IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HONOURABLE THE ACTING CHIEF JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION No.25112 of 2021
(CNR No.HBHC010404452021)

Date of Order: 11.11.2026

Reserved on : 23.09.2026 **Pronounced on** : 11.11.2026
Uploaded on : 12.11.2026

Between:
M/s. Tecumseh Products India Private Limited.

...Petitioner

AND

Income Tax Officer, National Faceless Assessment Centre,
Room No. 401, 2nd Floor, E-Ramp, Jawahar Lal Nehru Stadium,
Delhi – 110003 and 3 Others.

...Respondents

ORDER: *(per Hon'ble the Acting Chief Justice P.Sam Koshy)*

Heard Mr. Harpreet Singh Ajmani, learned counsel appearing on behalf of Mr. G. Narendra Chetty, learned counsel for the petitioner; and Ms. J. Sunitha, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondents.

2. The instant Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the impugned Final Assessment Order bearing DIN ITBA/AST/S/143(3)/2021-

22/1035556860(1), dated 14.09.2021, passed by respondent No.1 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (for short the 'Act') to be illegal, nullity and void ab initio, as it has been passed in non-compliance with the provisions of section 144C of the Act, whereby the Final Assessment Order was passed without complying with Section 144C which mandates a draft assessment order to be passed before the final assessment order.

3. The facts of the case are that the petitioner was a private limited company incorporated under the provisions of the Companies Act, 1956 and was engaged in the business of manufacture of hermetically sealed compressors in India, which were widely used in air conditioners, refrigerators and commercial refrigeration applications. Engineering solutions were also provided by the petitioner through Computer Aided Designing, Engineering and Manufacturing (for short 'CADEM'). For the assessment year 2018-19, a revised return of income was filed by the petitioner on 30.11.2018, declaring NIL total income after setting off the current year losses amounting to Rs.14,31,785/-.

4. The case of the petitioner was selected for scrutiny under the Computer Aided Scrutiny Selection system (for short 'CASS') and a notice under Section 143(2) of the Act was issued on 22.09.2020. Subsequently, a notice along with a questionnaire was issued under Section 142(1) of the Act on 26.11.2020. In response to the notice

under Section 142(1), a reply was filed by the petitioner *vide* letters dated 10.12.2020 and 28.12.2020, and all the preliminary documents were placed on record.

5. A reference was thereafter made under Section 92CA of the Act to the Transfer Pricing Officer (for short 'TPO') on 01.03.2021, for determination of the Arm's Length Price (for short 'ALP') of the international transactions entered into by the petitioner with its Associated Enterprises (for short 'AEs'). A notice under Section 92CA(2) was issued by the TPO to the petitioner on 29.03.2021, calling upon the petitioner to file the documents maintained in terms of Section 92D(3) of the Act. The TPO then issued a show cause notice on 25.07.2021, rejecting the transfer pricing analysis undertaken by the petitioner and requesting further explanations. An order was passed by the TPO under Section 92CA(3) of the Act on 31.07.2021 proposing a transfer pricing adjustment of Rs.65,78,92,738/- on account of the following international transactions:

(i) Sale and Manufacture of Goods: Rs.63,92,95,748/-.

(ii) Interest on ECBs: Rs.34,82,917/-;

(iii) Business Support Services: Rs.40,13,628.

(iv) Interest on Trade Receivables: Rs.1,11,00,445/-.

It was clearly mentioned in the said order that the respondent No.1 was mandatorily required to follow the provisions of Section 144C of the Act before passing the final order.

6. In compliance with the provisions of Section 144B of the Act, a show cause notice proposing variation on account of the Transfer Pricing adjustments was issued to the petitioner on 01.09.2021. In the meanwhile, a rectification application dated 03.09.2021 was filed by the petitioner under Section 154 of the Act before the TPO requesting rectification of mistakes apparent from the record. On the same day, a reply to the show cause notice dated 01.09.2021 was also filed by the petitioner, wherein reliance was placed on the submissions made before the TPO to dispute the variation to the returned income on account of the Transfer Pricing adjustments. Without prejudice to the above, respondent No.1 was also requested to consider the rectified amounts in terms of the rectification application filed before the TPO for the purpose of making adjustments.

7. The petitioner was denied the remedy of disputing the assessment order by raising objections before the Dispute Resolution Panel (for short 'DRP') as provided for under Section 144C of the Act, as the option of filing objections before the DRP was not available on the e-proceedings portal of the Income Tax Department. The only option visible on the said portal was to file an appeal before the

Commissioner of Income Tax (Appeals), which, according to the petitioner further corroborated that the impugned order had been passed in contravention of Section 144C of the Act and was a final assessment order. Reliance was also placed by the petitioner, in support of this contention, on the assessment framed for the assessment year 2017-18 wherein a draft assessment order had been passed.

8. The objections raised by the petitioner to the proposed adjustments were rejected, and the Final Assessment Order was passed on 14.09.2021 by respondent No.1 under Section 143(3) read with Section 144B of the Act for the assessment year 2018-19, in complete disregard of the procedure contained in Section 144C of the Act. Aggrieved, the petitioner challenged the legality and validity of the impugned Final Assessment Order dated 14.09.2021 by way of the present Writ Petition.

9. Learned counsel for the petitioner submitted that the procedure of framing an assessment under Section 144C read with section 144B of the Act is to be mandatorily followed and at the first instance a "draft order" has to be passed in case of an "eligible assessee" in terms of section 144C(1) read with section 144C(15)(b) and 144B of the Act. It is pertinent to mention that Section 144C(15)(b) of the Act defines an "eligible assessee" to be:

i. Any person in whose case the variation referred to sub-section (1) to section 144C of the Act arises as a consequence of an order of the TPO; and

ii. Any foreign company and the final assessment order dated 14.09.2021 passed under Section 143(3) read with Section 144B of the Act without passing a "draft order" in terms of Section 144C(1) of the Act is illegal, bad in law a nullity.

10. Learned counsel for petitioner further submitted that the factum of the impugned order being a "final assessment order" and not a "draft order" is further corroborated from the fact that it was passed under Section 143(3) read with Section 144B of the Act (as sated in the assessment order), and the notice of demand under Section 156 of the Act has been issued and directions have been given in the impugned assessment order to also initiate penalty proceedings separately. Further, it is also evident from the screenshot of Department's online portal which depicts that the petitioner only has an option to file an appeal before the Commissioner of Income tax (Appeals) and resultantly, the vested right of the petitioner to get the assessment framed in terms of Section 144C read with Section 144B of the Act is abrogated. Therefore, the impugned assessment order dated 14.09.2021 and the consequential notices are unsustainable in law, illegal and a nullity.

11. Learned counsel for the petitioner relied upon the decision of the Bombay High Court in the case of **SHL (India) (P) Ltd. vs. CIT**[1] wherein it was held that the Assessing Officer cannot straightaway pass a final assessment order without issuing a draft assessment order under Section 144C(1), even in the case of remand of proceedings and that such an omission is not a mere irregularity, but an incurable illegality, which cannot be saved by Section 292B of the Act.

12. On the other hand, the learned Senior Standing Counsel for Income Tax Department relied upon the decision of the Delhi High Court in the case of **Interglobe Enterprises (P) Ltd. vs. NFAC**[2] wherein it was held that since there existed a statutory remedy available for the petitioner; the Writ Petition was not maintainable for the present case.

13. Having heard the contentions put forth on either side and on perusal of records, the question that falls for our consideration is whether the Final Assessment Order dated 14.09.2021 passed by respondent No.1 under Section 143(3) read with Section 144B of the Act without first forwarding a draft assessment order to the petitioner under Section 144C(1) of the Act where the proposed variation arose from the order of the Transfer Pricing Officer under Section 92CA(3) is without jurisdiction and a nullity and whether the availability of an

[1] (2021) 3 HCC (Bom) 99
[2] (2023) 450 ITR 126

appeal before the Commissioner of Income Tax (Appeals) bars this Court from entertaining the Writ Petition.

14. Section 144C of the Act lays down a special procedure for a class of assessees described as eligible assessees. The Assessing Officer must in the first instance forward a draft of the proposed order of assessment to an eligible assessee if he proposes a variation in the returned income or loss that is prejudicial to the assessee. An eligible assessee under Section 144C(15)(b) includes any person in whose case the variation arises as a consequence of the order of the Transfer Pricing Officer under Section 92CA(3). The petitioner falls in that class.

15. The draft order starts a process that the Act sets out in a fixed order. The eligible assessee may either accept the draft or raise objections before the DRP and before the Assessing Officer. The Panel is a body of senior officers of the Department that is independent of the Assessing Officer. It issues directions on the objections and the Assessing Officer then completes the assessment in conformity with those directions. The assessee thus gets the benefit of a review by a collegiate authority before any final order is made against it. That is a substantive right and not a procedural nicety.

16. Section 144C(1) opens with a non-obstante clause and applies notwithstanding anything to the contrary in the Act. It therefore

overrides the general power to make an assessment under Section 143(3) in cases that fall within its scope. The Bombay High Court in **SHL (India) (P) Ltd.** (supra) has noticed the same feature of the provision and held as under:

> *"**24.** The decision of the Delhi High Court in JCB India Ltd. v. CIT [JOB India Ltd. v. CIT, 2017 SCC OnLine Del 10424] also re-emphasises that the assessing officer cannot straight away pass a final assessment order without issuing a draft assessment order under Section 144-C(1), even in the case of remand of proceedings and that such an omission is not a mere irregularity, but an incurable illegality, which cannot be saved by Section 292-B of the IT Act. Paras 17, 18, 19 and 20 of the said decision are relevant and the same are quoted as under:*
>
> > *"17. The court is unable to agree with the submissions made on behalf of the Revenue by Mr Jain. Section 144-G(1) of the Act is unambiguous. It requires the AO to pass a draft assessment order after receipt of the report from the TPO. There is nothing in the wording of Section 144-C(1) which would indicate that this requirement of passing a draft assessment order does not arise where the exercise had been undertaken by the TPO on remand to it, of the said issue, by the ITAT.*
> >
> > *18. It was then contended by Mr Jain that the assessment order passed by the AO should not be declared to be invalid because of the failure to first pass a draft assessment order under Section 144-C of the Act. In this regard, reference is made to Section 292-B of the Act.*
> >
> > *19. As already noted, the final assessment order of the AO stood vitiated not on account of mere irregularity but since it was an incurable illegality: Section 292-B of the Act would not protect such an order. This has been explained by this Court in CIT v. Citi Financial*

Consumer Finance India (P) Ltd. [CIT v. Citi Financial Consumer Finance India (P) Ltd., 2015 SCC OnLine Del 14678] where it was held:

'Section 292-B of the Act cannot be read to confer jurisdiction on the AO where none exists. The said section only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income, assessment notices, summons or other proceedings, provided the same are in substance and in effect in conformity with the intent of purposes of the Act.'

20. The court further observed that Section 292-B of the Act cannot save an order not passed in accordance with the provisions of the Act. As the court explained, 'the issue involved is not about a mistake in the said order but the power of the AO to pass the order'."

26. *In our view, the following principles emerge from the above discussion:*

(i) That the procedure prescribed under Section 144-C of the IT Act is a mandatory procedure and not directory.

(ii) Failure to follow the procedure under Section 144-C(1) would be a jurisdictional error and not merely procedural error or irregularity.

(iii) Therefore, Section 292-B of the IT Act cannot save an order passed in breach of the provisions of Section 144-C(1), the same being an incurable illegality.

27. *It is important to note that Section 144-C(1) is a non obstante provision, which requires its compliance irrespective of the other provisions that may be contained in the IT Act. There is no dispute that petitioner is an eligible assessee and also there is no dispute as to the applicability of Section 144-C. It is also not in dispute that the final assessment order has been passed without the draft assessment order as contemplated under Section 144-C(1) of the*

IT Act. The assessing officer ought to have in the first instance forwarded a draft of the proposed order of assessment to petitioner, as there was a proposed variation prejudicial to the interest of the assessee. This important step has been completely omitted by the respondent taking away a very necessary right of petitioner to file objections to the proposed variation with the DRP and the assessing officer, which in our view, strikes to the root of the procedure contemplated by Section 144-C.

28. *Applying the aforesaid principles to the facts of this case, we are of the view that the failure on the part of the assessing officer to follow the procedure under Section 144-C(1) is not a merely procedural or inadvertent error, but a breach of a mandatory provision. We are also not impressed with the arguments of the Revenue that the assessing officer was under pressure of two charges, as there were timelines to adhere to, since the said timelines from time to time have been extended, the most recent one being to 30-9-2021. The Revenue ought to have appreciated that the requirement under Section 144-C(1) to first pass a draft assessment order and to provide a copy thereof to the assessee is a mandatory requirement which gave substantive right to the assessee to object to any variation, that is prejudicial to it. In this case, the order under Section 92-CA(3) of the IT Act, proposed to make an adjustment of Rs 10,74,54,337 to the arm's length price considered as nil "by petitioner and to that extent the said adjustment was evidently prejudicial to the interest of petitioner depriving petitioner of this valuable right to raise objection before DRP would be denial of substantive rights to the assessee, for which, in our view, the assessing officer has no power under the statute, as the provision clearly mandates the assessing officer to pass and furnish a draft assessment order in the first instance in such a case. The legislature, in our view, has intended to give an important opportunity to petitioner, who is an eligible assessee, which in our view, has been taken away. In our view, failure to follow the procedure under Section 144-C(1) would be a*

jurisdictional error and not merely procedural error or a mere irregularity. The assessment order has not been passed in accordance with the provisions of Section 144-C of the IT Act. This is not an issue, which involves a mistake in the said order, but it involves the power of the assessing officer to pass the order. By not following the procedure laid down in Section 144-C(1) to pass and furnish a draft assessment order to petitioner and directly passing a final assessment order and without giving petitioner an opportunity to raise objections before the DRP, there is a complete contravention of Section 144-C, the assessing officer having wrongly assumed jurisdiction to straight away pass the final order. This is not a mere irregularity but an incurable illegality Even the provisions of Section 292-B of the IT Act would not protect such an order as Section 292-B of the IT Act cannot be read to confer jurisdiction on the assessing officer, where none exists. The Supreme Court decision in CIT v. M. PiraiChoodi [CIT v. M. PiraiChoodi, (2010) 15 SCC 283 : (2011) 334 ITR 262] referred to in the Revenue's reply is also not applicable to the issue at hand as that was a case where the assessee was not given an opportunity to cross-examine the witness concerned and which assessee also had a statutory appellate remedy which the assessee had failed to avail of, whereas there is no such right available to petitioner in this case. In fact, petitioner has lost a substantive right due to the failure of the respondents to pass and forward a draft assessment order in the first instance on a variance, prejudicial to the interest of petitioner. In our view, this is clearly a case of jurisdictional error. The final assessment order passed by the assessing officer stands vitiated on account of lack of jurisdiction, which is incurable and deserves to be set aside as void ab initio."

17. Section 144B regulates the manner in which assessments are conducted under the faceless scheme. It does not displace Section 144C. The two provisions deal with different matters. A show cause notice proposing a variation under the faceless scheme is not a draft

order under Section 144C(1) and does not carry the same consequences. After a show cause notice the assessee is left with the statutory appeal against the final order. After a draft order the assessee has the additional forum of the DRP. The show cause notice dated 01.09.2021 therefore cannot stand in for the draft order that Section 144C(1) requires.

18. The order of the TPO itself recorded that the Assessing Officer was mandatorily required to follow Section 144C before passing the final order. The Revenue was thus told by its own officer in plain terms what procedure had to be followed. Respondent No.1 nevertheless issued a show cause notice on 01.09.2021 and received the petitioner's reply on 03.09.2021 and thereafter passed the Final Assessment Order on 14.09.2021 under Section 143(3) read with Section 144B. No draft order was ever forwarded to the petitioner.

19. Several features of the impugned order show that it is a final assessment order and was never meant to be a draft. It was passed under Section 143(3) read with Section 144B as stated on its face. A notice of demand under Section 156 was issued along with it. It also directed that penalty proceedings be initiated separately. None of these steps is taken in a draft order. The Revenue has not explained how an order carrying them can be treated as anything other than final.

20. The petitioner also points out that the e-proceedings portal offered it no facility to file objections before the Dispute Resolution Panel and showed only the option of an appeal before the Commissioner of Income Tax (Appeals). The portal thus treated the order as a final one. This is consistent with our reading. We also note that for the assessment year 2017-18 the same Department framed the assessment by first passing a draft order. No reason has been offered for adopting a different procedure for the next year in a case of the same kind. A statutory right cannot be lost because of the manner in which a portal is configured. The petitioner cannot be faulted for failing to raise objections before the Panel when no draft order was ever served on it. The loss of that forum is the direct result of the omission of the Department.

21. In the case of **SHL (India) (P) Ltd.** (supra), the Bombay High Court considered the effect of passing a final assessment order without a draft order. It held that the procedure under Section 144C is mandatory and not directory. It held that a failure to follow Section 144C(1) is a jurisdictional error and not a mere procedural irregularity. It held further that Section 292B cannot save an order passed in breach of Section 144C(1) because the breach is an incurable illegality. It also observed that the omission strikes at the root of the procedure by taking away the right of the assessee to object before the Panel.

22. The Revenue relied on the case of **Interglobe Enterprises (P) Ltd.** (supra) for the proposition that the petitioner has an alternative statutory remedy and that the writ petition is not maintainable. The rule of alternative remedy is a rule of discretion and not one of jurisdiction. It yields where the impugned action is without jurisdiction or in breach of natural justice or in violation of a mandatory statutory procedure. The relevant paragraphs are reproduced below for ready reference:

> *"**7.** Since in the present case no prior show-cause notice as well as draft assessment order had been issued and no hearing had been given before passing the impugned assessment order, there is a blatant violation of principles of natural justice as well as mandatory procedure prescribed in "Faceless Assessment Scheme" and stipulated in section 144B of the Act.*
>
> ***8.** It is also settled law that an alternative statutory remedy does not operate as a bar to maintainability of a writ petition where the proceeding is carried out in violation of principles of natural justice - like in the present case.*
>
> ***9.** Keeping in view the aforesaid facts and mandate of law, the impugned assessment order dated April 9, 2021 and notice of demand for the assessment year 2018-19 are set aside and the matter is remanded back to the Assessing Officer, who shall issue a draft assessment order and grant an opportunity of hearing to the petitioner by way of video conferencing and thereafter pass a reasoned order in accordance with law. With the aforesaid direction, the present writ petition along with pending application stands disposed of.*

23. The decision of **Interglobe** (supra) placed before us does not support the Revenue. The Delhi High Court there found a blatant

violation of natural justice and of the mandatory procedure of the faceless scheme because no draft order had been issued and no hearing had been granted. It held in terms that an alternative statutory remedy is no bar to a Writ Petition where the proceeding is carried out in violation of principles of natural justice. It then set aside the assessment order and the notice of demand and remanded the matter to the Assessing Officer to issue a draft assessment order and grant a hearing. The decision therefore supports the petitioner and also indicates the course that is appropriate here.

24. An appeal before the Commissioner of Income Tax (Appeals) is a remedy against a final assessment order validly made. It is not a substitute for the very procedure that the Act prescribes in its place. The petitioner would have to give up the forum of the Panel to which it is entitled before the final order and would be left with an appeal against an order that should never have been made in that form.

25. We also place our reliance on the decision of this Court in the case of **Principal Commissioner of Income Tax-2, Hyderabad vs. M/s. Hyundai Motor India Engineering Pvt. Ltd.**[3] wherein the petitioner was granted relief on similar lines as in the present case. In paragraph No.18 of the said judgment, it was held as under:

> *"**18.**Given the aforesaid legal position as it stands, as is required under Section 144-C of the Act and also taking note of the contents of the operative part of the so called assessment order, in*

[3] I.T.T.A. No.29 of 2023, dated 11.09.2023

the considered opinion of this Bench leads to the only conclusion of the order being a final assessment order, more particularly, when the authority concerned has also ordered and directed for initiation of penalty proceedings simultaneously along with the draft assessment order. Hence, this Bench has no hesitation in reaching to the conclusion that the findings arrived at by the Tribunal while allowing the appeal of the respondent/assessee was proper, legal and justified. That the present appeal thus being devoid of merits, deserves tobe and is accordingly, rejected. There shall be no order as to costs.

26. Therefore, the Final Assessment Order dated 14.09.2021 was passed without the draft order that Section 144C(1) of the Act requires and it is without jurisdiction and cannot be sustained. We do not examine the merits of the Transfer Pricing adjustment of Rs.65,78,92,738/- or the other contentions raised by the petitioner in relation to it. Those will be open for consideration before the Panel after a draft order is passed. The proper course is to restore the proceedings to the stage that followed the order of the TPO. The order under Section 92CA(3) is not challenged before us. The defect lies in what the Assessing Officer did afterwards. A remand to that stage will allow the statutory scheme to take its course.

27. For the foregoing reasons the Writ Petition stands **allowed**. The Final Assessment Order bearing dated 14.09.2021, passed by respondent No.1, under Section 143(3) read with Section 144B of the Act for the assessment year 2018-19 is set aside. The notice of

demand under Section 156 of the Act and the directions for initiation of penalty proceedings issued with it also stand set aside.

28. The question of law framed is answered in favour of the petitioner and against the Revenue.

29. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, ACJ

NARSING RAO NANDIKONDA, J

Date: 11.11.2026
GSD