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W.P.No.23246 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2026

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23246 of 2023

and

W.M.P.Nos.22783 and 22785 of 2023

Motilal Jain Mahaveer Jain

... Petitioner

Vs.

1.Income Tax Officer,
International Taxation Ward,
Coimbatore May Flower Mid City Building,
1510, Trichy Road,
Coimbatore, Tamil Nadu – 641 018.

2.Income Tax Officer,
Ward 1(2) Erode,
NO R II Nallappa Street,
Erode – 638 001.

... 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 on the file of the Respondent and quash the impugned order in ITBA/AST/S/147/2022-23/1048584094(1) dated 10.01.2023 under Section 147 read with Section 144C(13) of the Income Tax Act, 1961 passed by the Respondent as illegal and not in accordance with law.



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For Petitioner : Mrs.T.V.Muthu Abirami

For Respondents : Mr.B.Ramanakumar
Senior Standing Counsel

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ORDER

The Petitioner is before this Court against the impugned Assessment Order bearing DIN and Order No.ITBA/AST/S/147/2022-23/1048584094(1) dated 10.01.2023 passed for the Assessment Year 2017-2018 under Section 147 read with Section 144C(13) of the Income Tax Act, 1961.

2. The facts on record reveal that during the Financial Year 2016-2017 during the month of November / December, the Petitioner had deposited a sum of Rs.10,00,000/- into the Petitioner's Bank Account maintained with the ICICI Bank. It is noticed that Return of Income has not been filed by the Petitioner for the aforesaid Financial Year.

3. In view of the above, a Notice under Section 142(1) of the Income Tax Act, 1961 was issued by the Jurisdictional Assessing Officer within whose jurisdiction the Petitioner was operating the Bank Account where the amount was deposited by the Petitioner.



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4. In response to the aforesaid Notice, the Petitioner filed a Return of Income on 04.04.2018 for the Assessment Year 2017-2018, declaring gross total income as Rs.9,160/- and therefore sought for refund of a sum of Rs.2,830/- after adjusting the tax paid at source.

5. The Petitioner thereafter by a Letter dated 13.12.2019 informed the jurisdictional Assessing Officer at Erode that the Petitioner was a Non-Resident Indian (NRI) and living in United Arab Emirates since 2008 and is working as a Finance Manager in Lefebvre Engineering, Sharjah, United Arab Emirates.

6. In the said Letter, the Petitioner has stated that while vacationing in India between 12.11.2026 and 19.11.2026 (8 days) during the period when there was demonetization, the Petitioner had deposited a sum of Rs.10,00,000/- into the Petitioner's Bank Account and that the cash relates to the balance remaining from the amounts withdrawn previously by the Petitioner's parents from the Petitioner's NRI account with ICICI Bank which was deposited on 16.11.2016.



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7. Since the Petitioner claimed that the Petitioner was NRI, the 1st Respondent namely the Income Tax Officer, International Taxation Ward, Coimbatore, had issued a Notice under Section 148 of the Income Tax Act, 1961 on 31.03.2021 under the old regime for the Assessment Year 2017-2018 which ultimately culminated in the impugned Assessment Order dated 10.01.2023.

8. The impugned Assessment Order has also preceded a Draft Assessment Order dated 30.03.2022 which was also subject matter of challenge before the Dispute Resolution Panel, Bangalore by the Petitioner which came to be disposed by the Dispute Resolution Panel under Section 144C(5) of the Income Tax Act, 1961 on 14.12.2022.

9. It was pursuant to the aforesaid Draft Assessment Order and now the impugned Assessment Order has been passed against the Petitioner.

10. The challenge to the impugned Assessment Order is primarily on the ground that proceedings have been initiated by the 1st Respondent without a corresponding Transfer Order under Section 127 of the Income Tax



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Act, 1961. In this connection, the Petitioner has placed reliance on the decisions of the Hon'ble Supreme Court, Delhi High Court, Calcutta High Court, Orissa High Court and of this Court which are as follows:-

- i. **Ajantha Industries Vs. Central Board of Direct Taxes**, [1976] 102 ITR 281 (SC).
- ii. **Raj Sheela Growth Fund (P.) Limited Vs. Income-tax Officer**, [2024] 165 taxmann.com 182 (Delhi).
- iii. **Kusum Goyal Vs. Income-tax Officer**, [2010] 329 ITR 283 (Calcutta).
- iv. **Vedanta Resource Limited Vs. Assistant Commissioner of Income Tax** in W.P(C) Nos.6372, 6375, 6377, 6378, 6395 of 2022 vide Order dated 09.02.2023.
- v. **SNJ Breweries Private Limited, Represented by its Director Vs. The Principal Director of Income Tax (Investigation) and others**, [2024] 468 ITR 37 (Mad.).

11. That apart, it is submitted that the Petitioner is not an “**eligible assessee**” within the meaning of Section 144C(15)(b) of the Income Tax Act, 1961. Specifically, reference is made to the decision of the Gujarat High Court in **Pankaj Extrusion Limited Vs. Assistant Commissioner of Income-tax (OSD)**, [2011] 198 Taxman 6 (Gujarat) wherein, the Court held as under:-



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“6. Section 144C provides for a detailed procedure to be followed in cases where any variation in income or loss returned which is prejudicial to the interest of an assessee occurs on account of reference made in Section 92CA of the Act. Relevant portion of Section 144C is reproduced herein below:

“144C. 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 in the income or loss returned which is prejudicial to the interest of such assessee.

(15) For the purposes of this section,-

(b) “eligible assessee” means,-

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

(ii) any foreign company.”

7. Plain reading of clause-(b) of Sub-section(15) of Section 144C would show that an assessee can be stated to be eligible assessee as referred to in Sub-section(1) of Section 144C in whose case variation referred to in the said sub-section arises as a consequence of order of Transfer Pricing Officer passed under sub-section(3) of Section 92CA. We have been taken through the order passed by the Assistant



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Commissioner of Income Tax dated 29.9.2010, wherein it is held as under:

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“3. The assessee is engaged in the business of manufacture of Aluminum Profiles. The details of international transactions in terms of Section 92B of the Act between the assessee and its Associate Enterprise are give in Form 3CEB. Relevant details regarding international transactions were produced by the assessee and are kept on record. After discussion and based on records produced, no adjustment is being made to the arm's length price of the transactions.” (underline supplied)

12. Learned Senior Standing Counsel for the Respondents on the other hand would submit that the Petitioner is indeed an “**eligible assessee**” within the meaning of Section 144C(15)(b)(ii) of the Income Tax Act, 1961.

13. That apart, it is submitted that the Petitioner had accepted his status as an “**eligible assessee**” and had thus approached the Dispute Resolution Panel by filing an objection against the Draft Assessment Order dated 26.04.2022.

14. It is submitted that the Notice under Section 148 of the Income Tax Act, 1961 was followed by several Notices issued under Section 142(1),



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143(2), Show Cause Notice issued under Section 69(A) of the Income Tax Act, 1961 which ultimately culminated in the Draft Assessment Order dated 30.03.2022 in respect of which objection was filed before the Dispute Resolution Panel on 26.04.2022 which was ultimately disposed by the Dispute Resolution Panel on 14.12.2022.

15. By way of rejoinder, the learned counsel for the Petitioner submits that an application was filed only for rectification of the aforesaid Draft Assessment Order dated 30.03.2022 before the Dispute Resolution Panel on 30.01.2023.

16. That apart, it is submitted that the impugned Assessment Order passed for the Assessment Year 2017-2018 on 10.01.2023 was clearly barred by limitation under Section 153 of the Income Tax Act, 1961.

17. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondents.



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18. The attempt of the Petitioner to abate the assessment proceedings initiated with the issuance of Section 142(1) Notice dated 09.03.2018 and thereafter Section 148 Notice on 31.03.2021 in the light of the status of the Petitioner declared in the response dated 13.12.2019 cannot be countenanced.

19. At best, the Petitioner can argue that the impugned Assessment Order that has been passed on 10.01.2023 by the 1st Respondent was without jurisdiction and beyond the period of limitation. However that would be subject to the Petitioner not being an “**eligible assessee**” within the meaning of Section 144C(15)(2) of the Income Tax Act, 1961. In this case, the Petitioner is indeed an “**eligible assessee**” within the meaning of Section 144C(15)(b) of the Income Tax Act, 1961.

20. The definition of “**eligible assessee**” in Section 144C(15)(b) of the Income Tax Act, 1961 stood amended by Finance Act, 2020 with effect from 01.04.2020. Section 142(1) Notice was issued on 09.03.2018. At the time when Section 148 Notice was issued by the 1st Respondent on 31.03.2021, the definition of “**eligible assessee**” was amended to include any non-resident not being a Company with effect from 01.04.2020.



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21. For the sake of clarity, the definition of the expression “**eligible assessee**” before its amendment and after its amendment vide Finance Act, 2021, with effect from 01.04.2020 is reproduced below:-

Section 144C(15)(b) of the Income Tax Act, 1961 (before amendment with effect from 01.06.2013)	Section 144C(15)(b) of the Income Tax Act, 1961 (after amendment with effect from 01.04.2020)
144C. Reference to dispute resolution panel. 15. For the purposes of this Section,- (a) “Dispute Resolution Panel” means a collegium comprising of three Principal Commissioners or 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 sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of Section 92CA; and ii. any foreign company.	144C. Reference to dispute resolution panel. 15. For the purposes of this Section,- (a) “Dispute Resolution Panel” means a collegium comprising of three Principal Commissioners or 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 sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of Section 92CA; and ii. any non-resident not being a company, or any foreign company.

22. The decision of the Gujarat High Court in **Pankaj Extrusion Limited** (referred to *supra*) was rendered on 21.02.2011 i.e., when the definition read as before its amendment vide Finance Act, 2021, with effect



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from 01.04.2020 when the definition of the expression “**eligible assessee**” in Section 144C(15)(b)(ii) of the Income Tax Act, 1961 was confined to any Foreign Company.

23. Thus, it is clear that the Petitioner is an “**eligible assessee**” within the meaning of amended definition “**eligible assessee**” in Section 144C(15)(b)(ii) of the Income Tax Act, 1961.

24. That apart, the Petitioner had also acquiesced in the proceedings by challenging the Draft Assessing Order dated 30.03.2022 passed under Section 144C of the Income Tax Act, 1961 by filing an objection before the Dispute Resolution Panel, Bangalore on 26.04.2022. It is also to be noted that the Petitioner is estopped from questioning the jurisdiction of the Respondent / Assessing Officer in view of Section 124(3) (a)(b) and (c) of the Income Tax Act, 1961 and Section 292BB of the Income Tax Act, 1961.

25. The attempt of the Petitioner to distance from the status as an “**eligible assessee**” by filing an application for rectification under Section 154 of the Income Tax Act, 1961 on 30.01.2023 which appears to be pending as



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on date was merely an afterthought after the Dispute Resolution Panel passed its order.

26. Since the matter was taken up before the Dispute Resolution Panel under Section 144C of the Income Tax Act, 1961 the limitation gets extended by virtue of Section 144C read with Section 153 of the Income Tax Act, 1961.

27. As per Sub-Section (13) to Section 144C of the Income Tax Act, 1961 the limitation for passing the Assessment Order gets extended. Therefore, there are no merits in the challenge to the impugned Assessment Order either on the ground that the Petitioner was not an “**eligible assessee**” within the meaning of Section 144C(15)(b)(ii) of the Income Tax Act, 1961 or that the 2nd Respondent has passed the order without a Transfer Order under Section 127 of the Income Tax Act, 1961.

28. Therefore, this Writ Petition is liable to be dismissed. However, at best liberty can be granted to the Petitioner to challenge the correctness of the conclusion in the impugned Assessment Order on merits before the Appellate Tribunal within a period of thirty (30) days from the date of receipt of a copy of this order.



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29. This Writ Petition is dismissed with the above liberty. No costs. Connected Writ Miscellaneous Petitions are closed.

10.02.2026

Neutral Citation : Yes / No

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To:

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2.Income Tax Officer,
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C.SARAVANAN, J.

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