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

WRIT PETITION NO.3710 OF 2024

Fugro Survey India Private Limited .. Petitioner

Versus

The National Faceless Assessment Centre and Ors. .. Respondents

Mr.Dharan V. Gandhi, with Ms.Aanchal Vyas, Advocates for the Petitioner.

Mr.Akhileshwar Sharma, Advocate for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: FEBRUARY 10, 2026

P. C.

1. The above Writ Petition is filed to challenge the Order passed by Respondent No.2 (the DRP) in so far as it records the finding (a) that the Petitioner had failed to intimate the Assessing Officer about the filing of the objections before the DRP; and (b) the objections filed by the Petitioner are taken as non-est for failing to adhere to the requirements of clause (b) of Section 144C(2) of the Income Tax Act, 1961 ("the I.T.Act").

2. Mr.Gandhi, the learned counsel appearing on behalf of the Petitioner, submitted that in the facts of the present case, the Order was passed by the Transfer Pricing Officer (TPO) under Section 92(CA)(3) of the Income Tax Act proposing and / or recommending certain adjustments to the income of the Petitioner. Pursuant to the recommendation of the TPO, Respondent No.1 (NFAC) on 14th September 2023 passed a draft assessment order under Section 144C(1) of the I.T.Act and served the same on the Petitioner. As per the provisions of Section 144C(2), the Petitioner, on 13th October 2023, filed its objections to the draft assessment order with Respondent No.2 (DRP). On the same very day, i.e. on 13th October 2023, the Petitioner also addressed an email to the I.T.Authorities as well as a letter to Respondent Nos. 2 and 3 that the Petitioner had filed its objections before the DRP. According to Mr.Gandhi, once this was the case, the 1st Respondent could not have proceeded to pass any final assessment order. However, contrary to the provisions of Section 144C, on 26th October 2023, the final assessment order was passed by Respondent No.1 assessing the total income of the Petitioner at Rs.85.04 crores against the returned income of 36.46 crores. In other words, by the final assessment order, an addition of Rs.48.58 crores was made on account of the Transfer Pricing Adjustment.

3. Mr.Gandhi submitted that being aggrieved by the final assessment order passed on 26th October 2023, the Petitioner approached the CIT (Appeals) on 23rd November 2023. This Appeal is pending. One of the grounds in the Appeal (ground no.2) is that the final assessment order could not have been passed since the objections of the Petitioner to the draft assessment order were pending before the DRP and the same was duly intimated to the Assessing Officer.

4. Mr.Gandhi submitted that when the Petitioner's objections to the draft assessment order came up before the DRP, since the final assessment order was already passed, the DRP ought to have simplicitor not entertained the objections by holding that it had become *functus officio* [because the final assessment order was already passed]. The DRP could not have given any directions or a finding that the Petitioner had not intimated the Assessing Officer about the objections being filed before the DRP. He submitted that once the final assessment order is passed under Section 144C(4), the DRP becomes *functus officio* and thereafter, cannot pass any directions or give any findings. In this regard, Mr.Gandhi relied upon the decision of this Court in the case of **Undercarriage and Tractor Parts Pvt.Ltd. vs. Dispute Resolution Panel – 3 and Ors. [Writ Petition No.2387 of 2020 decided on 12th September 2023].**

5. Accordingly, Mr.Gandhi submitted that the observations made by the DRP, regarding the Petitioner not intimating the assessing officer about the objections filed before the DRP, ought to be set aside.

6. On the other hand, Mr.Sharma, the learned Advocate appearing on behalf of the Revenue, relying upon the Affidavit in Reply filed in the above Writ Petition, submitted that in the present case, intimation of filing the objections before the DRP had to be informed to the Faceless Assessing Officer who had passed the Draft Assessment Order. According to Mr.Sharma, it is the admitted position that no such intimation was given to the Faceless Assessing Officer. He submitted that as an after thought, the Petitioner, in the present Petition, has stated that it was unable to inform the Faceless Assessing Officer on the portal due to some technical glitch and therefore it informed the Jurisdictional Assessing Officer. Mr.Sharma submitted that apart from making this bald averment in the Petition, there is nothing on record to show that the portal was not functioning when the Petitioner informed the Jurisdictional Assessing Officer about the filing of their objections before the DRP. Consequently, Mr.Sharma submitted that the finding rendered by the DRP were fully justified, and hence, required no interference by this Court.

7. We have heard the learned counsel for the parties and also perused the papers and proceedings in the above Writ Petition. The facts as narrated by us above are not disputed. It is not in dispute that initially, after the order was passed by the TPO, Respondent No.1 passed a draft assessment order under Section 144C(1) of the I.T. Act. To this draft order, the Petitioner filed its objections before Respondent No.2. The Petitioner also addressed an email to Respondent No.2 as well as Respondent No.3 (JAO) intimating them that objections have been filed before the DRP to the Draft Assessment Order. After this, the final assessment order was passed by Respondent No.1 on 26th October 2023. From this final assessment order, an Appeal is also filed by the Petitioner before the CIT (Appeals), and which is pending.

8. In these facts, we are clearly of the view that once a final assessment order was passed, even assuming for the sake of argument wrongly, the DRP could not have issued any directions and / or given any finding, as was sought to be done in the impugned order passed by the DRP. We say this because in the scheme of Section 144C, the DRP can issue directions only when the assessment is pending. This is quite clear from the provisions of Section 144C(5), 144C(6), 144C(7), 144C(8), 144C(11), 144C(12) and 144C(13). When one reads these provisions, it becomes clear that the directions to be given by the DRP are only when the assessment proceedings are pending and not after final assessment order is passed. Once the final assessment order is passed, the DRP can issue no directions or give any finding. In the view that we take, we are supported by the decision of this Court in the case of **Undercarriage and Tractor Parts Pvt.Ltd. (Supra)**. In the facts of that case, before the DRP passed any directions, a final assessment order was passed by the Assessing Officer. Despite this, the DRP proceeded to pass certain directions. Based on the directions given by the DRP, the Assessing Officer passed a fresh assessment order which was challenged before this Court. It is in this light that this Court observed that the DRP could give directions only in pending assessment proceedings, and once the assessment order was passed, rightly or wrongly, the assessment proceedings came to an end. Once they came to an end, the DRP had no power to pass any directions under sub section (5) of section 144C of the I.T. Act. The relevant portion of this decision reads thus:

> *"10 Section 144C(5) of the Act provides "the DRP 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". Therefore, it is quite obvious, when it says "..... to enable him to complete the assessment", it presupposes pending assessment proceedings.*
>
> *Sub-section 6 of Section 144C of the Act provides "the DRP shall issue the directions referred to in sub-section 5, after*

considering the following .....". The directions referred to in sub-section 5 are those directions for the guidance of the Assessing Officer to enable him to complete the assessment. Therefore, this also presupposes pending assessment proceedings.

Sub-section 7 of Section 144C of the Act provides "the DRP may, before issuing any directions referred to in sub-section 5.....". These directions are for the guidance of the Assessing Officer to enable him to complete the assessment, which also presupposes pending assessment proceedings.

Sub-section 8 of Section 144C of the Act provides "the DRP may confirm, reduce or enhance the variations proposed in the draft order ......" which means the assessment proceedings are still pending.

Sub-section 11 of Section 144C of the Act provides "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" which also presupposes pending assessment proceedings.

Similarly under sub-section 12 of Section 144C of the Act which says "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"; and

Under sub-section 13 of Section 144C of the Act which says "upon receipt of the directions issued under sub-section 5, the Assessing Officer shall, in conformity with the directions, complete ..... the assessment .....".

Therefore, the DRP could give directions only in pending assessment proceedings. Once assessment order is passed, rightly or wrongly, the assessment proceedings come to an end. Therefore, the DRP would have no power to pass any directions contemplated under sub-section 5 of Section 144C of the Act. Act."

9. The SLP against this Order is also dismissed by the Hon'ble Supreme Court on 2nd May 2025.

10. After analyzing the provisions of Section 144C as well as the law laid down by this Court in **Undercarriage and Tractor Parts Pvt.Ltd. (Supra)**, we are of the view that the DRP ought to have simplicitor dismissed the objections of the Petitioner on the sole ground that a final assessment order has already been passed and ought not to have given any finding in relation to any matters relating thereto. We, accordingly, direct that the findings given in relation to whether the objections filed by the Petitioner before the DRP were intimated to the Assessing Officer, or otherwise, were wholly unwarranted in the facts of the present case.

11. We, accordingly, direct that those findings of the DRP shall not be considered when the CIT (Appeals) decides the Appeal filed by the Petitioner against the final assessment order dated 26th October 2023. In other words, the CIT (Appeals) shall decide the Appeal filed by the Petitioner without being influenced by any of the observations made by the DRP in the impugned order dated 6th May 2024.

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

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

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**