IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

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The HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.6799 of 2024
and
W.M.P.Nos.7589 & 7590 of 2024

M/s Cholamandalam MS General Insurance Company Limited
Represented by its Chief Financial Officer,
Mr. Venugopalan - Age 59 years
Dare House, II Floor, No.2,
N.S.C. Bose Road, Parrys,
Chennai - 600 001.
PAN : AABCC6633K ...Petitioner

Vs.

1. National Faceless Assessment Centre,
   Assessment Unit, Income Tax Department,
   Ministry of Finance, Room No.401,
   2nd Floor, E-Ramp, Jawaharlal Nehru Stadium,
   Delhi - 110 003.

2. Deputy Commissioner of Income - Tax,
   Non-Corp. Circle 8 (1),
   Annexe Building - V Floor,
   Aayakar Bhawan, No.121,
   Mahatma Gandhi Road,
   Nungambakkam, Chennai,
   Tamil Nadu - 600 034.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records in DIN No.ITBA/AST/S/143(3)/2023-24/1061144222(1) dated 19.02.2024 issued under section 143 (3) read with section 144C(3) read with section 144B of the Income - tax Act 1961 on the file of the Respondent No.1 for the Assessment year 2021-22 and quash the same as without jurisdiction and barred by limitation.

For Petitioner	:	Mr.Sandeep Bagmar R
For Respondents	:	Mr. V.Mahalingam, Senior Standing Counsel Mr. S. Premalatha, Junior Standing Counsel Mr.S.Rajasekar, Junior Standing Counsel

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ORDER

The challenge in this Writ Petition is to the order dated 19.02.2024 passed by the respondent under Section 143 (3) read with Section 144B of the Income Tax Act 1961 (in short 'the Act') for the Assessment Year 2023-24, on the ground that the same is illegal, without jurisdiction and being barred by limitation.

2. The case of the petitioner in brief is as follows:

(i) The petitioner is a General Insurance company. The petitioner filed its Return of Income electronically on 22.02.2022 for the Assessment Year (AY) 2021-22, declaring a total income of INR 5,16,59,82,810/-. The petitioner's case was selected for scrutiny and a notice under Section 143 (2) of the Act dated 28.06.2022 was issued by the respondent to the petitioner for initiation of scrutiny assessment. The respondent referred the petitioner's case to the Transfer Pricing Officer (TPO) vide communication dt. 26.10.2022 for determination of arm's length price of the international transactions of the petitioner with its associated enterprises ('Aes') and the said officer passed an order dated 21.10.2023 under Section 92CA(3) of the Act and did not propose any variation whatsoever to the petitioner's income. The 1st respondent issued notice under section 142 (1) of the Act on various dates, which was duly responded to by the petitioner.

(ii) A Show Cause Notice dated 06.11.2023 was issued to the petitioner to show cause as to why the adjustments proposed in the said notice be not carried out to the returned income for the Assessment Year

2021-22. In response to the same, the petitioner submitted its reply dated 10.11.2023 and attended the Virtual Hearing held on 23.11.2023. The respondent passed a draft assessment order under Section 144C(1) of the Act on 11.12.2023 asking the Assessee to respond with the acceptance of variations or file its objections before the Dispute Resolution Panel within a period of 30 days. The petitioner filed its submissions vide letter dated 04.01.2024 before the first respondent. The petitioner neither accepted the draft order nor filed any objections before the DRP as it is not an " eligible assessee" within the meaning of section 144C. The respondent passed the final assessment order under Section 143 (3) read with section 144C(3) read with Section 144B of the Act dated 19.02.2024 ("Impugned order") whereby various additions were made to the returned income of the petitioner. Challenging the same, the present writ petition has been filed.

2. The learned counsel for the petitioner would submit that as the TPO, in his order dated 21.10.2023, did not propose any variations to the international transactions entered into by the petitioner, on a plain reading of Section 144C(1) of the Act read with Section 144C(15)(b), it is evident

that the petitioner is not an "eligible assessee" and consequently, the provisions of Section 144C of the Act shall not apply for Assessment Year 2021-22. Hence, the first respondent has erroneously assumed jurisdiction under Section 144C by passing a draft assessment order under section 144C(1) of the Act.

3. By referring to Section 153(1) of the Act, he would submit that in the case on hand, the assessment started on 31.03.2022 and normally the period for limitation for assessment is nine months from the end of the relevant assessment year i.e., 2021-2022, as per the aforesaid provision, which ends on 31.12.2022. From the said date, the respondent ought to have passed the Assessment Order under Section 143(3) of the Act on or before 31.12.2022. In the case on hand, the matter was referred to Transfer Pricing Officer in terms of Section 92CA (3) of the Act on 26.10.2022, who subsequently passed an order under Section 92CA(3) on 21.10.2023. He further submitted that if a reference is made to the Transfer Pricing Officer u/s. 92CA of the Act, then the time is extended by a further period of 12 months, which ends on 31.12.2023. As per section 153(1) read with section

153(4) of the Act, the respondent is statutorily required to pass the final assessment order within a period of 21 months (9 months plus 12 months) from the end of the relevant assessment year, i.e., on or before 31.12.2023. Since the final Assessment order was passed by the respondent only on 19.02.2024, the same is without jurisdiction and barred by limitation.

4. It is further contented that totally there are two issues one is Disallowance of provisions on account of IBNR & IBNER claims charged to profit and loss account and the other issue is with regard to disallowance of penalty payment. As far as the 1st issue is concerned, for the earlier assessment years, this Court has already passed a Judgment on 16.04.2025 in T.C.A.Nos.755,855 of 2018, 49, 51 and 52 of 2023, in favour of the petitioner. As far as other issue is concerned, the petitioner has already remitted 25,00,000/- . Therefore, he would submit that the petitioner will not press for the refund of the said amount even if the impugned order is quashed. He therefore prays to set aside the impugned order.

5. On the other hand, Mr.V.Mahalingam, learned Senior Standing Counsel for the respondents would submit that there was no variations in the order passed by the Transfer Pricing Officer and since there was no variations in the said order, the petitioner is not an "eligible assessee". However, he would submit that the order impugned herein is beyond the period the period of limitation and in the event, if this Court is inclined to allow the Writ petition, by setting aside the assessment order, since the petitioner has already remitted a sum of Rs.25,00,000/- the same may be retained.

6. In reply, the learned counsel for the petitioner would submit that the petitioner will not claim for the refund of a sum of Rs.25,00,000/- which was already remitted by him and his statement may also be recorded.

7. I have given due consideration to the submission made by the learned counsel appearing on either side and perused the materials available on record.

8. This Court find force in the submission made by the learned counsel for the petitioner.

9. In the present case, there was no variations proposed in the assessment order by the assessing officer. Thus, the assesee is not an eligible assessee in terms of provisions of Section 144C(15)(b) of the Act. The issue pertains to Assessment Year 2021-2022. The assessment started on 31.03.2022 and referred to the Transfer Pricing Officer (TPO) under Section 92CA of the Act.

10. The Transfer Pricing Officer had passed an order on 21.10.2023. As per Section 153(1) of the Act, in the normal course, the time limit for completion of the assessment would be nine months from the end of the relevant assessment year (2021-2022) which ends on 31.12.2022.

11. In the present case, since the matter was referred to Transfer Pricing Officer the time was extended by a further period of 12 months, which ends on 31.12.2023. Therefore, if the assessee is not an "eligible

assessee" under Section 144C(15)(b), then the assessment for the Assessment Year 2021-2022 have to be completed on or before 31.12.2023, but the assessment order was passed on 19.12.2024, i.e., beyond the period of limitation prescribed under the Act under Section 153 (1) of the Act. Thus, the impugned order was passed beyond the period of limitation. Any order passed beyond the limitation is not sustainable and is liable to be set aside.

12. Accordingly, the impugned order is quashed. While quashing the impugned order, it is made clear that since the petitioner made a submission that they will not claim refund of a sum of Rs.25 lakhs which was already deposited by the petitioner and retained by the respondents, the petitioner is not entitled for the said amount.

13. In the result, this writ petition is disposed of. The order impugned herein is set aside to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.04.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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To

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