



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

% Judgment delivered on: 29.10.2025

+ **ITA 304/2025 & CM APPL. 50009/2025**

COMMISSIONER OF INCOME TAX INTERNATIONAL  
TAXATION-2, NEW DELHI .....Appellant

versus

HYUNDAI ROTEM COMPANY .....Respondent

**Advocates who appeared in this case**

For the Appellant: Mr. Sunil Agarwal, SSC Mr. Viplav Acharya, Ms. Priya Sarkar, JSC and Mr. Utkarsh Tiwari, Advocates.

For the Respondent: Ms. Ananya Kapoor, Ms. Soumya Singh and Mr. Sumit Lalchandani, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE VINOD KUMAR**

**JUDGMENT**

**V. KAMESWAR RAO, J.**

**CM APPL. 50009/2025 (Condonation of delay in filing)**

1. For the reasons stated in the application, the delay of 103 days in filing the appeal stands condoned.
2. The application stands disposed of.

**ITA 304/2025**

3. The present appeal has been filed by the appellant who is the Commissioner of Income Tax (International Taxation)-2, New Delhi under Section 260A of the Income Tax Act, 1961 (the Act) against the impugned order dated 18.11.2024 passed by the Income Tax Appellate Tribunal, Delhi "I" Bench ('ITAT') in ITA No.2027/Del/2022 for the Assessment Year (AY) 2018-19, with the following prayers:-

*“(a) Allow this appeal and set aside the impugned order of Ld.ITAT dated 18.11.2024 for AY 2018-19 in ITA No. 2027/Del/2022.*

*(b) Formulate and decide the substantial questions of law as stated in para 3 of this appeal;*

*(c) Amend, alter, modify/ reframe any of the substantial questions of law which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”*

4. The respondent/assessee is a company incorporated in Korea engaged in producing different kinds of railway vehicles such as multiple units, high speed trains, light rail vehicles, locomotives and passenger coaches, car manufacturing systems and environment plants. The assessee filed its return of income on 26.03.2019 declaring a total income of ₹13,64,92,120/-.

5. The case was selected through CASS, and notice under Section 143(2) of the Act was issued on 22.09.2019. By way of assessment proceedings, the case was referred to a Transfer Pricing Officer (TPO) on 24.06.2021. The TPO passed the order dated 25.07.2021 under Section 92CA (3) of the Act proposing upward adjustment amounting to ₹7,36,34,508/- in respect of "*provision of administrative support services*".



Based on the TPO's report, the Assessing Officer ('AO') passed the Draft Assessment Order dated 27.09.2021 proposing assessed income of ₹ 21,01,26,630/-.

6. The assessee filed objections before the Dispute Resolution Panel ('DRP'), New Delhi against the Draft Assessment Order dated 27.09.2021. The DRP vide its order dated **24.05.2022** directed the appellant herein as under:-

*"4.1.18.... The AO/TPO is directed to re verify margin computation in respect of comparables selected for benchmarking and rectify the computational errors if any..."*

7. Pursuant to the direction of the DRP, the TPO revised the adjustment to ₹6,12,26,135/- and the AO passed the Final Assessment Order (FAO) dated **01.07.2022** at an assessed income of ₹19,77,18,255/-. Aggrieved by the FAO dated 01.07.2022, the respondent/assessee filed the appeal before the ITAT under Section 143 read with Section 144C(13) of the Act.

8. It was the submission of the assessee before the ITAT that, FAO passed on the pivotal issue is vitiated in law owing to bar of limitation and thus *non est* in law at the threshold as the time lines as provided under Section 144C(13) of the Act were not satisfied.

9. The submission of the appellant/Revenue was that manual orders uploaded by the DRP were not visible in the assessment worklist of the AO and hence the AO was not notified about the same in the ITBA portal. The case of the assessee reflected in AO's work list on 30.06.2022 as is also evident from the "Order Sheet Details" downloaded from ITBA in the case of the assessee for AY 2018-19. Hence, the AO did not receive any



communication of the said DRP order either through mail or on ITBA worklist until 30.06.2022. It received the Dak physically on 01.06.2022 vide Diary No 123 and there was no communication regarding the same on the email from the DRP. In such a scenario, the time limit can only be computed from the date on which the communication was received in Dak i.e 01.06.2022. The appellant stated that, as per the Act, the time prescribed is one month from the end of the month in which directions are received from DRP for passing the FAO and in the instant case FAO was passed on 01.07.2022, which was well within time limit as prescribed in the Act.

10. The ITAT vide its order dated 18.11.2024, allowed the appeal and held as under :-

*“17. In the context of faceless assessment process time and place of dispatch and receipt of electronic document (in this case DRP order) is required to be ascertained by reference to section 13 of Information Technology Act, 2000 which is the basis prescribed under Section 144B of Income Tax Act also (refer section 144 B (6) (v)) Hon'ble Supreme Court in case of **G. S. Chatha Rice Mills, (2021) 2 SCC 209-J** para 85), interpreted this very provision. Applying principles laid down by Hon'ble Supreme Court, only relevant facts necessary for deciding additional ground in present appeal relating to time barred assessment, is time of uploading by DRP of DRP order onto ITBA portal. Intimation letter to DRP order unambiguously shows 26.05.2022 as date of uploading of DRP order. This fact cannot be disputed. Except this critical and relevant information everything else (like when order is visible to AO, date of uploading some document by DCIT/ACIT circle 2(1)(1) Delhi) has been submitted by respondents. It is fair to conclude that the date of uploading DRP order on ITBA portal is 26.05.2022. As per section 144C(13) of the Act, assessment had to be completed on or before 30.06.2022. In the present case*



*assessment was completed only on 01.07.2022 i.e. it is time barred, null and void. Therefore, impugned assessment order dated 30.06.2022 is set aside being barred by limitation.”*

*18. Other grounds having become academic in nature are left open.”*

11. The present appeal has been filed by the appellant raising the following questions of law:-

*“3.1. Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT erred in holding that the assessment order for AY2018-19 was time barred, null and void and therefore, it is set aside?*

*3.2. Whether on the facts and circumstances of the case and in law Hon’ble ITAT erred in overlooking the findings of AO enumerated in Assessment Order w.r.t to TPO adjustment amounting to Rs.6,12,26,135/-?*

*3.3. Whether on the facts and circumstances of the case and in law, Hon’ble ITAT erred in placing reliance on section 130 and section 144B of the Income-tax Act, 1961 which is not applicable to International Taxation as per circular number No :187/3/2020-ITA-1 dated 31st March 2021?*

*3.4. Whether on the facts and circumstances of the case and in law, Hon’ble ITAT erred in overlooking the clear provisions of section 144C(13) of the Income-tax Act, 1961, which stipulates that upon the receipt of directions issued under sub section 5, the AO shall in conformity with the directions, complete notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee within one month from the end of month in which the directions have been received?*

*3.5. Whether on the facts and circumstances of the case and in law, Hon’ble ITAT erred in interpreting section 144C (13) of the Income-tax Act, 1961 in calculating time of receipt of directions from the date of uploading of DRP order in ITBA Module?”*



12. It is the case of the appellant that the ITAT has erred in holding that the FAO for AY 2018-19 is time barred, null and void as the same was done without correctly interpreting the provisions of Section 144C (13) of the Act in calculating time of receipt of directions from the date of uploading of DRP orders in ITBA portal. The ITAT has erred in overlooking the clear provisions of Section 144C(13) of the Act, which stipulates that upon the receipt of directions issued under sub-Section 5 of Section 144C of the Act, the AO shall in conformity with the directions, notwithstanding anything to the contrary contained in Section 153 of the Act, complete the assessment without providing any further opportunity of being heard to the assessee within one month from the end of month in which the directions have been received.

13. Mr. Sunil Agarwal, learned Senior Standing Counsel for the appellant submitted that the short question involved in this appeal is what would be the actual date of “receipt” of the directions of the DRP issued under Section 144C (5) of the Act for the purpose of computing the limitation period prescribed to pass the FAO under Section 144C (13) of the Act.

14. He submitted that Section 282 of the Act prescribes four independent modes of service of communications. All four modes are in the alternative and do not prescribe any priority among the four modes. Service of communications by any of these modes will satisfy the requirements of this section. He also submitted that, Section 144B of the Act governs the procedure of assessment and mode of communication between an assessee and the Department for cases which are governed by Faceless Assessment Scheme (FAS). Further, Section 144B (5) (ii) of the Act mandates electronic



mode of communication as the exclusive mode of communications between assessee and Faceless Assessment Centre in cases governed by FAS. In other words, he submitted that, out of the four modes of service of communications available under Section 282 of the Act, electronic mode is the only mode of communication which is the exclusive and mandatory mode.

15. Mr. Agarwal submitted that, Section 144B (2) of the Act authorises the Central Board of Direct Taxes (CBDT) (Board) to exclude cases which shall not be governed by FAS. In exercise of powers conferred under Section 144B (2) of the Act, the Board, since the very inception of FAS, has excluded the application of FAS to following two categories of cases: (i) Cases assessed in International Taxation charges, and (ii) Cases assessed in Central Circle charges.

16. He submitted that the assessee in the instant appeal is assessed by the Assistant Commissioner of Income Tax, Circle 2(1)(1), International Taxation, New Delhi and therefore, the assessee is excluded from the operation of FAS, and thereby excluded from exclusive mode of communication. In support of his submission, he has relied upon a Circular dated **17.09.2020** with **CIRCULAR F. NO. 225/126/2020/ITA-II** and Order dated **31.03.2021**, **ORDER F. NO. 187/3/2020-ITA-1**.

17. He submitted that the assessee is governed by the special provisions of Section 144C of the Act, which starts with a *non-obstante* clause, conferring upon Section 144C (1) overriding powers over entire Act. Further, Section 144C (13) of the Act specifically overrides the limitation



provisions of Section 153/153B of the Act for the purpose of passing a FAO. He also stated that, Section 144 C of the Act does not apply to all assessees, but it applies only to “eligible assessee” as defined vide Section 144C (15) (b) of the Act. The instant assessee is an “eligible assessee” within the meaning of Section 144C (15) (b) (ii) of the Act.

18. Furthermore, Mr. Agarwal stated that the scheme of Section 144C of the Act is a package deal, after having adopted the benefits of special provisions of Section 144C of the Act, the assessee is not entitled to “pick and choose” between the special provisions of Section 144C as against the general provisions of FAS. Therefore, under Section 144C (13), date of “receipt” of DRP directions by the AO, is the statutory basis for the commencement of limitation period available to the AO for passing the FAO, Section 144C (12) of the Act, provides the limitation to DRP to “issue” directions to AO under Section 144C(5) of the Act. In support of his submission, he has relied upon *Collector Of Central Excise, Madras v. M/s M.M Rubber and co., Tamil Nadu, 1992 Supp (1) Supreme Court Cases 471* and *Commissioner of Income Tax, Chennai v. Mohammed Meeran Shahul Hameed (2022)1 Supreme Court Cases 12*.

19. According to Mr. Agarwal, under Section 144C (13) of the Act, date of “Receipt” of DRP order by the office of the AO, is the statutory basis for period of limitation available to the AO to pass the FAO. The date of receipt of DRP order by the AO in Dak is 01.06.2022, therefore, the FAO dated 01.07.2022 has been passed within limitation provided u/s 144C (13) of the Act.



20. He submitted that the note would show that the date of receipt of DRP directions by the AO is the only issue involved in this appeal and it is purely a question of fact to be decided on the basis of factual evidence on record as a *sine qua-non*. The question is contested by the Revenue and no factual rebuttal by assessee has been provided. Therefore, the ITAT having admitted an additional ground on a disputed factual issue and having decided the appeal on this preliminary point alone without going into the merits of the matter, and therefore, the order is without jurisdiction, *non-est* and *void ab initio*.

21. Mr. Agarwal, submitted that without prejudice to the above, the Gujarat High Court in ***Principal Commissioner, Customs, Ahmedabad Commissionerate v. GAIL (India) Ltd., [2025] 151 GSTR 306 (Guj)***, has held that, mere uploading of communication on a portal without anything else does not satisfy the test of service. In that case, the matter arose under the Customs Act, 1962, which also has a portal called ICEGATE [“Indian Customs Electronic Gateway”] similar to ITBA portal under the Income Tax Act.

22. He submitted that the terms “Receipt”, “Issue”, “Pass”, “Service” of notice/order have been explained by Supreme Court and this Court in various judgments. In support of this submission, he has relied upon ***Suman Jeet Agarwal v. Income-Tax Officer And Others [2022] 449 ITR 517 (Delhi)***, ***M/s M.M Rubber and co., Tamil Nadu (supra)***, ***Mohammed Meeran Shahul Hameed (supra) and R.K. Upadhyaya v. Shanabhai P. Patel (1987) 3 Supreme Court Cases 96***. The language of Section 144C (13)



of the Act is absolutely clear, unambiguous and incapable of admitting any ambiguity and therefore is liable to be applied on its plain terms.

23. He stated that, statutory provisions of the Act regarding limitation was held to be fully applicable even in the judgments of this Court in *Commissioner of Income Tax v. Sudhir Choudhri & Commissioner of Income-Tax v. Rajiv Choudhrie*, 2005 SCC OnLine Del 726 and *Commissioner of Income Tax v. (1) Odeon Builders P. Ltd. (I.T.A. No. 52 of 2015) and (2) Gulbarga Associates P. Ltd. (I.T.A. Nos. 755 and 756 of 2015)* 2017 SCC OnLine Del 7622 51. None of the statutory provisions were declared as overridden by the pronouncements of this Court.

24. He submitted that, without noticing the correct position of law, the ITAT has misdirected itself in importing and applying some sort of deemed receipt or presumed receipt by the AO, which is utterly repugnant to the plain statutory provisions. The FAS not being applicable to this case, excludes the provisions of Section 144B (5) (ii) and (iii) of the Act. He also stated that judgments relied upon by the respondent are delivered in the context of Indian companies and none of the cases pertain to foreign company unlike the assessee in the instant appeal. Therefore, all of them need to be distinguished on facts itself and therefore have no bearing on instant appeal.

25. In support of his submission, he has relied upon the following judgments:-

***a. Canon India P Ltd v. Commissioner Customs (2021) 18 SCC 563.***



***b. CIT v. Arvind Construction Co P Ltd (1992) 193 ITR 330 (Del)***

***c. CIT v. ITAT (2000) 245 ITR 659 (Del)***

***d. Jaipuria Samla Amalgamated Collieries Ltd v. CIT (1972) 3 SCC 317***

***e. Commissioner Central Excise v. Raghuvar India Ltd (2000) 5 SCC 299***

***f. Kanwar Singh Saini v. High Court of Delhi (2012) 4 SCC 307***

***g. CCE v. M. M. Rubber & Company 1992 Supp (1) SCC 471***

***h. National Thermal Power Co Ltd v. CIT (1997) 7 SCC 489***

26. Ms. Ananya Kapoor, learned counsel for the respondent, submitted that, as per Section 144C(13) of the Act, the AO should have completed the assessment by 30.06.2022. However, the FAO has been prepared, issued and served on 01.07.2022, in direct violation to limitation prescribed under Section 144C(13) of the Act and as such the same has been rightly quashed on this ground by the ITAT vide the impugned order.

27. She submitted that the ITAT has recorded a finding of the fact that the DRP direction dated 24.05.2022 was uploaded on the ITBA Portal on 26.05.2022 and the same is evident from the ITBA portal letter. She also submitted that the Intimation Letter is also dated 26.05.2022 and hence the uploading of the DRP directions on 26.05.2022 on the portal constitutes as valid service to the appellant for the purposes of determining the limitation for Section 144(13) of the Act. In effect, the DRP issued directions on



26.05.2022 and thus, in view of Section 144C (13) of the Act, the FAO had to be passed by 30.06.2022. Therefore, the FAO passed on 01.07.2022 is clearly barred by limitation.

28. She submitted that the Bombay High Court, Madras High Court, Karnataka High Court, Telangana High Court and this Court have adjudicated this very issue in favour of the taxpayers wherein, this exact question was before the Courts i.e., pertaining to date of service/receipt of DRP directions by the AO to determine the time limitation as prescribed under Section 144C(13) of the Act. All five High Courts have ruled in favour of the taxpayers. In support of this, she has relied upon the following judgments:-

***a. This Court:-Louis Dreyfus Company India Private Limited v. DCIT 13(1), W.P.(C) 15381/2022.***

***b. Bombay High Court:- Vodafone Idea Ltd. v. CPC, [2023] 459 ITR 413 (Bom.) & PCIT v. Sterling Oil Resources Ltd. (ITA NO. 1238/2018***

***c. Madras High Court:- CIT v. Ramco Cements [2025] 171 taxmann.com 306 & Taeyang Metal India (P.) Ltd. v. DCIT, [2024] 160 taxmann.com 536 (Madras).***

***d. Karnataka High Court :- Himalaya Drug Company v. DCIT, ITA No. 571 of 2017***

***e. Telangana High Court :- Rapiscan Systems Pvt. Ltd. v. ADIT (Int Tax)-2 (WP No. 44891/2022)***

29. Ms. Kapoor submitted that Section 13 of Information Technology Act, 2000, read with under Section 282 of the Income Tax Act, 1961 is very clear, inasmuch as, it states that the dispatch of a record occurs when it



enters a computer resource outside the control of the originator. Hence, the moment the document is uploaded by the originator, which in the present case is the DRP, on 26.05.2022 in ITBA Portal, the dispatch from the side of the DRP is complete and since the entire documents are uploaded through electronic mode, the same happens seamlessly and accordingly, the receipt of the said document also becomes instantaneous. Hence, the date of receipt of DRP direction was also 26.05.2022 itself and the due date in terms of Section 144C (13) of the Act would start reckoning from that date itself.

30. She submitted that the ***E-ASSESSMENT SCHEME, 2019*** (“the Scheme”) dated 12.09.2019, states that all communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making an assessment under this Scheme shall be through the National E-assessment Centre. In fact paragraph 8(b) of the Scheme states that all internal communication shall mandatorily be through electronic mode only. Hence, the reliance by the appellant/Revenue on the physical receipt copy through speed post/dak on 01.06.2022 is not relevant as Revenue is in fact taking a stand which is contrary to its own Scheme, issued under Section 143(3)(A) of the Act.

31. Furthermore, it is a settled principle of law that, DRP proceedings are part of assessment proceedings, and hence, this is an internal communication from the DRP to the AO and this is covered in the scope of Paragraph No. 8 of the Scheme. She stated that this Court in ***M/s Lahmeyer Holding GMBH v. DDIT W.P.(C) 7417/2012, 19.05.2015***, has held that “*It must be noted*



that the DRP procedure is part of the assessment proceedings.”. The Bombay High Court in *Vodafone India Services (P) Ltd. v. UOI*, [2013] 39 *taxmann.com* 201 (Bombay), has also noted this the observation of this Court in *M/s Lahmeyer Holding GMBH (supra)*.

32. She submitted that **Annexure A6** document dated 30.06.2022 is incorrect, as the “From” and “To” column itself evidences that, it is the date from, when the document was sent from National E-assessment Centre to the Jurisdictional AO. This date is not at all relevant for the purposes of Section 144C (13) of the Act and the appellant has erred in relying upon the same. In terms of Section 144C(13) of the Act, in the present case, as the order/directions of the DRP were reflected in ITBA portal on 26.05.2022, it was incumbent on the part of the AO to issue/upload the FAO by 30.06.2022 and the failure on the part of the AO to issue/upload the FAO within the stipulated time period itself renders the order as void as barred by limitation of time.

33. Ms. Kapoor stated that, a Full Bench decision of this Court in the case of *Odeon Builders Pvt. Ltd (supra)*, has considered the issue of receipt of the order of ITAT to determine the timelines to prefer an appeal by the Revenue before this Court under Section 260A of the Act. This Court noted that internal modes of communication will not enlarge the statutory timelines and once the pronouncement is done and the order is uploaded, the time period will start getting counted for the purposes of limitation.

34. She has placed reliance on the principles of strict interpretation by relying upon the judgment of the Supreme Court in *R.K. Upadhyaya v.*



***Shanabhai P. Patel, (1987) 3 SCC 96.*** She also submitted that the judgments of the Supreme Court and the several High Courts would show that, all Courts have consistently held that the expression ‘issue’ in its common parlance and its legal interpretation means that the issuer of the order must, after drawing up the order, make an overt act to ensure due dispatch of the order to the addressee. It is only upon due dispatch and that the order is outside the control of the originator, that the order can be said to have been ‘issued’. In the electronic mode, issue and receipt is simultaneous as the moment the document is uploaded, it is said to have been issued and receipt.

35. She has contested the stand of Revenue/appellant for the following reasons:-

a. An arbitrary distinction has been drawn by the Revenue/appellant between Faceless AO and Jurisdictional AO as it only determines who passes the FAO. The mode of communication being electronic at all stages, such a distinction makes no difference to the facts of the present case. In fact, ***Annexure 6*** relied upon by the AO in the appeal set itself evidences that all communication throughout the proceedings has only been through electronic mode. The appellant’s attempt to canvass e-assessment proceedings to apply only to proceedings conducted by Faceless AO and not Jurisdictional AO, is completely erroneous. Even for assessment proceedings conducted through Jurisdictional AO, the proceedings have to be in electronic form only.



b. The stand that electronic communication is not mandatory, is contrary to their own Scheme and also against the Government's larger intent to go digital. Section 143(3A) of the Act, wherein the Scheme has been issued reads as follows-

*“(3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) or section 144 so as to impart greater efficiency, transparency and accountability by*

*(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible; (b) optimising utilisation of the resources through economies of scale and functional specialisation; (c) introducing a team-based assessment with dynamic jurisdiction.”*

c. The Scheme issued pursuant to this as stated above as well, reads as follows-

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

*8. Exchange of communication exclusively by electronic mode.— For the purposes of this Scheme,-*

*(a) all communications between the National e-assessment Centre and the assessee, or his authorised representative, shall be exchanged exclusively by electronic mode; and*



*(b) all internal communications between the National e-assessment Centre, Regional e-assessment Centres and various units shall be exchanged exclusively by electronic mode.”*

d. The reliance placed by Mr. Agarwal on ***Suman Jeet Aggarwal (supra)***, is incorrect, as that judgment pertains to Section 148 of the Act which refers to “issue”, whereas Section 144(13) refers to “receipt”. In ***Suman Jeet Aggarwal (supra)***, this Court was concerned with “issue of Section 148 notice to the taxpayers”; The present case is with regard to the “receipt of DRP direction qua the AO”. Since the DRP proceedings are part of assessment proceedings only, and the DRP and AO are part of the same machinery, the communication of orders is thus Department *inter se* and cannot be compared with a case like ***Suman Jeet Aggarwal (supra)***, which was admittedly is in the context of issuance of notice for initiation of reassessment to the taxpayer from the AO. That was a case of communication between the Department and the assessee and will not apply *mutatis mutandis* in case of communication in respect of on-going assessment proceedings between the different machineries within the Income Tax Department itself.

e. In ***Suman Jeet Aggarwal (supra)***, this Court had identified 5 categories and none of those 5 categories are applicable to the facts at hand. In that case, the Revenue argued that mere generation of the notice on the ITBA portal amounts to issuance of notice to taxpayers, and this argument was rejected by this Court. In the facts and issue involved in the present case, the matter is



conclusively covered by decision of this Court in the case of ***Louis Dreyfus Company India Private Limited (supra)*** which is a vital fact which has been grossly ignored by the Revenue/appellant.

36. Ms. Kapoor in support of her submissions, has relied upon the following judgments:-

***a. Louis Dreyfus Company India Private Limited v. DCIT 13(1) in W.P.(C) 15381/2022 (Delhi High Court).***

***b. PCIT-1 v. M/s Fiberhome India Private Limited in ITA No. 91/2024 (Delhi High Court).***

***c. Vodafone Idea Ltd. v. CPC in W.P.(L) No. 15398/2023 (High Court of Bombay).***

***d. CPC v. Vodafone Idea Ltd. In SLP(C) Diary No. 55786/2024 (Supreme Court).***

***e. Taeyang Metal India (P.) Ltd. v. DCIT in W.P. No. 12159/2023 (High Court of Madras).***

***f. Rapiscan Systems Pvt. Limited v. ADIT (INT. TAX)-2 in W.P.(C) No. 44891/2022 (Telangana High Court).***

***g. Shell India Markets Private Limited v. ACIT in W.P. No. 3298/2021 (High Court of Bombay).***

***h. PCIT-13 v. Sterling Oil Resources Ltd. in ITA No. 1238/2018 (High Court of Bombay).***

***i. Himalaya Drug Company v. DCIT, Central Circle – 1 in ITA No. 571/2017 (High Court of Karnataka).***

***j. CIT v. Ramco Cements, (2025) 171 taxmann.com 306 (Madras High Court).***

37. Having heard the learned counsel for the parties and perused the records, the short issue for consideration is whether the ITAT is the justified



in setting aside the Final Assessment Order (FAO) dated 01.07.2022, stating that the FAO ought to have been passed by the AO by 30.06.2022, and hence the same is barred by limitation.

38. The submission of Mr. Agarwal, primarily is that, till such time the AO physically receives a copy of the DRP report, the time to pass an Assessment Order shall not run. According to him, in this case the DRT report having been received only on 01.06.2022 and FAO having been passed on 01.07.2022, the same is within the period of one month as is contemplated under Section 144C (13) of the Act. He also stated that the reliance placed by the respondent on the uploading of the DRP report on the portal on 26.05.2022 is of no consequence as the same was not visible to the AO and hence the AO having received the physical copy of report on 01.06.2022, the FAO passed on 01.07.2022 is within limitation.

39. The issue which falls for consideration in the given fact is no more *res-integra* in view of the judgment of this court in the case of ***Louis Dreyfus Company India Private Limited(supra)*** wherein, this Court on identical facts has by referring to the judgment of the Bombay High Court in ***Vodafone Idea Ltd(supra)***, wherein, an affidavit has been filed by the Chief Commissioner of Income Tax and Joint Commissioner of Income Tax, on the aspect of uploading, of orders, notices and decisions, as per E-Assessment of 2019, had concluded, as under:-

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

*“15. Annexed to the affidavit of Mr. Satish Sharma*



is a screenshot of the CHN-Case History Notings of the Dispute Resolution Panel proceedings uploaded on the Income-tax Business Application portal. The screenshot is of the page as it appears on the Income tax Business Application portal. A perusal of the screenshot of Case History Notings of the Dispute Resolution Panel read with the affidavit filed by Mr. Satish Sharma, the Chief Commissioner of Income-tax and Ms. Anne Varghese, the Joint Commissioner of Income-tax, clearly indicate that once the Dispute Resolution Panel directions are uploaded and the Document Identification Number ("DIN") is generated, which is also visible on the first page of the hard copy of the Dispute Resolution Panel directions, the said document is visible to the Assessing Officer of the Faceless Assessment Unit ("FAU") having jurisdiction over the permanent account number of the assessee concerned. Thus, both the affiants agree that the Dispute Resolution Panel directions once uploaded on the Income-tax Business Application portal are automatically visible to the Faceless Assessing Officer, if any assessment work item is pending related to a particular permanent account number. Admittedly assessment proceedings of the petitioner were pending. Thus, undoubtedly the Dispute Resolution Panel directions uploaded on the Income-tax Business Application portal were readily and clearly visible and accessible to the Faceless Assessing Officer of the assessee.

16. A reply affidavit in sur-rejoinder dated September 14, 2023 filed by Shri L. A. Janbandhu, the Deputy Commissioner of Income-tax-5(2)(1), Mumbai also affirms that the Dispute Resolution Panel directions were uploaded on the Income-tax Business Application portal on March 25, 2021. In



*fact Mr. Singh, in fairness admitted the directions of the Dispute Resolution Panel were available on the Income-tax Business Application portal. The defense of the respondents, however, was that the direction of the Dispute Resolution Panel under section 144C(5) of the Act were noted in the Case History Notings of the Faceless Assessing Officer only on August 23, 2023, and hence, that is the day he should be deemed to have received it. On the court putting a question to Mr. Singh as to how and under what mechanism are the directions of the Dispute Resolution Panel noted in the Case History Notings of the Faceless Assessing Officer, Mr. Singh candidly stated that was entered by the Faceless Assessing Officer. The fact remains that the Dispute Resolution Panel directions were always visible and accessible to the Faceless Assessing Officer on the Income-tax Business Application portal.*

*17. Mr. Singh made all attempts to persuade us that despite the Income-tax Business Application portal displaying the Dispute Resolution Panel directions and the same being accessible to the Faceless Assessing Officer, it was only on August 23, 2023, that the same were received by the Faceless Assessing Officer. We cannot accept this because, the E-assessment Scheme itself provides that all communication is deemed to have been received by the assessment units concerned once received through the National e-Assessment Centre. Thus, once the e-assessment Centre is in receipt of the Dispute Resolution Panel directions, the period of limitation runs from that day. There is no requirement of a deep dive in an analysis of the phrase "upon receipt of directions" as it appears in section 144C(13) of the Act. The fundamental principle of interpretation is to assign words their natural, original and precise meaning,*



*provided that the words are clear and take into account the purpose of the statute. It is settled law that a provision should be interpreted in its literal sense and given its natural effect. This is the elementary golden rule of interpretation of statutes. Since there is no ambiguity pertaining to the phrase "upon receipt of the directions issued under sub-section (5) of section 144C of the Act, the Assessing Officer shall. . ." there is no requirement of delving in a further in-depth analysis of the clear provision.."*

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*20. Section 144C of the Act is a self contained provision which carves out a separate class of assessees, i.e., "eligible assessee". Section 144C of the Act was inserted in the Finance Act of 2009, and came into effect from October 1, 2009. In the Notes on Clauses to the Finance Bill, 2009 (Budget 2009-10) ([2009] 314 ITR (St.) 57), the reason for insertion of section 144C is given as under (page 160 of 314 ITR (St.)) :*

*"The subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The correction of such view takes very long time with the existing appellate structure.*

*With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative dispute resolution mechanism within the Income-tax Department and accordingly, section 144C has been proposed to be inserted so as to provide inter alia the Dispute Resolution Panel as an alternative dispute resolution mechanism."*



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

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

“144-C. Reference to Dispute Resolution Panel.—



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

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

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

*(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 153-B, pass the assessment order under sub-section (3) within one month from the end of the month in which,—*

*(a) the acceptance is received; or*

*(b) the period of filing of objections under sub-section (2) expires.*

*(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.*

*(6) The Dispute Resolution Panel shall issue the*



*directions referred to in sub-section (5), after considering the following, namely:—*

- (a) draft order*
- (b) objections filed by the assessee;*
- (c) evidence furnished by the assessee;*
- (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;*
- (e) records relating to the draft order;*
- (f) evidence collected by, or caused to be collected by, it; and*
- (g) result of any enquiry made by, or caused to be made by, it.*

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

- (a) make such further enquiry, as it thinks fit; or*
- (b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.*

*(8) 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.*

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



*Section 144-BA.*

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

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

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

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

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

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

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

*(15) For the purposes of this section,—*

*(a) —Dispute Resolution Panel means a collegium comprising of three Commissioners of*



*Income tax constituted by the Board for this purpose;*

*(b) —eligible assessee means,—*

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

*and*

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

*17. As is manifest from a reading of sub-section (13) of Section 144C of the Act, the AO is not accorded any discretion in the framing of an order of assessment once directions have come to be framed by the DRP. In fact, the provision requires the AO to frame an order of assessment in conformity with those directions and without providing any further opportunity of hearing to the assessee. This principle of law has been affirmed by the Bombay High Court in the afore noted paragraphs of **Vodafone Idea Ltd (supra)** and in **Shell India Markets Private Limited(supra)**. The relevant paragraph of the decision in Shell India is extracted herein below:*

*“10. Sub-section (13) of Section 144C, therefore, is very clear inasmuch as the Assessing Officer shall, upon receipt of the directions issued under sub-section (5), in conformity with the directions, complete the assessment within one month from the end of the month in which such direction is received. Sub-section (13) also provides that the Assessing Officer can complete the assessment without providing any further opportunity of being heard to the assessee. This means that the moment the Assessing Officer receives the directions under sub-section (5), he has to straightaway complete*



*the assessment and he does not even have to hear the assessee. The Assessing Officer shall simply comply with the directions received from the DRP within one month from the end of the month in which such direction is received.*

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

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

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

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

—4(2). All communication among the assessment



unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making an assessment under this Scheme shall be through the National eassessment Centre.

**22. It is thus manifest that as per the provisions of E-as, 2019, all orders, notices and decisions have to be necessarily uploaded on the ITBA portal and as part of the larger faceless assessment regime which now holds the field. The uploading of the directive of the DRP on the ITBA portal would thus constitute valid and sufficient service and the period of limitation as prescribed in Section 144C(13) of the Act would be liable to be computed bearing that crucial date in mind.**

Once the aforesaid position becomes clear, it is evident that the order of assessment, if at all could have been framed lastly by 31 July 2022. There has thus been an abject failure on the part of the first respondent to comply with the mandatory timelines as incorporated in the aforesaid provisions. Accordingly, the writ petition is liable to be allowed and the impugned order of assessment and the consequential penalty proceedings are thus liable to be set aside on this short score alone.

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

**(emphasis supplied)**

40. In *Vodafone Idea Ltd(supra)*, the Revenue has made it clear that once DRP directions are uploaded with DIN number on the ITBA Portal, the same is visible to the AO.



41. In fact, the intimation letter to respondent dated 26.05.2022 having a DIN number, would affirm that the same is the date of uploading of the DRP directions. The ITAT records a finding on the uploading of DRP directions on 26.05.2022 and the same has not been disputed by the Revenue/appellant. As is noted from the affidavit filed before the Bombay High Court, it is in addition to the uploading that the DRP directions are sent through speed post to the AO. It follows, the plea that the physical copy of the DRP order was received only on 01.06.2022 is inconsequential; as the directions along with DIN were already uploaded and available on 26.05.2022. As such, the time for the AO to pass assessment order starts running from 01.06.2022, and expired on 30.06.2022. The assessment order in the present case having been made/passed on 01.07.2022, is clearly barred by limitation.

42. One of the submissions of Mr. Agarwal is that the present assessee was assessed by the Assistant Commissioner of the Income Tax 2 (2)(1) International Taxation, New Delhi and therefore the issue is excluded from the FAS and thereby from exclusive mode of communication. This plea does not appeal to us, for the reason, the Revenue themselves have uploaded the direction of DRP on portal, so they cannot disown that such a process is excluded from this mode of communication. That apart FAS and mode of communication are two different/separate concepts in as much as FAS denotes faceless assessment procedure, which is different from the manner in which communication should be sent by the revenue, which includes electronic communications. Suffice to state in *Vodafone India Ltd. (supra)*, the Bombay High Court was dealing with the uploading of DRP directions and hence, the electronic mode of communication is applicable to



International Taxation. It is established that the order of the DRP was uploaded to the ITBA Portal on 26.05.2022 by generating DIN, and was available to the AO on the said date.

43. One of the contentions of Mr. Agarwal is that the date of “receipt” of DRP directions is the statutory basis for commencement of limitation period available to the AO for the passing of FAO. In other words, it is his submission that the limitation starts from the date the AO is in receipt of DRP order i.e., the date of receipt of DRP order in dak on 01.06.2022. On this issue, it is apposite to consider Section 144C (13) read with Section 282(1)(C) of the Act and Section 13 of the Information and Technology Act, 2000.

44. On this proposition, the High Court of Telangana in ***Rapiscan Systems Pvt. Ltd. (Supra)***, while referring to ***E-Assessment Scheme of 2019, Louis Dreyfus Company India Private Limited (Supra)*** and ***Vodafone Idea Lts. (Supra)*** has held that once the DRP directions are uploaded on the portal, it would mean that the DRP/originator has lost control over it on the date and time the directions were uploaded on the portal and it must be treated to be “receipt” by the recipient i.e., AO on the same date. The relevant paragraphs of the judgment are reproduced as under:-

*“14. The E-assessment Scheme, 2019 ([2019] 417 ITR (St.) 12) placed reliance on section 13 of the Information Technology Act for the purpose of delivery of electronic record. The relevant portion reads thus (page 21 of 417 ITR (St.)):*



**“10. Delivery of electronic record.—(1) Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being the assessee, by way of,—**

(a) placing an authenticated copy thereof in the assessee's registered account; or

(b) sending an authenticated copy thereof to the registered e-mail address of the assessee or his authorised representative; or

(c) **uploading an authenticated copy on the assessee's mobile app; and followed by a real time alert...**

(4) The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000).” (emphasis supplied)

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16. The Bombay High Court in *Vodafone Idea Ltd. v. Central Processing Centre* [(2023) 459 ITR 413 (Bom); 2023 SCC OnLine Bom 2464; (2023) 156 taxmann.com 258 (Bom).] opened as under (page 423 of 459 ITR):

“15. Annexed to the affidavit of Mr. Satish Sharma is a screenshot of the CHN- case history notings of the **Dispute Resolution Panel proceedings uploaded on the Income-tax Business Application portal.** The screenshot is of the page as it appears on the Income-tax Business Application portal. A perusal of the screenshot of case history notings of the Dispute Resolution Panel read with the affidavit filed by Mr. Satish Sharma, the Chief Commissioner of Income-tax and Ms. Anne Varghese, the Joint Commissioner of Income-tax, clearly indicate that **once the Dispute Resolution Panel directions are uploaded and the document identification number ('DIN') is generated, which is also visible on the first**



page of the hard copy of the Dispute Resolution Panel directions, the said document is visible to the Assessing Officer of the Faceless Assessment Unit ('FAU') having jurisdiction over the permanent account number of the assessee concerned. Thus, both the affiants agree that the Dispute Resolution Panel directions once uploaded on the Income-tax Business Application portal are automatically visible to the Faceless Assessing Officer, if any assessment work item is pending related to a particular permanent account number. Admittedly assessment proceedings of the petitioner were pending. Thus, undoubtedly the Dispute Resolution Panel directions uploaded on the Income-tax Business Application portal were readily and clearly visible and accessible to the Faceless Assessing Officer of the assessee....

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



*ambiguity pertaining to the phrase ‘upon receipt of the directions issued under sub-section (5) of section 144C of the Act, the Assessing Officer shall...’ there is no requirement of delving in a further in-depth analysis of the clear provision....*

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

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19. The Delhi High Court in Louis Dreyfus Company India Pvt. Ltd. v. Dy. CIT [(2024) 464 ITR 595 (Delhi); (2024) 2 HCC (Del) 782.] further held that it is obligatory under the scheme to necessarily upload the communication on the Income-tax Business Application portal. Upon uploading the information on the portal, the period of limitation as prescribed under section 144C(13) of the Income-tax Act would be liable to be computed bearing that crucial date in mind.

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23. The pivotal question is whether in view of the language employed in section 144C(13) whether directions of the Dispute Resolution Panel can be said to be received by the Assessing Officer on June 30, 2022. A conjoint reading of section 144C(5) and (13) makes it clear that upon receipt of the directions issued under section 144C(5), it is imperative for the Assessing Officer to complete the proceedings within one month from end of the month in which such a direction is received. Thus, the key words used in section 144C(13) are “upon receipt of directions issued under sub-section (5)”.

24. Although, the Delhi, Bombay and Madras High Courts have already taken a view and we respectfully agree with that once such directions of Dispute Resolution Panel are uploaded on the portal, the Dispute Resolution Panel lost control over it and the date on which it entered the portal, the recipient, i.e., the Assessing Officer comes to know about it.

25. To elaborate, it is profitable to refer to section 13(1) of the Information Technology Act. This sub-section deals with “despatch of electronic record” and envisages that “despatch” of an electronic record is when it enters the computer resource outside the control of originator. Indisputedly, in this case, the “originator” is the Dispute Resolution Panel. Sub-section (za) of section 2 of the Information Technology Act defines the word “originator” and reads thus:



*“2. Definitions.—...*

*(za) ‘originator’ means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;” (emphasis supplied).*

*26. Once “originator” enters a computer resource outside his control, “despatch” takes place. Sub-section (2)(a) of section 13 of the Information Technology Act deals with “receipt” which makes it clear that “receipt” occurs at the time when the electronic record enters the designated computer resource. Thus, the meaning of “despatch” or “receipt” is elaborately defined in the aforesaid sub-sections of section 13 of the Information Technology Act. The word “computer resource” is also defined under section 2(k) of the Information Technology Act, which reads thus:*

*“2. Definitions.—...*

*(k) ‘computer resource’ means computer, computer system, computer network, data, computer database or software;”*

*27. In the instant case, the parties have taken a diametrically opposite view on the aspect whether the directions uploaded on the portal on June 30, 2022 can be treated to be “receipt” on the part of the Assessing Officer. Shri Vijhay K Punna, the learned standing counsel for the Revenue contends that “receipt” will be the date when the e-mail was received by the Revenue containing the Dispute Resolution Panel directions, i.e., on July 5, 2020.*

**28. As per the view taken by the aforesaid three High Courts there is no doubt that when the originator/Dispute Resolution Panel sends its directions in computer resource outside its control, it amounts to “despatch” and similarly, “receipt” takes place when the said electronic record enters the computer resource.**



29. Section 282 of the Income-tax Act on which reliance was placed by Shri Vihay K. Punna, the learned standing counsel for the Revenue makes it clear that in sub-section (1)(c) of section 282, the communication through electronic record as per Chapter IV of the Information Technology Act was recognised and treated to be service of notice generally. Chapter IV of the Information Technology Act contains section 13, which envisages time, place of “despatch” and “receipt” of electronic record.

30. In order to meticulously examine the aspect of “despatch” and “receipt”, in the present case, it is apt to quote the relevant portion of the letter dated March 5, 2024 filed along with I.A. No. 1 of 2024 in the present matter, which reads as under:

“2. In this regard, it is hereby stated that the directions dated June 30, 2022 were uploaded on Income-tax Business Application portal on June 30, 2022. Further, the physical copy of the directions was also sent to the Assessing Officer on June 30, 2022 through speed post.”  
(emphasis supplied)

31. The Income-tax Department through communication dated June 30, 2022 (annexure P-19) informed that the order under section 144C(5) dated June 30, 2022 is having Document No. (DIN) ITBA/DRP/M/144C(5)/2022- 23/1043689612 (1). This is a system generated document and it does not require any signature. A conjoint reading of communications dated January 30, 2024 and March 5, 2024 (annexure P-18) and communication dated June 30, 2022 (annexure P-19) leaves no room for any doubt that the Dispute Resolution Panel's directions were despatched on June 30, 2022 and also uploaded on the portal on the same date. Thus, the Dispute Resolution Panel/originator had lost control over it on the date and time the said directions were uploaded on the portal. Hence, the same must be treated to be a “receipt” by the recipient, i.e., the Assessing Officer on the same day, i.e., June 30, 2022. (See paragraph 26.7 of Suman Jeet Agarwal v. ITO [(2022) 449 ITR 517 (Delhi); 2022 SCC OnLine Del



**3141.] , where the Delhi High Court poignantly held that the portal of the Department is the “computer resource in the control of the Department”).**

32. In view of the forgoing discussion, there is no cavil of doubt that the Assessing Officer received the Dispute Resolution Panel's directions on June 30, 2022 and, therefore, the limitation must be counted from that date and not from July 5, 2022. The impugned assessment orders dated August 30, 2022 and September 1, 2022 that were issued counting the limitation from July 5, 2022 in both the writ petitions are liable to be set aside as the same are issued beyond permissible period of limitation.

33. In the result, both the writ petitions are allowed by setting aside the impugned assessment orders dated August 30, 2022 and September 1, 2022. There shall be no order as to costs. Miscellaneous applications, if any, shall stand closed.”

(emphasis supplied)

45. In fact, Ms. Kapoor has referred to the judgment of this Court and other High Courts dealing with Section 144 C (13) of the Act, in support of her submissions, as reproduced above. We agree with the submission of Ms. Kapoor that the date of uploading of the order of the DRP will *ipso facto* be considered as service to the recipient, more so when the DRP proceedings are also assessment proceedings and vide order dated 26.05.2022, the necessary documents were uploaded on the ITBA Portal for the perusal of the assessee and the Assessment Unit/ AO by providing DIN credentials.

46. Suffice it to state, paragraph 4(2) of *E-Assessment Scheme of 2019* was referred in the judgment of this Court in *Louis Dreyfus Company India Private Limited (Supra)*, to draw a conclusion that, as per the provisions of the *E- Assessment Scheme of 2019*, all orders, notices and



decisions have to be necessarily uploaded on the ITBA Portal. As part of the larger Faceless Assessment Regime, all filed and uploaded directives of the DRP would be construed to be sufficient service and the period of limitation as prescribed under Section 144C (13) of the Act, would be liable to be computed from the date of uploading of the order and the AO shall pass the Assessment Order, bearing that crucial date in mind.

47. If that be so, the crucial date being 26.05.2022 and the date of one month from the end of the month on which DRP order/ directive was received by the AO would be 30.06.2022. In the case of the appellant/Revenue, the FAO was passed only on 01.07.2022, which is clearly barred by limitation as contemplated under Section 144 C (13) of the Act.

48. Mr. Agarwal has relied upon the judgments, as noted below along with the propositions of law laid down therein:

- i. ***GAIL (India) Ltd (Supra)***:- The Court found that on a refund claim the limitation period starts from the "date of service" of the final assessment order. This means that simply uploading the order to a customs portal is not enough. The assessee must receive formal intimation of the order for the one-year limitation period under Section 27(1B)(c) of the Customs Act, 1962, to begin. Furthermore, Merely because the Customs Department has uploaded the final assessment order on portal is not sufficient compliance of intimation to the assessee as it is a condition *sine qua non* to file the refund claim within one year as per Section 27(1B)(c) of the Act from the



date of finalization provided such order of assessment is communicated to the assessee. The judgment is clearly distinguishable as it is a case under the Customs Act governed by provisions of the said Act.

ii. ***Suman Jeet Agarwal (Supra)***:- In this case the impugned notices were generated and sent for dispatch through electronic mail by the Jurisdictional Assessing Officer using ITBA software developed by TCS on 31.03.2021 and through normal post on 01.04.2021. The issue in this petition was whether the “dispatch” of notices is separate from “issue”. In this case a clear distinction between the **generation** of a notice and its **issuance** or **dispatch** was drawn. The Court held that a notice generated on the ITBA Portal is not "issued" until it is actually sent to the assessee, either by email or post. The date of dispatch is the relevant date for computing the limitation period, not the date of internal generation. This reinforces that a document's legal effect requires a demonstrable act of communication. Suffice to state, the judgment does not consider the effect of E-Assessment Scheme 2019, as was considered by the judgment in the case of ***Louis Dreyfus Company India Private Limited (Supra)***.

iii. ***Sudhir Choudhrie (Supra)***:- This Court held that ITAT orders must be pronounced in open court on the date of signing/declaration to trigger parties' awareness and limitation for appeals under Section 254(1). Pronouncement is an official declaration, not behind parties' backs; mere communication later cannot prejudice rights. Section



255(5) empowers ITAT to regulate procedure for justice, including pronouncement. Delayed communication (years in some cases) renders appeals ineffective; pronouncement ensures timely recourse, ending arbitrary delays.

- iv. ***Odeon Builders P Ltd. (Supra)***:- This Court while interpreting Section 260A(2)(a) for limitation to appeal ITAT orders held that :
- (i) "Received" means by any named departmental officer (e.g., CIT(Judicial)), triggering limitation. (ii) No need to read "concerned" into the section; limitation starts from receipt by any such officer, not only the jurisdictional one. (iii) ITAT's obligation under Section 254(3) is met by sending to parties/memo details; jurisdiction changes do not postpone limitation. (iv) Earlier cases (Arvind Construction, ITAT) reconciled but inapplicable to Section 260A. (v) Post-pronouncement, departmental awareness presumed; certified copy preparation time excludable if applied immediately. (vi) Receipt by CIT(Judicial) suffices. (vii) For common orders, limitation from earliest receipt by any officer. (viii) Administrative instructions cannot override statutory limitation start date.
- v. ***Canon India P Ltd (Supra)***:-The Supreme Court held that only the "proper officer" who assessed/cleared goods under Section 17 can issue show-cause notices for duty recovery under Section 28 of the Act.. DRI-issued notice for misclassification of cameras as non-video (based on 29-min recording limit) was invalid. The Review petition (2024) partially allowed, clarifying DRI officers can be



empowered via notifications under Section 4(2); 2021 judgment per incuriam for overlooking Section 28(11) validation upheld.

- vi. ***Arvind Construction Co P Ltd. (Supra)***:- This Court held that limitation for reference under Section 256 to High Court starts from the date the jurisdictional CIT receives the ITAT order, not the CIT(Judicial). Receipt by any "Commissioner" triggers the 60-day period, but internal forwarding delays are the Department's responsibility. Earlier decisions aligned; emphasized strict statutory interpretation without adding "concerned."
- vii. ***CIT v ITAT & Another : (2000) 245 ITR 659 (Del)***:-This Court ruled that for filing reference under Section 256, limitation under Section 256(1) begins upon receipt of ITAT order by the jurisdictional CIT, not CIT(Judicial) or pronouncement date. ITAT's duty under Section 254(3) is to communicate to parties; departmental receipt by any officer starts the clock, but jurisdictional one controls for appeal decision. It was held that the point raised in the writ petition is fully covered by a decision of this court in ***Arvind Construction Co. Private Limited, (Supra)***.
- viii. ***Jaipuria Samla Amalgamated Collieries Ltd. (Supra)***:- The Supreme Court held that reopening assessment under Section 34(1)(a) of the 1922 Act (now Section 147) requires tangible evidence of escapement, not mere change of opinion. Where initial assessment overlooked certain facts but no "information" escaped



notice, reopening invalid. It was emphasized that reassessment cannot substitute fresh assessment without new materials.

- ix. ***Raghuvar India Ltd (Supra)***:- The Supreme Court clarified that limitation under Section 11A (5 years for extended period on suppression) applies only to show-cause for duty/tax recovery, not refunds or credits. Any law prescribing a period of limitation that creates or destroys rights must be specifically enacted. Courts cannot impose limitation periods by implication where none exist, though they may require actions affecting citizens' rights to be exercised within a reasonable time
- x. ***Kanwar Singh Saini (Supra)***:- The Supreme Court held that jurisdiction is a legislative function and cannot be conferred by parties' consent or by a superior court. If a court or tribunal lacks jurisdiction, its orders or decrees are null and void, as this issue goes to the root of the matter. Such a jurisdictional challenge can be raised at any stage, including during appeal or execution. A court's findings become irrelevant and unenforceable if it lacks jurisdiction, and acquiescence by a party cannot override statutory limits, as courts derive their authority solely from legislation.
- xi. ***M. M. Rubber & Company(Supra)***:- The Supreme Court held that when an authority is empowered to exercise a function or make a decision affecting parties' rights, it must do so within the prescribed limitation period. The order or decision becomes effective from the date it is signed by the authority, marking the point when the



authority no longer has the power to alter or redraft it (i.e., when there is no *locus poenitentiae*). This date, when the order is made public, notified, or leaves the authority's control, is considered the date the order is "made" or "passed." The date when the order is communicated to the affected party is irrelevant for determining whether the authority exercised its power within the prescribed limitation period.

- xii. **Mohammed Meeran (Supra)**:- In this case, The Supreme Court held that under Section 263(2), the 2-year limitation for revision runs from the end of the financial year in which the order sought to be revised was "made," not "received" by the assessee. Word "made" is key; receipt date irrelevant. The revision order passed within 2 years of making was valid, despite delayed communication.

49. Mr. Agarwal has relied upon those judgments for the proposition as reproduced by us. Suffice it to state that none of the judgments relied by Mr. Agarwal relates to the interpretation of the limitation in the context of an order passed under Section 144C (13) of the Act by the DRP and uploaded on the ITBA portal. As such these judgments are distinguishable on facts, more so, in view of the provisions of Section 144C (13) of the Act read with the **E-Assessment Scheme of 2019**. At the cost of repetition, we state that the judgment of this Court in **Louis Dreyfus Company India Private Limited (Supra)** and the Bombay High Court is **Vodafone Idea Ltd. (Supra)** has settled the position of law in this regard.



50. In view of the above discussion, we are of the view that no substantial questions of law arise for consideration in this appeal. Accordingly, the appeal is dismissed.

**V. KAMESWAR RAO, J**

**VINOD KUMAR, J**

**OCTOBER 29, 2025**

*RT*