

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.O. No. 284 of 2024

ALMATIS ALUMINA PRIVATE LIMITED

-VERSUS-

**ASSISTANT/DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE (7)1, KOLKATA AND OTHERS**

For the petitioner : Mr. J.P. Khaitan, Sr. Adv.,
Mr. Akhilesh Gupta, Adv.,
Mr. Pranav Sharma, Adv.

For the respondents : Mr. Soumen Bhattacharya, Adv.

Hearing concluded on : 18.03.2026

Judgment on : 19.03.2026

Kausik Chanda, J.:-

The present writ petition under Article 226 of the Constitution of India raises an issue concerning the statutory scheme under Section 144C of the Income Tax Act, 1961, relating to the Dispute Resolution Panel. The petitioner challenges the action of the Income Tax Authorities in seeking to enforce a demand purportedly arising from a notice of demand dated March 16, 2021 issued under Section 156 of the Act. The said demand was issued along with a draft assessment order under Section 144C(1) for the assessment year 2017–18. The grievance of the petitioner is that although a draft order was issued and objections were duly filed before the Dispute Resolution Panel, no final assessment order was ever passed within the statutory time limit prescribed under Section 144C(13). In such circumstances, it is contended that no enforceable demand exists in law and the attempt of the authorities to recover the alleged tax liability is wholly without jurisdiction.

2. The petitioner had filed its return of income for the assessment year 2017–18 declaring its total income under the normal provisions of the Act as ‘nil’ and reporting a book loss of Rs. 21,34,14,840/- under Section 115JB. During the relevant financial year, the petitioner had entered into certain international transactions with its associated enterprises. Consequently, the Assessing Officer made a reference to the Transfer Pricing Officer under Section 92CA(1) of the Act for determination of the arm’s length price in relation to such transactions. By an order dated January 25, 2021 passed under Section 92CA(3), the

Transfer Pricing Officer proposed an adjustment of Rs.41,13,22,617/- to the income of the petitioner. Since the proposed adjustment resulted in a variation prejudicial to the assessee, the special procedure contained in Section 144C became applicable.

3. In terms of Section 144C(1), the National e-Assessment Centre forwarded to the petitioner a draft of the proposed assessment order dated March 16, 2021 incorporating the variation determined by the Transfer Pricing Officer. Along with the draft order, a notice of demand under Section 156 and a notice initiating penalty proceedings under Section 274 read with Section 270A were also issued. Being aggrieved by the proposed variation, the petitioner filed objections before the Dispute Resolution Panel within the time prescribed under Section 144C(2). The Assessing Officer as well as the National e-Assessment Centre were duly informed about the filing of such objections.

4. The Dispute Resolution Panel thereafter issued its directions on August 31, 2021 under Section 144C(5). The directions were received by the authorities in September 2021. Pursuant thereto, the Transfer Pricing Officer passed an order dated October 29, 2021 giving effect to the directions of the Dispute Resolution Panel and reducing the transfer pricing adjustment from Rs.41,13,22,617/- to Rs.29,94,72,101/-. However, despite the issuance of such directions, the Assessing Officer did not pass any final assessment order completing the assessment in conformity with the directions of the Dispute Resolution Panel.

5. The statutory scheme governing limitation for completion of assessment assumes importance in this context. Under Section 153 of the Act, the time limit for completion of the assessment for the assessment year 2017–18 was twenty-one months from the end of the relevant assessment year, that is to say December 31, 2019. Since a reference had been made to the Transfer Pricing Officer under Section 92CA, the limitation period stood extended by twelve months, thereby making December 31, 2020 the last date for completion of assessment. In view of the extraordinary circumstances arising from the COVID-19 pandemic, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 read with Notification No. 10 of 2021 dated February 27, 2021 extended the time limit for completion of the assessment to September 30, 2021.

6. However, once the procedure under Section 144C is invoked, the completion of assessment is governed by the specific provision contained in Section 144C(13). The said provision mandates that upon receipt of the directions of the Dispute Resolution Panel under Section 144C(5), the Assessing Officer shall complete the assessment in conformity with such directions within one month from the end of the month in which the directions are received, notwithstanding anything contained in Section 153 or Section 153B. The directions of the Dispute Resolution Panel having been received in September 2021, the Assessing Officer was statutorily required to pass the final assessment order on or before October 31, 2021. Admittedly, no such order was passed.

7. Despite the absence of a final assessment order, the Income Tax Department proceeded to enforce the demand which had been raised by the notice dated March 16, 2021 issued along with the draft order. The petitioner received several communications between February 2022 and January 2023 calling upon it to make payment of the alleged demand. Thereafter, further intimations were issued proposing adjustment of the said demand against refunds due to the petitioner for other assessment years. The petitioner repeatedly objected to such communications and also lodged grievance petitions through the online portal. However, no relief was granted and the demand continued to be reflected as outstanding, which compelled the petitioner to approach this Court.

8. This Court, by an interim order dated April 18, 2024, granted protection to the petitioner in respect of the impugned demand and penalty notices. The said interim order has been extended from time to time and continues to remain in force. Notwithstanding the subsistence of the interim order, the respondents adjusted an amount of Rs.74,970/- against a refund due to the petitioner for the assessment year 2014–15. Subsequently, another intimation under Section 245 dated August 21, 2024 was issued proposing further adjustment of the alleged demand against refunds due for other years.

9. The principal contention advanced on behalf of the petitioner is that in the absence of a final assessment order passed within the period prescribed under Section 144C(13), the jurisdiction of the Assessing Officer to complete the assessment stood extinguished. It is submitted

that the draft assessment order cannot by itself give rise to any enforceable tax liability and that the notice of demand issued along with such draft order is a nullity in law. The petitioner has relied upon several judgments reported at **(2023) 459 ITR 413 (Bom) (Vodafone Idea Ltd. v. Central Processing Centre)**, **(2024) 464 ITR 595 (Delhi) (Louis Dreyfus Company India Pvt. Ltd. v. Deputy Commissioner of Income Tax)**, **(2025) 473 ITR 485 (Telangana) (Rapiscan Systems Pvt. Ltd. v. Additional Director of Income Tax (International Taxation))**, **(2025) 478 ITR 114 (Ker) (IBS Software Services Pvt. Ltd. v. Union of India)**, and **(2025) 481 ITR 767 (Bom) (Principal Commissioner of Income Tax v. Sterling Oil Resources Ltd.)**, wherein it has been consistently held that the time limit prescribed under Section 144C(13) is mandatory and that failure to pass the final assessment order within the prescribed period results in lapse of jurisdiction.

10. In response, the respondents have sought to explain the failure to complete the assessment on the ground that certain technical glitches occurred in the ITBA system. According to the respondents, while issuing the draft order on March 16, 2021 the functionality meant for passing the final assessment order was inadvertently used instead of the functionality meant for passing a draft assessment order. It is stated that because of this technical error the assessment proceedings were shown as closed in the system and consequently the final order could not be passed. On this basis the respondents have prayed that

reasonable time may be granted to enable them to pass an order giving effect to the directions of the Dispute Resolution Panel.

11. The explanation furnished by the respondents cannot be accepted. The statutory provisions governing limitation for completion of assessment are clear and unambiguous. Section 144C(13) expressly requires the Assessing Officer to complete the assessment within one month from the end of the month in which the directions of the Dispute Resolution Panel are received. The provision further declares that the said requirement operates notwithstanding anything to the contrary contained in Section 153 or Section 153B. The legislative intent underlying this provision is to ensure expeditious completion of assessment once the Dispute Resolution Panel has issued its directions. The language employed in the statute is mandatory and leaves no scope for extension of time on administrative or technical grounds.

12. It is well settled that once the statutory period of limitation expires, the authority concerned becomes functus officio and loses the jurisdiction to pass the assessment order. Internal administrative difficulties or technical issues within the departmental systems cannot operate to extend a period of limitation prescribed by statute. In the judgments relied upon by the petitioner, it has been clearly held that authorities cannot ignore or bypass the period of limitation prescribed in Section 144C(13) to complete the assessment.

13. The reliance placed by the respondents upon the decision of the Supreme Court reported at **(2025) 177 taxmann.com 262 (SC)**

(Assistant Commissioner of Income-tax (International Taxation) v. Shelf Drilling Ron Tappmeyer Ltd.) is misplaced. The controversy in that case concerns the interplay between the time limit prescribed under Section 153 and the procedure contained in Section 144C, particularly whether the entire process under Section 144C must fall within the overall limitation prescribed in Section 153. That issue has no bearing upon the present case. The petitioner does not contend that the procedure under Section 144C must be completed within the time limit of Section 153. The petitioner's case is that even within the time specifically provided under Section 144C(13) the respondents failed to pass the final assessment order. The issue considered in Shelf Drilling therefore does not arise in the present proceedings.

14. In the absence of a valid final assessment order passed within the statutory time frame, the draft assessment order cannot give rise to any enforceable demand. A notice of demand issued along with the draft order is without legal basis since the liability to pay tax crystallizes only upon completion of the assessment. Consequently, the demand sought to be enforced against the petitioner for the assessment year 2017-18 has no legal foundation. The petitioner's return of income must therefore be treated as having been accepted.

15. For the foregoing reasons, the impugned notice of demand dated March 16, 2021 issued under Section 156 and the penalty notice issued under Section 274 read with Section 270A in respect of the assessment year 2017-18 are quashed and set aside. The respondents are directed

to refund to the petitioner the sum of Rs.74,970/- which was adjusted against the refund due for the assessment year 2014–15, together with such statutory interest as may be applicable. The respondents shall also refrain from taking any further steps to enforce the impugned demand.

16. W.P.O. No.284 of 2024 is accordingly allowed. There shall be no order as to costs.

17. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)