



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1460 OF 2025

Barentz India Private Limited

.. Petitioner

Versus

The Assessment Unit, National Faceless
Assessment Centre, New Delhi and Anr.

.. Respondents

Adv. Vishal Kalra, a/w *Adv. Saumyendra S. Tomar*, *Adv. Harsh R. Shah (AOR)* and *Adv. Snigdha Gautam*, for the Petitioner.

Ms. Shilpa Goel, for the Respondent.

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE: OCTOBER 13, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition challenges the impugned final assessment order dated 28th February 2025 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (for short “IT Act”), as well as the impugned notices dated 28th February 2025 issued under

Sections 156 and 274 read with Section 271AA(1) and Section 270A of the IT Act. The Assessment Year in question is 2022-2023.

3. The short grievance in the above Petition is that in the facts of the present case, the Petitioner is an “eligible assessee” as contemplated under Section 144C(15)(b)(i) and therefore, before any final assessment order could have been passed which was prejudicial to the interest of the assessee, the Assessing Officer ought to have passed a draft assessment order and served it on the Petitioner so as to enable it to file its objections (to the draft assessment order) before the Dispute Resolution Panel (“**DRP**”) as contemplated under the provisions of Section 144C. This is for the simple reason that the transaction in question was an “international transaction”. If no draft assessment order is passed and served on the Petitioner, the final assessment order cannot stand, is the contention of the Petitioner.

4. The learned Advocate appearing for the Revenue sought to contend that in the case of an Indian company, the provisions of Section 144B would apply instead of Section 144C. In this regard, she brought to our attention sub-sections (xx) and (xxi) of Section 144B(1). She, therefore, submitted that this is a fit case where the matter be remanded back to the concerned officer for the purposes of passing a fresh draft assessment order and following the procedure under Section 144B.

5. We have heard the learned Counsel for the parties at some length.

6. We find that to the provisions of Section 144B(1) and more particularly Sections 144B(1)(xxi) to 144B(1)(xxix), the provisions of Sections 144C have been made applicable. These provisions clearly stipulate that in case of an eligible assessee, a draft assessment order has to be served on the Petitioner to enable the Petitioner to approach the DRP. This, in fact, has not been done in the facts of the present case. In the facts of the present case, a final assessment order has been directly passed by the Faceless Officer without serving a draft assessment order on the Petitioner to enable it to approach the DRP. This is in clear violation not only of the provisions of Section 144C but also of Section 144B(1)(xxi) to (xxix) thereof. Once this is the case, the final assessment order in the above Petition cannot stand and would have to be set aside.

7. In the view that we take, we are supported by the decision of this Court in the case of ***Danfoss Fluid Power Private Limited Vs. Union of India and Ors. (Writ Petition No. 10403 of 2025 decided on 29th September 2025)***. In the facts of *Danfoss (supra)*, a final assessment order was passed without serving the draft assessment order on the Petitioner. This Court held that the same would clearly be in contravention of

the provisions set out in Section 144C. In fact, while deciding the case of *Danfoss (supra)*, this Court relied upon another decision of this Court in the case of ***SHL(India) Pvt. Ltd. Vs. Deputy Commissioner of Income-Tax and Others [(2021) 438 ITR 317 (Bom)]***. The relevant portion of *Danfoss (supra)* reads thus:-

“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."*

8. As far as the prayer for remand is concerned, we see no reason to remand the matter back to the Assessing Officer. If the Assessing Officer, in law, is entitled to initiate this process again by passing a fresh draft assessment order and serving it upon the Petitioner, they are free to do so if

they are entitled to do in law. We have not opined on this aspect of the matter one way or the other.

9. In view of the foregoing discussion, the above Writ Petition is allowed in terms of prayer clause (a), which reads thus:-

“(a) issue a writ of and / or order and / or directions in the nature of certiorari, mandamus, prohibition or any other appropriate writ, order or direction for quashing the impugned final assessment order dated 28.02.2025 passed under section 143(3) read with section 144B of the Act, and the impugned notices dated 28.02.2025 issued under sections 156 and 274 r.w.s. 271AA(1) and 270A of the Act by the Respondent No.1 in the case of the Petitioner for assessment year 2022-23;”

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

11. 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.]