross-examine the concerned witness and which assessee also had a statutory appellate remedy which the assessee had failed to avail of, whereas there is no such right available to the Petitioner in this case. In fact, the Petitioner has lost a substantive right due to the failure of the Respondents to pass and forward a draft assessment order in the first instance on a variance, prejudicial to the interest of the Petitioner. In our view, this is clearly a case of jurisdictional error. The final assessment order passed by the Assessing Officer stands vitiated on account of lack of jurisdiction, which is incurable and deserves to be set aside as void ab initio.

We, therefore, quash and set aside the impugned assessment order, demand notice and penalty notice, all dated April 6, 2021 for the assessment year 2017-18.

The Writ Petition is allowed in the above terms. However, there shall be no order as to costs."

6. In view of the foregoing discussion, the impugned assessment order dated 28th March 2025 is hereby quashed and set aside.

7. Before parting, we must clarify that though, in the above Writ Petition, the Petitioner has challenged the order dated 28th January 2025 passed by the Transfer Pricing Officer under Section 92CA of the IT Act, said relief has not been pressed before us and we have not given any opinion in relation thereto.

8. Rule is made absolute in the aforesaid terms and the above Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**

Santosh Chabukswar- Court Steno.