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WP No. 15393 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.11.2025
Pronounced on	27.01.2026

CORAM

THE HON'BLE MR JUSTICE C. SARAVANAN

W.P.No.15393 of 2022

and

W.M.P.Nos.14550 and 14551 of 2022

Eaton Power Quality Private Limited,
Represented by its Managing Director
and Authorized Signatory
Syed Sajjadh Ali

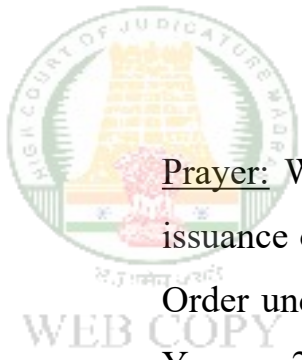
... Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Transfer Pricing Officer 1(2),
Room No.502, 5th Floor,
Tower – 1,
No.16, BSNL Building,
Greams Road, Chennai – 600 006.

2.The Assessing Officer,
National Faceless Assessment Centre,
Delhi, Income Tax Department,
Government of India,
2nd Floor, Jawahar Lal Nehru Stadium,
New Delhi – 110 003.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records and quash the impugned Order under Section 92CA(3) of the Act dated 27.01.2022 for the Assessment Year 2017-2018 in DIN & Order: ITBA/TPO/F92CA3/2021-2022/1039116837(1) in PAN: AAACC6943R issued by the 1st Respondent and all further proceedings thereto.

For Petitioner : Mr.Vishal Kalra
For Mr.S.P.Chidambaram

For Respondents : Mr.Avinash Krishnan Ravi
Junior Standing Counsel

ORDER

In this Writ Petition, the Petitioner has challenged the impugned Order dated 27.01.2022 passed by the 1st Respondent under Section 92CA(3) of the Income Tax Act, 1961.

2. By the impugned Order dated 27.01.2022, the 1st Respondent Deputy Commissioner of Income Tax, Chennai has ordered as under:-

'From the above, it can be seen that residual method under Rule 10AB was brought into the statute to evaluate transactions which were not being capable of being evaluated under other regular methods and is also in accordance with the OECD Guidelines referred earlier. Further, if one were to accept the assessee's contentions, then certain transactions would be



rendered incapable of being evaluated for ALP. This certainly is not the case and the Income Tax Rules and OECD Guidelines provide for benchmarking or transactions even with hypothetical prices as held by the ITAT in the case of Gulf Energy Maritime Services P Ltd (supra).

As discussed above, the other Method is adopted as the Most Appropriate Method and the ALP of the transactions relating to Corporate Support Service Fee in pursuance of the Agreement is treated as NIL by benchmarking it separately under Rule 10AB and a downward adjustment of Rs.20,12,29,781/- is proposed on the said transaction.

12. It is hereby clarified that the findings and discussions made in this order are applicable only in respect of reference received for Assessment Year 2017-2018 and not for any other Assessment Year.'

3. The case of the petitioner is that the reference to the 1st Respondent on 13.01.2022 was beyond the statutory period of limitation under Section 153(2) r/w 153(4) and Section 92CA(1) of the Income Tax Act, 1961.

4. The sum and substance of the challenge to the impugned Order dated 27.01.2022 passed under Section 92CA(3) of the Income Tax Act, 1961 is that the date of approval under Section 92CA(1) from the Principal Commissioner or Commissioner of Income Tax has to be computed with the reference timelines contemplated under Sub-Section (2) to Section 92CA of the Income Tax Act, 1961.



5. The challenge to the impugned Order is primarily on the ground of limitation and has inspired from the decision of a Division Bench of this Court in **Virtusa Consulting Services (P.) Limited Vs. Dispute Resolution Panel (DRP)**, [2022] 446 ITR 454.

6. To substantiate the arguments, the learned counsel for the Petitioner drew attention to the following paragraphs from the decision of the Division Bench of this Court in **Virtusa Consulting Services (P.) Limited** (cited *supra*).

“19. Similarly, the contention of the learned counsel for the Revenue that both the proviso’s to section 153(1) are independent, have no connection in their operation and the reference to the Transfer Pricing Officer has to be made within twenty four (24) months and additional time of nine (9) months was granted to complete the final assessment proceedings is fallacious. The said contention is against the scheme of determination and assessment of arm’s length price dealt in the Act under sections 92CA, 144C and 153. As discussed in the timeline (supra), when the time given to the Dispute Resolution Panel itself is nine (9) months from the date of draft order to complete the assessment and then a further time of one month to the Assessing Officer to complete the assessment from the end of the month in which the direction is received, it cannot be said that the total additional time was nine (9) months and the provisos have no connection. It is also not out of place to mention here that if the time provided to the Transfer Pricing Officer to pass an order and for the assessee to submit their objections as per section 144C(2) are also considered along with the time period for the



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Dispute Resolution Panel and the Assessing Officer, it is beyond any doubt that the extended period is twelve (12) months and not nine (9) months. Further, when one proviso provides a time limit and when another proviso extends such time under certain circumstances, it cannot be held that both the provisos are independent. Therefore, the proviso which has altered the original time limit from twenty four (24) months to twenty one (21) months vide amendment in Finance Act, 2006 with effect from June 1, 2006 and the second proviso inserted by Finance Act, 2007, extending the time for completion of assessment, when a reference has been made to the Transfer Pricing Officer, during the course of assessment proceedings, have to be read in tandem and together. Our decision is also fortified by the fact that section 153 was repealed and substituted with effect from June 1, 2016, where under section 153(1) it is clearly mentioned that the period of assessment is twenty one (21) months and under section 153(4), it is clearly mentioned that in case of reference under section 92CA(1) during the course of assessment proceedings, the period of assessment would be extended by twelve months clarifying the mischief caused on account of the interpretation adopted by the officials. Therefore, when the extended time provided for the Department is twelve (12) months, the Department cannot contend that it is only nine (9) months as because the reference was not made in time. Similarly, we also disagree with the findings of the learned judge, who has embarked much on the circular regarding the necessity for more time for the Transfer Pricing Officer and the reason for the amendment losing sight of the time provided in the amendment and period within which the reference is to be made.

20. Now, coming to the next contention on "estoppel", we have already held that the question of limitation is a legal plea, which goes to the root of the jurisdiction of the authorities. A legal plea can be raised at any stage of the proceedings. It will be useful to refer to the following judgments in this regard.



i. *National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad* (2011) 12 SCC 695 :

ii. *Band Box (P.) Ltd. v. Estate Officer, Punjab and Sind Bank* (2014) 16 SCC 321:

iii. *K. Lubna v. Beevi* (2020) 2 SCC 524 :

21. Further, there cannot be any waiver of a statutory right as rightly contended by the learned senior counsel for the appellant. It is useful to refer to some judgments on this aspect.

i. *Supdt. of Taxes v. Onkarmal Nathmal Trust* (1976) 1 SCC 766 :

ii. *CIT v. Jolly Fantasy World Ltd.* [2015] 373 ITR 530 (SC):

22. From the above judgments, it is clear that a legal plea can be raised at any stage and there cannot be any waiver of a statutory right. In the present case, though the appellant-petitioner has participated in the proceedings before the Transfer Pricing Officer and the Assessing Officer, it is their specific stand that they have raised the issue before the Dispute Resolution Panel and also that, when they submitted their objections and documents to the Transfer Pricing Officer, the date of reference was not known to them. This stand is not factually objected to by the Department. Further, there is no acquiescence, waiver or estoppel in taxing laws. The law on this point is well settled. The levy and collection of tax must be within the four corners of law in compliance with the substantial and procedural mandates of connected legislations. Therefore, we again disagree with the findings of the learned judge.

23. If the reference is bad, then as a sequitur, all further proceedings, in furtherance of the same are also bad. In the present case, because of a reference after the



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permissible period, the time line has been missed by the Department at every stage. Therefore, the appellant is entitled to succeed in the appeal.

24. In the result, the appeal succeeds and the writ petition stands allowed. There will be no order as to costs.”

7. Learned counsel for the Petitioner submits that the case was earlier handled by the Transfer Pricing Officer (TPO), Hyderabad and thereafter transferred to the 1st Respondent Transfer Pricing Officer (TPO), Chennai. Learned counsel also drew attention to the Registers of Records to be maintained by the 1st Respondent Deputy Commissioner of Income Tax, Transfer Pricing Officer (TPO), Chennai for international transaction as per Annexure-I and Annexure-II to Instructions at Sl.Nos.2 and 3. It is further submitted that the Petitioner was called upon to produce the details. However, the Petitioner failed to produce the same.

8. Learned counsel for the Petitioner submitted that the difference between approval and reference has been brought out clearly in the following three instructions:-



a. Instruction No.3 of 2003 dated 20.05.2003	b. Instruction No.15 of 2015 dated 16.10.2015	Instruction No.3 of 2016 dated 10.03.2016
d. In order to make a reference to the TPO, the Assessing Officer has to satisfy himself that the taxpayer has entered into an international transaction with an associated enterprise. One of the sources from which the factual information regarding international transaction can be gathered is Form No.2CEB filed with the return which is in the nature of an accountant's report containing basic details of an international transaction entered into by the taxpayer during the year and the associated enterprise with which such transaction is entered into, the nature of documents maintained and the method followed. Thus, the primary details regarding such international transactions would normally be available in the accountant's report. The Assessing Officer can arrive at <i>prima facie</i>	g. 3. Reference to Transfer Pricing Officer (TPO) b. 3.1. The power to determine the Arm's Length Price (ALP) in an international transaction is contained in sub-section (3) of Section 92C of the Act. However, Section 92CA of the Act, <i>inter alia</i>, provides that where the Assessing Officer (AO) considers it necessary or expedient so to do, he may refer the computation of ALP in relation to an international transaction to the Transfer Pricing Officer (TPO). Sub-section (3) of Section 92CA provides that the TPO, after taking into account the material available with him shall, by an order in writing, determine the ALP in accordance with Sub-section (3) of Section 92 of the Act. Sub-section (4) of Section 92CA provides that on receipt	I. 3.6. Since the provisions of Section 92CA of the Act, <i>inter alia</i>, refer to the computation of the ALP of the international transaction or specified domestic transaction, it is imperative for the AO to ensure that all international transactions or relevant specified domestic transactions or both, as the case may be, are explicitly mentioned in the letter through which the reference is made to the TPO. In this regard, guidelines as under may be followed: 3. If a case has been selected for scrutiny on a TP risk parameter pertaining to international transactions only, then the international transactions shall alone be referred to the TPO; 4. If a case has been selected for scrutiny on a TP risk parameter pertaining to specified



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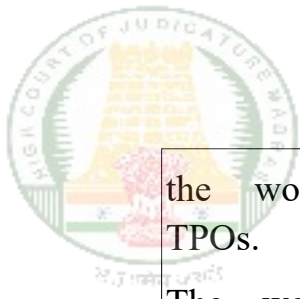
belief on the basis of these details whether a reference is considered necessary. No detailed enquiries are needed at this stage and the Assessing Officer should not embark upon scrutinizing the correctness or otherwise of the price of the international transaction at this stage. In the initial years of implementation of these provisions and pending development of adequate data base, it would be appropriate if a small number of cases are selected for scrutiny of transfer price and these are dealt with effectively. The Central Board of Direct Taxes, therefore, have decided that wherever the aggregate value of international transaction exceeds Rs.5 Crores, the case should be picked up for scrutiny and reference under Section 92CA be made to the TPO. If there are more than one transaction with an associated enterprise or there are transactions	of the order of the TPO, the AO shall proceed to compute the total income of the taxpayer in conformity with the ALP determined by the TPO. Thus, while the determination of ALP, wherever reference is made to him, is required to be done by the TPO under Sub-section (3) of Section 92CA read with Sub-section (3) of Section 92C, the computation of total income in conformity with the ALP so determined by the TPO is required to be done by the AO under Sub-section (4) of Section 92C read with Sub-section (4) of Section 92CA of the Act. c. 3.2. d. 3.3. 3.4. Before making a reference to the TPO, the AO has to seek the approval of the Principal Commissioner or Commissioner as provided in the Act. The provisions of Section 92CA of the Act, inter-	domestic transaction only, then the specified domestic transactions shall alone be referred to the TPO; and If a case has been selected for scrutiny on the basis of TP risk parameters pertaining to both international transactions and specified domestic transactions, then the international transactions and the specified domestic transactions shall together be referred to the TPO.
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with more than one associated enterprises the aggregate value of which exceeds Rs.5 Crores, the transactions should be referred to the TPO. **Before making reference to the TPO, the Assessing Officer has to seek approval of the Commissioner / Director as contemplated under the Act.** Under the provisions of Section 92CA reference is in relation to the international transaction. Hence all transactions have to be explicitly mentioned in the letter of reference. Since the case will be selected for scrutiny before making reference to the TPO, the Assessing Officer may proceed to examine other aspects of the case during pendency of assessment proceedings but await the report of the TPO on the value of international transaction before making final assessment.

a. The threshold limit of Rs.5 Crores will be reviewed depending upon

alia, refer to the international transaction. Hence, all international transactions, in relation to which a reference to the TPO is considered necessary, have to be explicitly mentioned in the letter through which the reference is being made.



the workload of the TPOs. The work relating to selection of cases for scrutiny and reference to TPO on the above basis in respect of pending returns filed for the Assessment Year 2002-2003 should be completed by June 30, 2003.		
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9. Learned Junior Standing Counsel for the Respondents on the other hand would submit that proceedings are in time. Specifically, it is submitted that a reference was made to the screenshot from the ITBA portal of Transfer Pricing Assessment proceedings from the dashboard of the 1st Respondent Deputy Commissioner of Income Tax, Chennai namely B.V.Anil Kumar, wherein the date of approval for reference to Transfer Pricing Officer(TPO) has been given as 10.02.2021 in view of Instruction No.3 of 2016, circulated by F.No.500/9/2015-APA-II from the Central Board of Direct Taxes dated 10.03.2016.

10. That apart, it is submitted that an objection regarding limitation was raised by the Petitioner on 18.01.2022 and that the objection of the Petitioner



was overruled by an Order dated 21.01.2022 passed by the 1st Respondent with the following observations:-

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“It is clear from the above that the period for completion of assessment or reassessment gets extended by twelve months, where a reference under Section 92CA(1) is made during the course of the proceeding of the assessment or reassessment.

*In your case the reference under Section 92CA(1) was made by the Faceless Assessment Unit and the same was approved by the concerned Commissioner of Income Tax through online ITBA portal on **10.02.2021** i.e., during the course of the proceedings for reassessment only. A copy of the screenshot of the reference details as per the ITBA portal is enclosed herewith for your reference.*

Further, as per the ITBA portal, the limitation date for completing the assessment in your case is 31.03.2022. As all the proceedings relating to assessments are being done through online portal only, the dates of references, notices, time limitations etc., cannot be tinkered with. As such, the reference is in order and very much valid.

Accordingly, the period for completion of reassessment in your case for the Assessment Year 2017-2018 gets extended by 12 months i.e., upto 31.03.2022, as per the provisions of sub-section 4 of Section 153. As such, the proceedings initiated by the undersigned in your case for the Assessment Year 2017-2018 are very much valid. Thus, your preliminary objection regarding the reference is hereby disposed off by rejecting the same and the TP proceedings in your case are continued further.

In this regard, you are hereby requested to furnish all the information / details / documents called for at the earliest in order to complete the proceedings in time.”

11. It is therefore submitted by the learned Junior Standing Counsel for the Respondent that in the absence of challenge to the aforesaid order dated 21.01.2022 overruling the objection of the Petitioner dated 18.01.2022, the



challenge to the impugned Order passed by the 1st Respondent dated 27.01.2022 is without jurisdiction.

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12. That apart, it is submitted that after the impugned Order dated 27.01.2022 was passed by the 1st Respondent, the 2nd Respondent had also issued a Draft Assessment Order on 28.02.2022 under Section 144C of the Income Tax Act, 1961 and therefore, the above development was *fait accompli* and comes in the legitimate way of challenge to the impugned Order dated 27.01.2022.

13. Learned Junior Standing Counsel for the Respondents further submitted that reference to Transfer Pricing Officer (TPO) under Section 92CA(1) of the Income Tax Act, 1961 was made on 10.02.2021 and not on 13.01.2022 as claimed by the Petitioner. The entire communication between the Jurisdictional Assessing Officer, Faceless Assessing Officer and Transfer Pricing Officer (TPO) and a taxpayer were carried out through Income Tax Business Application (ITBA) after the implementation of faceless assessment.

14. The reference to Transfer Pricing Officer (TPO) under Section 92CA requires approval of the Principal Commissioner of Income Tax. On



08.02.2021, a proposal for the reference to Transfer Pricing Officer (TPO) was made by 2nd Respondent the Assessing Officer of Assessing Unit to Range Head of Assessment Unit.

15. Subsequently it went to the approval of the Principal Commissioner of Income Tax. The Principal Commissioner of Income Tax gave his approval on 10.02.2021. The approval given by the Principal Commissioner of Income Tax on 10.02.2021 thus completes the reference by the Assessing Officer to the Transfer Pricing Officer (TPO).

16. Learned Junior Standing Counsel further submitted that since the Notice under Section 148 of the Income Tax Act, 1961 was issued on 24.02.2020, the time limit available for completion of assessment was twelve months from the end of Financial Year in which Section 148 Notice was issued. Financial Year 2019-2020 ended on 31.03.2020. Twelve months from 31.03.2020 would be 31.03.2021.

17. It is submitted that the Petitioner has wrongly mentioned this as 31.12.2020. It is submitted that the time limit for completion of assessment proceedings was available till 31.03.2021 under normal times and as the



reference to the Transfer Pricing Officer (TPO) was done on 10.02.2021 during the course of reassessment proceedings, as per provisions of Section 153(4) of the Income Tax Act, 1961 the time limit was available for another 12 months i.e., till 31.03.2022.

18. Learned counsel for the respondents would further submit that the order of the Division Bench in **M/s. Virtusa Consulting Service Private Limited**, all though against the revenue has not attained finality as the revenue filed an appeal before the Hon'ble Supreme Court.

19. That apart, it is submitted that ordinarily, limitation for completing the assessment would have been 12 months in terms of Section 153 (2) of the Income Tax Act, proviso to Section 153(2) of the Income Tax Act, 1961. It is however submitted that once a reference is made under Section 92CA(1) of the Income Tax Act, during the course of proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under sub-section (1), (1A), (2), (3) and (3a) to Section 153 is to be extended by 12 months.



20. It is submitted that the dispute in the present case pertains to the Assessment Year 2017-2018. Thus, ordinarily the assessment should be completed within a period of 12 months from the end of the financial year in which the notice under Section 148 is issued. In other words it is submitted that ordinarily, the assessment should have been completed by 31.03.2021 as notice under Section 148 was issued on 24.02.2020. It is submitted that by virtue of extensions under Section 153(4), the time for completing the assessment thus to extended to 31.03.2022.

21. It is therefore submitted that the impugned order of the 1st Respondent under Section 92CA(3) of the Income Tax Act, 1961 cannot be subject matter of the challenge as under Section 92CA(1) where any person, being an assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, the Assessing Officer with the previous approval of the Principal Commissioner or Commissioner, refer the computation of the Arm's Length Price (ALP) in relation to the said international transaction or specified domestic transaction under Section 92C to the Transfer Pricing Officer (TPO).

22. It is submitted that in this case, since the approval given on 10.02.2021, which is within the period of 12 months from the end of the



financial year in which the notice under Section 148 was issued on 24.02.2020.

The order of the 1st Respondent Transfer praising officer under Section 92CA(3) of the Income Tax Act, 1961 cannot be questioned.

23. Learned counsel for the respondent submits that even if the provisions of the taxation under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 is applied the time for completing the assessment would have stood extended. Therefore, the present writ petition is liable to be dismissed.

24. By way of re-joinder, the learned counsel for the petitioner on the other hand would submit that the reference can be made within a period during which the reassessment proceedings were pending. It is submitted that if no reference was made within a period of 12 months, no further reference can be made thereafter. It is submitted that approval of the Principal Commissioner or the Commissioner of Income Tax is not sufficient and would not tantamount to reference under Section 92CA(1) of the Income Tax Act.

25. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents.



26. In this case, the impugned Order under Section 92CA(3) has been passed on 27.01.2022, whereby the Other Method was adopted as the Most Appropriate Method and the Arm's Length Price (ALP) of the transactions relating to Corporate Support Service Fee pursuant to the Agreement was treated as NIL by benchmarking it separately under Rule 10AB and a downward adjustment of Rs.20,12,29,781/- was proposed on the said transaction.

27. In the impugned Order it was also clarified that the findings and discussions made in that order were applicable only in respect of reference received for **Assessment Year 2017-18** and not for any other Assessment Year.

28. The Court is not really concerned with the correctness of above conclusion arrived in the impugned order. Rather the Court is only concerned with the larger issue as to whether the impugned order has been passed based a valid reference to the 1st Respondent by the 2nd respondent.

29. Therefore, the points for consideration in this Writ Petition are as under:-



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- a. When was the reference to the Transfer Pricing Officer (TPO) made pursuant to Section 148 notice dated 24.02.2020?
- b. Whether the reference to the 1st Respondent Transfer Pricing Officer (TPO) can be said to be time barred in view of the limitation under Section 153(2)?
- c. Whether the approval accorded under 92CA(1) would be sufficient to obtain the benefit of Section 153(4) for an additional period of 12 months for completing the assessment?

30. The challenge to the impugned order dated 27.01.2022 passed under Section 92CA(3) of the Income Tax Act, 1961 by the 1st Respondent is inspired from the decision of Hon'ble Division Bench of this Court in Virtusa Consulting Services (P.) Limited Vs. Dispute Resolution Panel (DRP), [2022] 446 ITR 454. The present challenge is purely on the ground of limitation to make a reference under Section 92CA(1) of the Income Tax Act, 1961.

31. In this case, a notice was issued by the jurisdictional Assessing Officer under Section 148 on 24.02.2020. As per Section 153(2) of the Income Tax Act 1961, an assessment order has to be passed within 12 months from the end of the financial year in which the notice under Section 148 was issued. During the course of such re-assessment proceeding, a reference can be made



to the Transfer Pricing Officer under Section 92CA(1) of the Income Tax Act, 1961.

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32. The end of the financial year for the notice under Section 148 dated 24.02.2020 is/was 31.03.2020. Therefore, ordinarily, an assessment order was to be passed on or before 31.03.2021. However, as per the exception under Section 153(4) of the Income Tax Act, 1961, the limitation to pass an Assessment Order would have been extended by twelve months.

33. As per Sub-Section 4 to Section 153, where a reference is made under Sub-Section (1) to Section 92CA during the course of the proceeding for an assessment or re-assessment, the period available for completion of assessment or re-assessment, as the case may be, gets extended by another 12 months. Thus, the last date for passing an Assessment order would have been extended to 31.03.2022.

34. Sub-section (4) to Section 153 of the Income Tax Act 1961, is reproduced below for the sake of clarity:-

“(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or



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reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.”

35. However, such extension of time to pass the assessment order would get extended by 12 months provided such a reference to the Transfer Pricing Officer (TPO) is made during the course of the proceeding for an assessment or re-assessment. In other words, such a reference should be made under Section 92CA(1) of the Income Tax Act, 1961 before the expiry of limitation for passing an Assessment Order under Section 153(2) of the Income Tax Act, 1961.

36. If a reference is made beyond the initial period of limitation for passing an Assessment order under Section 153(2) of the Income Tax Act, 1961, neither such a reference is valid under Section 92CA(1) of the Income Tax Act, 1961, nor an order passed purportedly in pursuance of such an invalid reference will be a valid Order under Section 92CA(3) of the Income Tax Act, 1961.

37. In this case, the proposal was made by the 2nd Respondent Assessing Officer on 08.02.202. An approval was granted by the PCIT/CIT on 10.02.2021



i.e. within period of limitation under Section 153(2) of the Income Tax Act, 1961. Therefore, reference ought to have been during the course of re-assessment immediately after the approval was granted on 10.02.2021 before expiry of initial period of limitation for passing an Assessment Order under Section 153(2) of the Income Tax Act, 1961.

38. While examining the scope and operation of Section 153 of the Income-tax Act, 1961 in *Virtusa Consulting Services (P.) Limited v. Dispute Resolution Panel (DRP)*, [2022] 446 ITR 454 (Mad), Division Bench of this Court observed as follows:-

(B) Timelines under sections 92CA, 144C and 153 of the Act

After an international transaction is noticed subject to satisfaction of section 92B, a reference is made to the Transfer Pricing Officer under sub-section (1) of section 92CA of the Act. Though, the provision does not state as to when a reference is to be made, a reading of section 153 would explicit that the reference is to be made during the course of the assessment proceedings before the expiry of the period to pass an assessment order. The Transfer Pricing Officer after considering the documents submitted by the assessee is to pass an order under section 92CA(3) of the Act. As per section 92CA(3A), the order has to be passed before the expiry of 60 days prior to the date on which the period of limitation under section 153 expires. As per section 153, no order of assessment can be passed at any time after the expiry of 21 months. As per section 92CA(4), the Assessing Officer has to pass an order in conformity with the order of the Transfer Pricing Officer.



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After the receipt of the order from the Transfer Pricing Officer determining the arm's length price, the Assessing Officer is to forward a draft assessment order to the assessee, who has an option either to file his acceptance of the variation of the assessment or file his objection to any such variation with the Dispute Resolution Panel and also the Assessing Officer under section 144C(2). It goes without saying that if no objections are filed by the assessee to the draft order, the Assessing Officer has to pass the final assessment order based on the draft order within one month from the end of the month in which the period for filing the objection had expired as per section 144C(4). Sub-section (5) of section 144C of the Act provides that if any objections are raised by the assessee before the Dispute Resolution Panel, the Panel consisting of top and expert functionaries of the Department is empowered to issue such direction as it thinks fit for the guidance of the Assessing Officer after considering various details provided in clauses (a) to (g) thereof. As per sub-section (12), the Dispute Resolution Panel has no authority to issue any directions under sub-section (5) from the end of the month in which the draft order is forwarded to the eligible assessee and not from the date when the assessee submits the objections. Sub-section (13) of section 144C of the Act provides that upon receipt of directions issued under sub-section (5) of section 144C of the Act, the Assessing Officer shall in conformity with the directions complete the assessment proceedings within one month from the end of the month in which the directions are received. As per the proviso to section 92CA(3A), if the time limit for the Transfer Pricing Officer to pass an order is less than 60 days, then the remaining period shall be extended to 60 days. This implies that not only the time frame is mandatory but also the Transfer Pricing Officer has to pass an order within 60 days. Further, the extension in the proviso referred above, also automatically extends the period of assessment to 60 days as per the second proviso to section 153. Further, but for the reference to the Transfer Pricing Officer, the time limit for completing the assessment would only be 21 months from the end of the assessment year. It is only if a reference has been made during the course of assessment and is pending, the Department gets



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another 12 months as per second proviso to section 153(1) and under section 153(4) after amendment.

39. To decide the question in dispute, the Court referred to the following provisions of the Income-tax Act and the time lines under the transfer pricing, as it prevailed for the Assessment Year 2006 – 2007 in paragraph No. 12:-

i. 92CA. Reference to the Transfer Pricing Officer.-

(left deliberately blank as not relevant for the purpose of discussion in the case)

ii. 144C. Reference to dispute resolution panel.-

(left deliberately blank – as not relevant for the purpose of discussion in the case)

iii. **Relevant provisions of section 153 prior to Amendment:**

“153.(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of

—

(a) two years from the end of the assessment year in which the income was first assessable; or

(b) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under sub-section (4) or sub-section (5) of section 139, whichever is later:



Provided that in case the assessment year in which the income was first assessable is the assessment year commencing on or after the 1st day of April, 2004 but before the 1st day of April, 2010, the provisions of clause (a) shall have effect as if for the words 'two years', the words 'twenty-one months' had been substituted:

Provided further that in case the assessment year in which the income was first assessable is the assessment year commencing on or after the 1st day of April, 2005 but before the 1st day of April, 2009 and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words 'two years', the words 'thirty-three months' had been substituted:

Provided also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2009 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words 'two years', the words 'three years' had been substituted.

(1A) No order of assessment shall be made under section 115WE or section 115WF at any time after the expiry of twenty-one months from the end of the assessment year in which the fringe benefits were first assessable.



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(1B) No order of assessment or reassessment shall be made under section 115WG after the expiry of nine months from the end of the financial year in which the notice under section 115WH was served.

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of one year from the end of the financial year in which the notice under section 148 was served:

Provided that where the notice under section 148 was served on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 2002:

Provided further that where the notice under section 148 was served on or after the 1st day of April, 2005 but before the 1st day of April, 2011, the provisions of this sub-section shall have effect as if for the words 'one year', the words 'nine months' had been substituted:

Provided also that where the notice under section 148 was served on or after the 1st day of April, 2006 but before the 1st day of April, 2010 and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—

(i) was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or

(ii) is made on or after the 1st day of June, 2007, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words 'one year', the words 'twenty one months' had been substituted:

Provided also that where the notice under section 148 was served on or after the 1st day of April, 2010 and during the course of the proceeding for the assessment or



reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA is made, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words 'one year', the words 'two years' had been substituted.

(2A) Notwithstanding anything contained in sub-sections (1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner : ”

Section 153 after June 1, 2016.

iv. After Amendment

“153. Time limit for completion of assessment, reassessment and recomputation.—

(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable.

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served.



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(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April 2019, the provisions of this sub-section shall have effect, as if for the words 'nine months', the words 'twelve months' had been substituted

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer, wholly or partly, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:



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Provided that where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of six months to give effect to the order.

(6) Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

(ii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed.

(7) Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income- tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.”



40. In the aforesaid case, the Assessment year in issue was 2006 - 2007.

The Hon'ble Division Bench of this Court followed the timelines under Section 153 of the Income Tax Act, 1961 as it stood in the year 2016.

41. However, in this present case, the Court is concerned with the impugned order passed under Section 92CA(3) of the Income Tax Act, 1961 for the Assessment Year 2017–2018, by which time proviso to Section 153(2) has been amended a proviso was inserted with effect from 01.04.2017, text of which has been referred.

42. Amended Section 153(2) along with a proviso by the Finance Act, 2017, with effect from 01.04.2017, is reproduced below for the sake of clarity:–

(2) No order of assessment, reassessment or recomputation shall be made under [section 147](#) after the expiry of nine months from the end of the financial year in which the notice under [section 148](#) was served:

***Provided** that where the notice under [section 148](#) is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.*



43. Therefore, the reliance placed on the decision in **Virtusa Consulting Services (P.) Limited** (referred to supra) is misplaced as the ratio is not applicable to the facts and circumstances of the present case.

44. In view of the aforesaid proviso to Section 153(2) of the Income Tax Act, 1961, where a notice under Section 148 is served on or after 01.04.2019, the period available for completion of assessment stands extended to twelve months i.e. till 31.03.2020.

45. As mentioned, in the present case, the notice under Section 148 was served on 24.02.2020. Therefore , the limitation for completing the assessment would have expired ordinarily on 31.03.2021, it being twelve months contemplated under the proviso to Section 153(2) of the Income Tax Act, 1961.

46. If the reference was made before the expiry of last date under Section 152(2) of the Income Tax Act, 1961 period for completing the Assessment gets extended by another 12 months in terms of Section 153(4) of the Income Tax Act, 1961.



47. The screenshot available along with the typed set of papers also indicates that a proposal was made by the Assessing Officer / 2nd Respondent to PCIT/CIT for reference to Transfer Pricing Officer (TPO) on 08.02.2021 and approval was granted by the Commissioner of Income Tax (CIT) on 10.02.2021.

48. However, the reference was made by the Assessing Officer / 2nd Respondent to the DC/ACIT TPO -1 Hyderabad only on 11.01.2022. It was later transmitted to the Deputy Commissioner of Income Tax / 1st Respondent on 13.01.2022.

49. In this background, a notice was issued on 13.01.2022 to the petitioner under Section 92CA(2) of the Income Tax Act, 1961 to produce the documents. In response to the notice the petitioner has raised the preliminary objection vide letter dated 18.01.2022. The aforesaid preliminary objection was disposed of vide letter dated 21.01.2022 of the by the 1st Respondent.

50. After approval was granted to the 2nd Respondent Assessing Officer to make a reference to Transfer Pricing Officer (TPO) by the Principal Commissioner of Income Tax. On 10.02.2021, a reference should have been



made under Section 92CA (1) of the Income Tax Act, 1961 on or before 31.03.2021 i.e. within the time prescribed for completing an Assessment under Section 153(2) of the Income Tax Act, 1961.

51. As mentioned elsewhere, the last date to pass Assessment Order would have ordinarily expired on 31.03.2021. However, during this period the country was still under the lock down due to outbreak of COVID-19 pandemic. Thus the last date for passing the Assessment Order would have expired on 30.06.2021, due to TOLA ordinance/ TOLA, 2020.

52. However, by CBDT Notification No. 17/2021 dated 30.09.2021, this date was also further extended to 30.09.2021. Thus, in normal course, the last date for passing the Assessment Order would have expired on 31.09.2022. Therefore, the reference to Transfer Pricing Officer (TPO) under Section 92CA(1) of the Income Tax Act, 1961 should have been made on or before 31.09.2022.

53. The impugned order itself records that a reference under Section 92CA(1) of the Income Tax Act, 1961 in the case of the petitioner was received from the DC/ACIT TPO -1 Hyderabad only on 13.01.2022 and that as per the



order sheet details available on ITBA portal, the DC/ACIT TPO -1 Hyderabad had received the case from AO-Technical Unit on 11.01.2022 and the case was referred for determination of the Arm's Length Price (ALP) in respect of all the transactions reported in Form No.3CEB filed by the petitioner for the Assessment Year 2017-2018.

54. Thus, the impugned order of the Transfer Pricing Officer (TPO) passed under Section 92CA(3) of the Income Tax Act, 1961 on 27.01.2022 after issuing a show cause notice to the petitioner on 25.01.2022, pursuant to which the draft assessment order has been passed on 28.02.2022, is without Jurisdiction.

55. Since the reference was not made within the period of limitation under Section 153(2) of the Income Tax Act, 1961, it is without jurisdiction.

56. Therefore, the impugned order dated 27.01.2022 is liable to be held having been passed in violation of Section 92CA(1) read with Section 153(2) of the Income Tax Act, 1961.



57. Therefore, the consequential proceedings, if any, initiated pursuant to the impugned order shall also stand vitiated and are liable to be set aside.

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58. Therefore, the impugned order dated 27.01.2022 is quashed. Accordingly, this Writ Petition stands allowed with the above observations. Consequently, connected miscellaneous petitions stand closed. No costs.

27.01.2026

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Neutral Citation: Yes/No

To

1.The Deputy Commissioner of Income Tax,
Transfer Pricing Officer 1(2),
Room No.502, 5th Floor,
Tower – 1,
No.16, BSNL Building,
Greens Road, Chennai – 600 006.

2.The Assessing Officer,
National Faceless Assessment Centre,
Delhi, Income Tax Department,
Government of India,
2nd Floor, Jawahar Lal Nehru Stadium,
New Delhi – 110 003.



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C.SARAVANAN, J.

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Pre-delivery Order in W.P.No.15393 of 2022

27.01.2026