2025 INSC 946

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS._____OF 2025
(Arising out of SLP (Civil) Nos.20569-20572 of 2023)

Assistant Commissioner of Income Tax (International Taxation) & Others ... Appellants

Versus

Shelf Drilling Ron Tappmeyer Ltd. Etc. ... Respondent(s)

WITH
SPECIAL LEAVE PETITION (CIVIL) NO.25798 OF 2024

I N D E X

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J U D G M E N T

NAGARATHNA, J.

Leave granted in SLP (Civil) Nos.20569-20572 of 2023.

2. I have perused the judgment authored by my learned Brother Satish Chandra Sharma, J. I am unable to persuade myself to concur with the reasoning adopted by my learned Brother, hence my separate opinion.

2.1 In the present cases, the respondents in the first batch of cases being non-resident assessees engaged in the business of exploration in terms of Section 44BB of the Income Tax Act, 1961 (for short, "the Act"), are eligible assessees within the meaning of Section 144C.

2.2 Briefly stated the issue which arises in these appeals is the interpretation to be given to Section 144C in light of Section 153 of the Act. The question which falls for consideration is on the applicability of Section 153 to a proceeding under Section 144C of the Act namely, whether the period of eleven months as envisaged under Section 144C of the Act should be over and above the limitation period prescribed, particularly, under Section 153(1) or

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(3), as the case may be. In other words, whether the time consumed for concluding the proceeding under Section 144C has to be subsumed within the limitation prescribed under Section 153(1) or (3) or as the case may be. It is worth noting that the question is one of statutory interpretation i.e. the interplay between Sections 153 and 144C and not one of normatively assessing the adequacy of time available to the Revenue or an assessee, under any scenario. If this Court were to assign its own view to the adequacy of statutory prescribed timelines, then it will amount to ignoring the cardinal principles of interpreting fiscal statutes. While my learned Brother has allowed the appeals filed by the Revenue, I have decided to dismiss the same.

Factual Background:

3. Briefly stated, the respondents in Civil Appeal arising out of SLP(C) No. 20569-20572/2023 are group companies incorporated overseas and are engaged in the business of shallow water drilling for clients engaged in the oil and gas industry. Respondents have been filing their return of income under the Act. The four special leave petitions filed before this Court arise from four writ petitions being W.P. No.2340/2021, W.P. No.2661/2021, W.P.

No.3059/2021 and W.P. No.3060/2021 preferred by the respondents before the Bombay High Court, which were allowed by the High Court *vide* common impugned order dated 04.08.2023. Considering the material similarities in all writ petitions, the common impugned order narrated and discussed the facts in W.P. No.2661/2021 and we will narrate the same insofar as concurrent with others which is from SLP(C) Nos.20570/2023. SLP(C) Nos.20569-20570/2023 concern Assessment Year (A.Y.) 2014-15 and SLP(C) Nos.20571-20572/2023 concern A.Y. 2018-19.

3.1 The respondents in the above cases are non-resident assessees, which are engaged, *inter alia*, in the business of providing services or facilities in connection with prospecting for or extraction or production of mineral oils, had the option to compute their income on presumptive basis under Section 44BB of the Act; however, for A.Y. 2014-15, the respondents opted out of the option to compute their income on presumptive basis and declared a total loss of Rs.120,18,44,672/- in their Return of Income filed on 29.11.2014. *Vide* Notice issued under Section 143(2) dated 28.08.2015, respondents' Return of Income was selected for scrutiny. Subsequently, the Draft assessment order was issued on

26.12.2016 computing the respondent's total income at Rs.4,34,79,980/-. Undisputedly, Respondents are eligible assessees as per Section 144C(15) of the Act. In accordance with Section 144C, respondents filed their objections before the Dispute Resolution Panel (for short, 'DRP') against the draft assessment order, which eventually did not accept respondents' case and by an order dated 28.09.2017 gave directions to the Assessing Officer. Upon receipt of the directions of the DRP, the Assessing Officer passed the final assessment order on 30.10.2017 under Section 143(3) read with Section 144C(13) of the Act.

3.2 Aggrieved by the said Order dated 30.10.2017, the respondents filed an appeal before the Income Tax Appellate Tribunal ('Tribunal', for short) which by way of its order dated 04.10.2019 allowed the appeal and remanded the matter to the Assessing Officer for fresh adjudication. Pursuant to such remand, on 05.02.2020, the respondent, informed the Assessing Officer about the order and requested for an early disposal of the same. More than a year thereafter, on 22.02.2021, the respondent was called upon to produce certain contractual details and supply reasons for incurring a loss during A.Y. 2014-15. Further

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information was requested *vide* notice dated 10.09.2021 issued under Section 142(1) of the Act. Subsequently, several notices were issued under Section 142(1) of the Act calling upon the respondent to provide documents and details. Finally, on 23.09.2021 at 09:42 AM, the respondent was issued a show cause notice allowing it time to respond till 03:30 PM on the next day i.e. 24.09.2021. As required, the respondent filed its response on 24.09.2021. Thereafter, an assessment order came to be passed in remand on 28.09.2021, which was clarified on 29.09.2021 to be a draft assessment order.

3.3 In compliance with Section 144C(2), the respondent filed its objections before the DRP on 27.10.2021 and also filed the writ petitions before the High Court impugning the draft assessment order dated 28.09.2021 by contending that no final assessment order could be passed now as the period of limitation expired on 30.09.2021 under Section 153(3) of the Act read with the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short, 'TOLA") and the Notification issued thereunder.

3.4 A perusal of the Memorandum of W.P. No.2340/2021 annexed by Petitioners confirms that the facts and dates in SLP(C) No.20569/2023 are congruent to those discussed above and therefore, the same need not reiterated.

3.5 The facts of SLP(C) Nos.20571-20572/2023 (arising out of W.P. Nos.3059-3060/2021) are slightly different although they call for an answer to the same question of law. Unlike the two other petitions which concern an order passed on remand, in these Petitions the original orders of assessment were required to be passed within the period of limitation set out in Section 153(1) of the Act. On 30.11.2018, the respondents therein filed their Return of Income declaring total loss for AY 2018-19. On 23.11.2020, the first notices under Section 142(1) were issued to them, which were replied to. Several other notices under Section 142(1) were issued and replies given before, finally, on 23.09.2021 a Show Cause Notice was issued in both cases and draft assessment orders under Section 144C passed on 28.09.2021. As per Section 153(1) of the Act, the limitation for passing of final assessment orders is eighteen months from the end of the Assessment Year. Ordinarily, the original due date would have been 30.09.2020, however, due to the

operation of the TOLA and the Notifications issued thereunder, the due date was extended to 30.09.2021. *Vide* the Common Impugned Order, the High Court was of the view that there is no difference in the legal principle falling for consideration in all these petitions since, in these two petitions, the draft order under Section 144C was passed on 28.09.2021 and no final assessment order could forthwith be passed due to the expiry of due date on 30.09.2021.

Being aggrieved by the said reasoning, the revenue has preferred these appeals.

3.6 The impugned order in SLP(C) No.25798 of 2024 is against an interim order passed by the Bombay High Court and the Writ Petition is pending adjudication.

Submissions:

4. We have heard learned Additional Solicitor General (ASG) Sri N. Venkataraman for the revenue and learned senior counsel Sri J.D. Mistry for the respondents at length. We have also perused the material on record.

4.1 Learned Additional Solicitor General contended that the method of assessment which is contemplated for eligible assessees

as defined under Section 144C(15) of the Act is distinct from the normal category of assessees as there is a departure in the assessment procedure under Section 144C of the Act which is a Code by itself. This is because under Section 144C(1) of the Act, a draft order has to be made and communicated to the eligible assessees who are defined under Section 144C(15) of the Act. That a draft assessment order is not an enforceable order but is made by the Assessing Officer prior to the making of a final assessment order which is in the case of eligible assessees only. The respondents herein fall within clause (b) of Section 144C(15). That insofar as an ordinary assessment is concerned, the time frame is as provided under Section 153 of the Act but if there is a variation arising in respect of a proceeding before the Transfer Pricing Officer, then under Section 92CA of the Act as there is an extension of the period of twenty-one months contemplated under Section 153(1) of the Act by a further period of twelve months, the total time period is increased to thirty-three months for passing an assessment order from the end of the relevant year. That, Section 144C has its own timeline which is in addition to what is prescribed

under Section 153 of the Act as it is in the nature of an exception to the latter provision.

4.2 It was submitted by Sri Venkataraman that under Section 144C of the Act, non-obstante clauses have been used in three sub-sections and the import of those clauses have to be clearly interpreted. In this context, he submitted that the Court must also bear in mind the difference between a non-obstante clause and a "subject to" clause which are used as distinct legislative devices for bringing forth the intent of the legislature, which is the Parliament in the instant case. Having regard to the non-obstante clause in sub-section (1) of Section 144C of the Act, it was submitted that there is no time frame envisaged for passing of a **draft order** by the Assessing Officer when a matter is remanded from the Tribunal under Section 254 of the Act. That the non-obstante clause would indicate that the time frame of twelve months mentioned in the proviso to sub-section (3) of the Section 153 would not apply to the passing of a draft order under sub-section (1) of Section 144C of the Act. However, the non-obstante clauses in sub-sections (4) and (13) of Section 144C would indicate that the said clauses are referrable directly to Section 153(3) of the Act. That, having regard

to the use of the non-obstante clauses under Section 144C of the Act, the said Section would have to be interpreted in juxtaposition with Section 153(3) of the Act which deals with the limitation for the passing of an assessment order pursuant to a remand order passed by the Tribunal.

4.3 Learned Additional Solicitor General further submitted that in the impugned orders of the Bombay High Court which have followed the judgment of the Madras High Court in the case of ***Commissioner of Income Tax vs. Roca Bathroom Products Pvt. Ltd., 2022 SCC Online Madras 8777 ("Roca Bathroom Products")*** are wholly incorrect inasmuch as the High Courts have failed to appreciate the fact that Section 144C is a Code by itself with regard to the making of an assessment order insofar as the category of eligible assessees are concerned. Hence, the said judgments require to be overruled. A similar view has also been taken by the Delhi High Court which is also incorrect.

5. *Per contra*, learned senior counsel Sri Mistry at the outset submitted that the Special Leave Petitions ought to be dismissed owing to "low tax effect". However, the said submission has not

been acted upon by us having regard to the important question of law which has been raised in these appeals.

5.1 Learned senior counsel for the respondents commenced his arguments by submitting that under the Act, there are only four provisions which empower the Assessing Officer to make an assessment order which are Sections 143(3), 144, 147 and 158. The exception to this is Section 172 of the Act under which an assessment order is passed on the landing of a ship on the Indian shores.

5.2 Arguing on the merits of the case, Sri Mistry contended that Section 153(1) of the Act prescribes the limitation period for completion of assessment, reassessment or recomputation which is twenty-one months subject to the provisos therein when an assessment is made under Sections 143 or 144 of the Act; that, in a case where Section 92C applies, sub-section (4) of Section 153 may have expressly extended the limitation period by twelve months which is by way of a recent amendment and is not applicable to the respondents-assessees in the present cases. Also, while calculating the period of limitation, the Explanation to Section 153 expressly provides the specific periods to be excluded.

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However, there is no reference to the time consumed in a proceeding under Section 144C being excluded and thereby extending the period of limitation as provided under sub-section (3) of Section 153 of the Act which is applicable to the present cases. Therefore, in all cases, pertaining to an eligible assessee, the procedure contemplated under Section 144C has to be within the time frame prescribed under Section 153(3) of the Act. There is no additional limitation period contemplated over and above what is prescribed in Section 153(3) of the Act which deals with a *de novo* assessment being made on the setting aside or cancellation of the assessment by the Tribunal under Section 254 of the Act. That in the instant case, there has been a breach of the limitation period while passing the re-assessment order. Hence, the High Court held that the re-assessment order was barred by limitation.

5.3 Elaborating on the said contention, it was argued that the overall time frame for passing an assessment/reassessment order is prescribed under Section 153(1) of the Act, which is a period of twenty-one months subject to the provisos thereto but when Section 153(3) applies, the procedure under Section 144C must be completed within the overall period of twelve months prescribed

under Section 153(3). That the expression "an order of fresh assessment" means a final assessment order and not to a draft order to be passed in twelve months. Hence, an intermediary mechanism has been envisaged under Section 144C of the Act before the final order is passed under that Section itself. Further, specific timelines have been indicated under Section 144C for various stages to be completed, which must be strictly adhered to in order to comply with the limitation period prescribed under Section 153(3) of the Act. In this regard, the judgment of the Madras High Court in the case of ***Roca Bathroom Products*** was relied upon.

5.4 Learned senior counsel submitted that the conundrum in this case is regarding a harmonious interpretation of Section 153(3) with Section 144C of the Act. In this regard, our attention was drawn to the Explanation to Section 153 which specifically excludes certain periods under certain circumstances while calculating the limitation period of twelve months under the proviso to Section 153(3) of the Act. It was submitted that if the Parliament intended that the period consumed while carrying out the procedure under Section 144C of the Act had to be excluded

from Section 153(3) of the Act then there would have been an express provision to that effect. In the absence of such a provision, the Court would have to strictly interpret Section 144C in light of Section 153(3) of the Act having regard to the intention of the Parliament *vis-à-vis* eligible assessees.

5.5 Applying the aforesaid submissions to the facts of the case, learned senior counsel Sri Mistry submitted that in the instant case, the order of the Tribunal is dated 04.10.2019 and in terms of the proviso to Section 153(3) of the Act, a period of twelve months is the maximum period in which a final assessment order has to be made *de novo* by bearing in mind the procedure envisaged under Section 144C of the Act in which event, there would be a period of eighteen months available from 04.10.2019 for passing such a *de novo* order whereas twelve months is the minimum period available to pass such an order if the order of the Tribunal is dated 31st March of a particular year as the period of twelve months have to be calculated from the end of the financial year in which the order of the Tribunal is received by the concerned Income Tax Commissioner. That Section 153(3) has been amended in the year 2016 which is after the insertion of Section 144C to the Act and

the Parliament was well aware of the process envisaged under Section 144C of the Act insofar as eligible assessees are concerned with regard to making of a final assessment order within the aforesaid time frame.

5.6 In this regard, reliance was placed on the judgment of this Court in ***Kalyankumar Ray vs. Commissioner of Income Tax, West Bengal, (1991) 191 ITR 634 (SC) ("Kalyankumar Ray")*** to contend that assessment under the Act is an integrated process involving not only the assessment of the total income but also the determination of tax and the latter is as crucial for the assessee as the former. This is because under Section 143(3) the Assessing Officer has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and the demand notice under Section 156 has to be issued in consequence of such an order. The same principle would squarely apply to Section 144C of the Act in the case of eligible assessees also insofar as the limitation period is concerned.

5.7 That an order passed under Section 144C of the Act is not appealable before the Commissioner (Appeal) but directly before

the Tribunal *vide* Section 246A(1)(a). On the other hand, an assessment order made pursuant to the directions of the DRP is appealable under Section 253(1)(d) of the Act before the Tribunal. Thus, an assessment order made under Section 144C is also an assessment made within the meaning of Section 143(3) but appealable before the Tribunal. Therefore, the limitation period prescribed under Section 153(3) to an order made under Section 144C of the Act is squarely applicable. Even though, no limitation period has been prescribed to make a draft assessment order pursuant to a remand made by the Tribunal on setting aside or cancelling the assessment, the fact remains that a final assessment order must be made under Section 144C within the limitation prescribed under the proviso to Section 153(3) of the Act.

5.8 It was emphatically submitted by learned senior counsel Sri Mistry that the non-obstante clause in sub-section (1) of Section 144C of the Act is not with reference to the limitation period prescribed under Section 153 of the Act. Since a draft order has to be made prior to a final assessment order in the case of eligible assessees unlike other categories of assessees, the Parliament has envisaged a special procedure as opposed to the procedure

contemplated in the case of ordinary assessees. In this regard, reliance was placed on the judgments of this Court in ***Central Bank of India vs. State of Kerala, (2009) 4 SCC 94*** and ***In Re: Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, (2024) 6 SCC 1*** in the context of interpretation of a non-obstante clause.

Opinion of Learned Satish Chandra Sharma J.:

6. My learned Brother Satish Chandra Sharma, J. who has penned his judgment is of the view that the learned Additional Solicitor General is right in his submissions and therefore has allowed the Revenue's appeals while rejecting the contentions advanced on behalf of the respondents-assessees. He has opined that judgments of the Madras High Court in ***Roca Bathroom Products*** as well as the impugned orders have to be set-aside.

6.1 Referring to ***Roca Bathroom Products***, my learned brother has stated that sub-section (4) of Section 153 of the Act applied to the instant case, which providing for an additional period of twelve months to complete the assessment and to pass a final order when there is a reference to the Transfer Pricing Officer in terms of Section 92CA of the Act. The Madras High Court on the other hand,

held that the proceedings before the DRP and the passing of the Draft Assessment and thereafter the Final Assessment Orders ought to take place within the period of limitation of twelve months as prescribed under Section 153(3) of the Act and not under an additional period of twelve months. The above reasoning has not been accepted by my learned Brother by observing that a fine balance has to be maintained between ensuring that the revenue authorities must have ample time and opportunity to assess the income and to ensure that there is no evasion of tax or escapement of income while at the same time, the rights of the assessees in having their return scrutinised on a timely basis must be balanced.

6.2 In the above backdrop, it has been reasoned that if the entire procedure contemplated in terms of Section 144C of the Act has to be subsumed within the overall time period prescribed under Section 153(3) of the Act, then it would result "*in a complete catastrophe for recovering lost tax*", as a narrower period of time will pressurise the Assessing Officer and as a result, the system will become unworkable. However, under Section 144C, specified timelines have been prescribed within which the assessment order must be passed. That although Section 153(3) does not distinguish

between persons who are to be assessed under Section 144C of the Act or otherwise, in fact, those whose assessments/reassessments are made under Section 143(3) are different from those under Section 144C of the Act. That under Section 144C of the Act, a totally distinct procedure is contemplated and if a matter is referred to the DRP, then the final assessment has to be made within the period of eleven months from the date of forwarding of the draft assessment order to the DRP.

6.3 According to my learned brother, the High Courts of Bombay and Madras have erred in opining that no exception has been carved out for Section 144C of the Act in any of the sub-sections of Section 153 and therefore, the procedure under Section 144C must necessarily conclude within the timeframe prescribed under Section 153(3) of the Act. My learned Brother has agreed with this view only to a limited extent, insofar as the timeline prescribed under Section 153(3) is concerned in as much as it must apply to the proceedings under Section 144C of the Act but only insofar as they relate to the passing of the draft assessment order contemplated under sub-section (1) of Section 144C of the Act. In other words, the view taken by my learned Brother is that in

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addition to the timeframe stipulated under Section 153(3) of the Act, i.e., twelve months for making an assessment order, the timeframe that is taken for completing the proceeding under Section 144C would also have to be excluded from the aforesaid twelve months which would automatically extend the limitation period beyond the twelve months as contemplated under Section 153(3) of the Act. This view is sought to be justified by holding that sub-sections (4) and (13) of Section 144C of the Act which contain the non-obstante clauses, exclude the application of Section 153(3) of the Act and the timelines prescribed thereunder. However, the High Courts of Madras and Bombay have taken the view that the timeline under Section 144C further reduces the timeline available to the Assessing Officer to pass an assessment order under that provision and that it limits the timeline in order to achieve the mandate under Section 153(3) of the Act which according to my learned Brother is an incorrect view.

6.4 That, after the directions are issued by the DRP under Section 144C, a period of one month is contemplated for passing the final assessment order, which in any case has to be passed within an overall twelve months period, under Section 153(3) of the

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Act. But learned Brother Sharma, J. has opined that the timelines in sub-sections (4) and (13) of Section 144C of the Act are independent of the timeline contemplated under Section 153(3) of the Act and Section 144C operates in a timeline *in addition to the* timeline contemplated under Section 153(3) of the Act. Therefore, the Bombay and Madras High Courts were not correct in their conclusions.

6.5 It is further reasoned by my learned Brother that Section 153(3) of the Act which prescribes the period of twelve months is only for the purpose of passing a draft order. The non-obstante clause contained in sub-sections (4) and (13) of Section 144C of the Act extend the timeline for passing a final order; that sub-section (4) of Section 144C operates only when the variation proposed in the draft assessment order is not accepted or when the period of filing objections before DRP has expired, which is subsequent to the passing of the draft assessment order. Therefore, the Assessing Officer has to comply with the requirements of Section 153(3) of the Act only insofar as the passing of the draft assessment order is concerned and if the variations made by him in the said order are accepted or objections are not made within a period of thirty days,

then the period of one month is extended for passing the final assessment order under Section 144C(4) of the Act.

6.6 Applying the said reasoning to the present case, it has been held that the Tribunal passed the remand order on 04.09.2019 and Assessing Officer ought to have passed the draft assessment order before 30.09.2021 and if in case the acceptance was received or no objection was filed before 30.10.2021 then the final order had to be passed in a month's time. But if objections were received from the eligible assessee then sub-sections (12) and (13) of Section 144C would apply and the Assessing Officer would have an additional period of one month to pass the final assessment order. This means that if the DRP issues directions, then within a period of one month, the final assessment order has to be passed, which is practically impossible, and the provision would be reduced to an absurdity. Therefore, the view of the High Court of Madras and Bombay was not acceptable to my learned Brother.

6.7 Thus, according to my learned Brother, Sharma, J. the timeline mentioned under Section 153(3) would apply only to the passing of the draft assessment order and if Section 92C applies,

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then the period would automatically be extended by twelve months under Section 153(4) of the Act.

6.8 Therefore, the impugned orders of the Bombay High Court have been set-aside and the appeals have been allowed by directing the revenue authorities to pass afresh an appropriate order in accordance with law, reserving liberty to the assessees to take recourse to remedies available under the law (by referring to the liberty granted to the parties in terms of paragraph 20 of the judgment and order dated 30.08.2021 passed by the Bombay High Court in Writ Petition No.30944 of 2021).

Relevant Provisions:

7. Before proceeding further, it would be useful to extract the relevant provisions of the Act as under:

> **"2. Definitions. –** In this Act, unless the context otherwise requires, -
>
> xxx
>
> (40) **"regular assessment"** means the assessment made under sub-section (3) of section 143 or section 144;"

7.1 Section 44BB is a special provision for computing profits and gains in connection with the business of exploration etc., of mineral oils which provision is applicable to the respondent assessees. The

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explanation in Section 44BB states that a plant includes ships, aircrafts, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of such business and the expression "minerals oil" includes petroleum and natural gas.

7.2 Section 139 speaks of filing of return of income. Section 143 deals with 'assessment' while Section 144 deals with 'best judgment assessment'. Under Section 144A the Joint Commissioner has the power to issue directions in certain cases while under Section 144BA reference can be made to the Principal Commissioner or Commissioner in certain cases. Section 144C deals with reference to dispute resolution panel. The time limit for completion of assessment, reassessment and recomputation is prescribed under Section 153 of the Act. The said Section prescribes the limitation period for the making of, *inter alia*, assessment orders on the application of several other provisions which is relevant for the purposes of this case. Sections 144C and 153 are extracted as under:

> **"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 which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variation with,—

(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

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(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the

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assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in sub-section (12) of section 144BA.

(14B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

(14C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14B),

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by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

(14D) Every notification issued under sub-section (14B) and sub-section (14C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three 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:

Provided that such eligible assessee shall not include person referred to in sub-section (1) of section 158BA or other person referred to in section 158BD.

(16) The provisions of this section shall not apply to any proceedings under Chapter XIV-B.

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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:

Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have

effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided further that in respect of an order of assessment relating to the assessment year commencing on—

(i) 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(ii) 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided also that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted:

Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2022, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted.

(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of twelve months from the end of the financial year in which such return was furnished.

(1B) Notwithstanding anything in sub-section (1), where a return is furnished in consequence of an order under clause (b) of sub-section (2) of section 119, an order of assessment under section 143 or section 144 may be made at any time before the expiry of twelve months from the end of the financial year in which such return was furnished.

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the

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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.

(3) Notwithstanding anything contained in sub-sections (1), (1A) and (2), an order of fresh assessment or fresh order under section 92CA, as the case may be, in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, or an order under section 92CA, as the case may be, 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 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, as the case may be:

Provided that where 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, as the case may be, 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.

(3A) Notwithstanding anything contained in sub-sections (1), (1A), (2) and (3), where an assessment or reassessment is pending on the date of initiation of search under section 132 or making of requisition under section 132A, the period available for completion of assessment or

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reassessment, as the case may be, under the said sub-sections shall,—

(a) in a case where such search is initiated under section 132 or such requisition is made under section 132A;

(b) in the case of an assessee, to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to;

(c) in the case of an assessee, to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to,

be extended by twelve months.

(4) Notwithstanding anything contained in sub-sections (1), (1A), (2), (3) and (3A), 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), (1A), (2), (3) and (3A), 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 or the Transfer Pricing Officer, as the case may be, wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order under section 92CA, as the case may be, 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 Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be:

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

Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).

(5A) Where the Transfer Pricing Officer gives effect to an order or direction under section 263 by an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him.

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

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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 Chief Commissioner or Chief Commissioner or 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.

(8) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A or sub-section (1) of section 153B or section 158BE, the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A or sub-section (5) of section 158BA, shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B or section 158BE, whichever is later.

(9) The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016:

Provided that where a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in *Explanation 1*, such assessment or reassessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016 (28 of 2016).

Explanation 1.—For the purposes of this section, in computing the period of limitation—

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(ii) the period commencing on the date on which stay on the assessment proceeding was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional Principal Commissioner or Commissioner; or

(iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B), under clause (i) of the first proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer; or

(iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited or inventory valued under sub-section (2A) of section 142 and—

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(a) ending with the last date on which the assessee is required to furnish a report of such audit or inventory valued under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal

Commissioner or Commissioner under sub-section (3) of section 245R; or

(ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer; or

(xii) the period (not exceeding one hundred and eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee,—

(a) in whose case such search is initiated under section 132 or such requisition is made under section 132A; or

(b) to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or

(c) to whom any books of account or documents seized or requisitioned pertains or pertains to, or any information contained therein, relates to; or

(xiii) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or clause (iii) of sub-section (4) of section 12AB, as the case may be, is received by the Assessing Officer,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (1A), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 154, 155 and 158BE and for the purposes of payment of interest under section 244A, this proviso shall also apply accordingly:

Provided also that where the assessee exercises the option to withdraw the application under sub-section (1) of section 245M, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (5) of the said section, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year:

Provided also that for the purposes of determining the period of limitation under sections 149, 154 and 155, and for the purposes of payment of interest under section 244A, the provisions of the fourth proviso shall apply accordingly:

Provided also that where after exclusion of the period referred to in clause (xii) the period of limitation for making an order of assessment, reassessment or recomputation, as the case may be, ends before the end of the month, such period shall be extended to the end of such month.

Explanation 2.—For the purposes of this section, where, by an order referred to in clause (*i*) of sub-section (6),—

(a) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be

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deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or

(b) any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed."

7.3 Section 246A deals with appeals before the Commissioner (Appeals) which is essentially with regard to an assessment order passed under sub-section (3) of Section 143 or sub-section (12) of Section 144BA or Section 144 made by the Assessing Officer. However, any order passed in pursuance of the directions of the DRP is not appealable to the Commissioner (Appeals) as the same is excluded under the said provision. On the other hand, under Section 253(1)(d), an order passed by an Assessing Officer under sub-section (3) of Section 143 or Section 147 or Section 153A or Section 153C in pursuance of the directions issued by the DRP, or an order passed under Section 154 in respect of such order can be appealed directly to the tribunal.

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Material relied upon by the Respondents in support of their Submissions:

8. Learned senior counsel for the respondents relied upon the Budget Speeches of the Finance Ministers of the relevant years in support of their submission that it has been the intention of the Parliament to reduce the time consumed in making an assessment order in the case of eligible assessees. The relevant portions are extracted as under:

(i) ***Speech of Finance Minister on July 6, 2009***

> **"96.** In order to further improve the investment climate in the country, we need to facilitate the resolution of tax disputes faced by foreign companies within a reasonable time frame. This is particularly relevant for such companies in the Information Technology (IT) sector. I, therefore, propose to create an alternative dispute resolution mechanism within the Income Tax Department for the resolution of transfer pricing disputes. To reduce the impact of judgemental errors in determining transfer price in international transactions, it is proposed to empower the Central Board of Direct Taxes (CBDT) to formulate 'safe harbour' rules.
>
> (underlining by me)

(ii) ***Memorandum Regarding Delegated Legislation***

Clause 55

"*Clause 55* of the Bill seeks to insert a new section 144C relating to reference to Dispute Resolution Panel.

The proposed new section provides for a dispute resolution mechanism for the purpose of speedy disposal of the

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objections raised by the eligible assessee under this new section.

Accordingly, it is proposed to empower the Board to make rules for the efficient functioning of the Dispute Resolution Panel for expeditious disposal of the objections filed by the eligible assessee."

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Provision for constitution of alternate dispute resolution mechanism

The dispute resolution mechanism presently in place is time consuming and finality in high demand cases is attained only after a long-drawn litigation till Supreme Court. Flow of foreign investment is extremely sensitive to prolonged uncertainty in tax related matter. Therefore, it is proposed to amend the Income-tax Act to provide for an alternate dispute resolution mechanism which will facilitate expeditious resolution of disputes in a fast track basis.

The salient features of the proposed alternate dispute resolution mechanism are as under:—

(1) The Assessing Officer shall, forward a draft of the proposed order of assessment (hereinafter 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.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,-

(a) File his acceptance of the variations to the Assessing Officer; or

(b) File his objections, if any, to such variation with,—

(i) The Dispute Resolution Panel; and

(ii) The Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if —

(a) The assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) No objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) The acceptance is received; or

(b) The period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objections are received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) Draft order;

(b) Objections filed by the assessee;

(c) Evidence furnished by the assessee;

(d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) Records relating to the draft order;

(f) Evidence collected by, or caused to be collected by, it; and

(g) Result of any enquiry made by, or caused to be made by it.

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(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5), -

(a) Make such further enquiry, as it thinks fit; or

(b) Cause any further enquiry to be made by any income tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which the direction is received.

(14) The Board may make rules for the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed, under sub-section(2), by the eligible assessee.

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three 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.

Further, it is proposed to make consequential amendments—

(i) in sub-section (1) of section 131 so as to provide that "Dispute Resolution Panel" shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908);

(ii) in clause (a) of sub-section (1) of section 246 so as to exclude the order of assessment passed under sub-section (3) of section 143 in pursuance of directions of "Dispute Resolution Panel" as an appealable order and in clause (c) of sub-section (1) of section 246 so as to exclude an order passed under section 154 of such order as an appealable order;

(iii) in sub-section (1) of section 253 so as to include an order of assessment passed under sub-section (3) of section 143 in pursuance of directions of "Dispute Resolution Panel" as an appealable order.

These amendments will take effect from 1st October, 2009.

[Clauses 49,55,71,72]"

(underlining by me)

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(iii) *Notes on Clauses*

Clause 55 of the Bill seeks to insert a new section 144C in the Income-tax Act relating to Dispute Resolution Panel.

The subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The correction of such view take very long time with the existing appellate structure.

With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative dispute resolution mechanism within the income-tax department and accordingly, section 144C has been proposed to be inserted so as to provide *inter alia* the Dispute Resolution Panel as an alternative dispute resolution mechanism.

This amendment will take effect from 1st October, 2009.

(iv) *Explanatory Notes to the Provisions of the Finance Act, 2016 dated 20th January 2017*

57. Rationalisation of time limit for assessment, reassessment and recomputation.

57.1 The existing statutory time limit for completion of assessment proceedings is two years from the end of the assessment year in which the income was first assessable. It is desirable that proceedings under the Act are finalised more expeditiously as digitisation of processes within the Department has enhanced its efficiency in handling workload. In order to simplify the provisions of existing section 153 of the Income-tax Act by retaining only those provisions that are relevant to the current provisions of the Income-tax Act, section 153 of the Income-tax Act has been amended by substituting the existing section with the following changes in time limit from the existing time limits:

(i) the period, for completion of assessment under section 143 or section 144 has been changed from existing two years to twenty-one months from the end of the

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assessment year in which the income was first assessable;

(ii) the period for completion of assessment under section 147 has been changed from existing one year to nine months from the end of the financial year in which the notice under section 148 was served;

(iii) the period for completion of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment has been changed from existing one year to 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 the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner

57.2 It is further provided that the period for giving effect to an order, under sections 250 or 254 or 260 or 262 or 263 or 264 of the Income-tax Act or an order of the Settlement Commission under sub-section (4) of section 245D of the Income-tax Act, where effect can be given wholly or partly otherwise than by making a fresh assessment or reassessment shall be three months from the end of the month in which order is received or passed, as the case may be, by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. It is also provided that in a case 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 reasons in writing from the Assessing Officer, if satisfied, may allow additional time of six months to give effect to the said order. However, in respect of cases pending as on 1st June 2016, the time limit for passing such order has been extended to 31.3.2017.

57.3 It is also provided that 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, 254, 260, 262, 263, or section 264 of the Income-tax Act or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Income-tax Act, then such assessment, reassessment or recomputation shall be made on or before the expiry of twelve months from the end of the month in which such order is received by the Principal Commissioner or Commissioner. However, for cases pending as on 1.6.2016, the time limit for taking requisite action is 31.3.2017 or twelve months from the end of the month in which such order is received, whichever is later.

57.4 Where an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147 of the Income-tax Act, such assessment shall be made 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. However, for cases pending as on 1.6.2016, the time limit for taking requisite action shall be 31.3.2017 or twelve months from the end of the month in which order in case of firm is passed, whichever is later.

57.5 Similarly, consequential changes in time limit for completion of assessment or reassessment by the Assessing Officer have been made in accordance with the extension of time limit provided to the Transfer Pricing Officer in certain cases by amendment in subsection (3A) to section 92CA of the Income-tax Act.

57.6 The provisions of section 153 of the Income-tax Act as they stood immediately before their amendment by the Act shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st of June, 2016.

57.7 **Applicability:** These amendments take effect retrospectively from 1st of June, 2016

(underlining by me)

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(v) ***Explanatory Notes to the Provisions of the Finance Act, 2017 dated 15th February 2018***

60. Rationalisation of time limits for completion of assessment, reassessment and re-computation and reducing the time for filing revised return.

60.1 The provisions of section 153 of the Income-tax Act specify the time limit for completion of assessment, reassessment and re-computation of cases mentioned therein.

60.2 In an effort to minimise human interface and move towards technology, massive computerisation has been carried out in the Department, which has translated into overall enhanced efficiency in the functioning of the Department. In view of the same, sub-section (1) of section 153 of the Income-tax Act has been amended to provide that for the assessment year 2018-19, the time limit for making an assessment order under sections 143 or 144 of the Income-tax Act shall be reduced from twenty-one months to eighteen months from the end of the assessment year, and for the assessment year 2019-20 and onwards, the said time limit shall be twelve months from the end of the assessment year in which the income was first assessable.

60.3 Sub-section (2) of section 153 of the Income-tax Act has further been amended to provide that the time limit for making an order of assessment, reassessment or recomputation under section 147 of the Income-tax Act, in respect of notices served under section 148 of the Income-tax Act on or after the 1st day of April, 2019 shall be twelve months from the end of the financial year in which notice under section 148 is served.

60.4 Sub-section (3) of section 153 of the Income-tax Act has also been amended to provide that the time limit for making an order of fresh assessment in pursuance of an order passed or received in the financial year 2019-20 and onwards under sections 254 or 263 or 264 of the Income-tax Act shall be twelve months from the end of the financial year in which order under section 254 is received or order

under section 263 or 264 is passed by the authority referred to therein.

(underlining by me)

(vi) ***Memorandum Explaining the provisions in the Finance Bill 2021***

Reduction of time limit for completing assessment

Section 153 of the Act contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. The sub-section (1) of the said section provides that the time-limit for passing an assessment order under section 143 or 144 of the Act shall be 21 months from the end of the assessment year in which the income was first assessable. However, this time limit had earlier been curtailed in order to improve the efficacy and efficiency of the Department to give effect to computerization of processes under the Act. As a result, the time limit for completion of assessment proceedings under sections 143 or 144 of the Act was reduced to 18 months for A.Y. 2018-19 and 12 months for A.Y. 2019-20 and subsequent assessment years vide the Finance Act, 2017.

Since then, the assessment procedure has been completely overhauled by the introduction of the Faceless Assessment Scheme, 2019. The assessment procedure is now conducted in a completely faceless and jurisdiction-less way where all internal and external communication is made electronically and different aspects of the assessment procedure like verification, scrutiny of books of accounts etc. are carried on by different units. The person-to-person interface between the taxpayer and the Department has been eliminated. This team-based approach for assessment with a dynamic jurisdiction is technologically driven and very efficient. Thus, the time required for completion of assessment procedure needs to be further reduced.

The benefits of shorter time period for scrutiny proceedings are manifold. On the one hand, it reduces the compliance burden on the taxpayers who find it easier to explain matters pertaining to a recent previous year which also improve the ease of doing business. On the other hand, it enhances the ability of the Department to detect and bring to tax any leakages of revenue as the instances of tax evasion come to the notice of the Department within a shorter span of time.

Hence, it has been proposed that the time limit for completion of assessment proceedings may be reduced further by three months. Thus the time for completing of assessment is proposed to be nine months from the end of the assessment year in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

This amendment will take effect from 1st April, 2021

[Clause 41]"

(underlining by me)

(vii) *Memorandum Explaining the provisions in the Finance Bill 2022*

2. As part of this process of making the tax administration transparent and efficient, provisions for notifying faceless schemes under sections 92CA, 144C, 253 and 264A were introduced in the Act through Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.11.2020 and under section 255, was inserted through Finance Act, 2021 with effect from 01.04.2021:

S. No.	Section	Scheme	Date of Limitation
1.	92CA	Faceless determination of arm's length price	31st day of March, 2022
2.	144C	Faceless Dispute	31st day of March, 2022

		Resolution Panel	
3.	253	Faceless appeal to Appellate Tribunal	31st day of March, 2022
4.	255	Faceless procedure of Appellate Tribunal	31st day of March, 2023

3. Section 92CA and section 144C are principally related to the transfer pricing functions and international taxation which are presently out of the regime of faceless assessment. New schemes for these two functions are a part of the assessment function and should follow the faceless assessment procedure, wherein certain modifications are proposed which will have an impact on the information technology structure. Therefore, notification at this time shall result in delay in stabilization of the systems.

4. As for notification of scheme under section 255, the Appellate Tribunal is deemed to be a civil court for all the purposes of section 195 of the Act and Chapter XXXV of the Code of Criminal Procedure, 1898. Therefore, a scheme governing the procedures to be followed by such a body needs to be formulated after due consultations with Ministry of Law & Justice. Similarly, the scheme under section 253 have to follow the scheme under section 255.

5. In light of the above limitations it is proposed to extend the date for issuing directions for the purposes of these sections 92CA, 144C, 253 and 255 till 31st March, 2024.

(underlining by me)

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8.1 A perusal of the speech of the Finance Minister dated 06.07.2009 in support of the Finance (No.2) Bill, 2009 (for short, 'the 2009 Bill') makes it apparent that the intent of the Parliament behind Section 144C is to expedite the final disposal of tax disputes pertaining to an eligible assessee. It should be recalled that a three-Judge Bench of this Court in ***Shree Sajjan Mills Ltd. vs. CIT, (1985) 4 SCC 590*** observed that the principle that a taxing statute should be strictly construed does not exclude a reasonable construction which gives effect to the purpose or intention of a provision as apparent from the scheme of the Act. It goes without saying that such reasonable construction is to be achieved only with the assistance of the internal and external aids permissible under the law and not by drawing reliance on any superlative or equitable considerations or, even, the goal of *"recovering lost tax"*.

8.2 Supporting legislative intent is also clear from the Memorandum to the 2009 Bill which *vide* clause (55) introduced Section 144C in the Act. The Memorandum specifically noted that the 2009 Bill amended the Act, *inter alia,* with a view to '*encouraging the growth of foreign investment in India by providing for a speedy dispute resolution mechanism.*' It was

cautiously noted that flow of foreign investment is extremely sensitive to prolonged uncertainty in tax matters and the alternate dispute mechanism was being brought in precisely to usher in a regime of expeditious resolution of tax disputes. The note on clause (55) exhibits a similar intent. It is noted that the '*subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view.*' The same note further explained that course correction from such a view took a very long time within the then existing appellate structure, and therefore Section 144C was inserted to ensure speedy disposal by the creation of the DRP as an *'alternative dispute resolution mechanism within the income-tax department'*. In my view, these notes reinforce the evident parliamentary intent. In particular, it is useful to emphasise that DRP was envisioned as an alternative dispute resolution mechanism '*within the income-tax department*'. This informs us that the procedure under Section 144C envisions the procedure to be completed between the Revenue and the assessee and within such procedure, the compartmentalised limitations for the DRP and Assessing Officer are outlined in the

relevant sub-sections. The import of this conspectus approach is a stricter interpretation of the timelines of Section 144C. To read it otherwise, would only inflate the timelines for completion of assessment order of an eligible assessee which would be doing violence to the intent implicit from the text.

8.3 Bearing the above object of the Parliament as adumbrated by the Budget speeches of the Finance Ministers for the respective years the provision under consideration would have to be interpreted on the basis of the settled rules and principles of interpretation of statutes which I shall now discuss.

Principles of Statutory Interpretation:

9. Before proceeding further, it would be useful to discuss the relevant principles of statutory interpretation from authoritative sources.

9.1 A statute or any enacting provision therein must be so construed as to make it effective and operative. Thus, courts should lean against construction which reduces a provision to a futility. It has been observed by Lord Dunedin of the House of Lords that "*A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial*

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omission or clear direction makes that end unattainable." *vide* ***Whitney vs. Inland Revenue Commissioner, (1926) A.C. 37 ("Whitney").*** Therefore, any construction which would defeat the plain intention of the Legislature must be rejected by the courts. Hence, courts should avoid a construction which would reduce the provision to futility and rather accept a construction based on the view that Parliament or any Legislature would legislate only for the purpose of bringing about an effective result. It is in that context that purposive construction by court is gaining acceptance rather than holding that there is absurdity in the statute. The doctrine of purposive interpretation may be taken recourse to for the purpose of giving full effect to the statutory provisions and the courts must state what meaning the statue should bear rather than rendering the statute a nullity.

9.2 Another principle of statutory interpretation is that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, courts are bound to give effect to that meaning irrespective of consequences. The results of the construction are then not a matter for the court, even though they may be strange or surprising, unreasonable or unjust

or oppressive. Gajendragadkar, J. in ***Kanailal Sur vs. Paramnidhi Sadhu Khan*** , ***AIR 1957 SC 907*** opined thus:

> "If the words used are capable for one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act."

S.R. Das, J. in ***CIT, Agri vs. Keshab Chandra Mandal, AIR 1950 SC 265*** observed thus:

> "Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules."

He further observed that:

> "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act". *Vide* ***Rananjaya Singh vs. Baijnath Singh, AIR 1954 SC 749.***"

9.3 Similarly, Subba Rao, J. observed that in interpretation of a statute, the primary test is – the language employed in the Act and when the words are clear and plain, the court is bound to accept the expressed intention of the Legislature, *vide* ***MV Joshi vs. MU Shimpi, AIR 1961 SC 1494.***

9.4 This means that mere hardship cannot be a ground for not giving effective and grammatical meaning to every word of the provisions of a statute if the language used therein is unequivocal. Thus, an unambiguous and plain statute must be given its full interpretation. It has been observed that unambiguous means "unambiguous in context". The expression "context" in this connection is used in a wide sense as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia* and the mischief which by those and other legitimate means can be discerned that the statute was intended to remedy. In this context, it would be useful to recall the words of Grover, J. in ***VO Tractoroexport vs. Tarapore and Co., AIR 1971 SC 1,*** which are as follows:-

> "We are aware of no rule of interpretation by which rank ambiguity can be first introduced by giving certain expressions a particular meaning and then an attempt can be made to emerge out of semantic confusion and obscurity by having resort to presumed intention of the Legislature to give effect to international obligations."

9.5 On the other hand, plain meaning rule applies at the stage when the words have been construed in their context and the conclusion has been reached that they are susceptible to only one

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meaning. In that event, the meaning so derived is to be given effect to irrespective of consequences.

9.6 Further, while interpreting a statute it must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make out a consistent enactment of the whole statutes. Such a construction has a merit of avoiding any inconsistency or repugnancy either within a Section or between a Section and other parts of the statutes. It is the duty of the courts to avoid a clash between two Sections of the same Act and "*whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise*". While doing so the edges have to be ironed out so as to read the provisions of an Act in consonance with the object of the Act. Thus, the provisions of one Section of a statute cannot be used to defeat another section of the same statute. The same rule applies to a sub-section of a Section. In ***Venkataramana Devaru vs. State of Mysore AIR 1958 SC 255,*** Venkatarama Aiyar, J. said that "*the rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be*

given to both. This is what is known as the rule of harmonious construction."

9.7 Therefore, effect should be given to both provisions. Thus, a construction which reduces one of the provisions to a "useless lumber" or 'dead letter' is to be avoided. One of the ways in dealing with such a situation is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the same accordingly. However, if a specific provision has to be read within the mandate of a general provision then the same has to be accordingly construed so as to give effect to the mandate of the general provision. However, if a situation arises where two Sections of the Act cannot be reconciled, as there is an absolute contradiction between them, it is often said that the latter must prevail. Another way of looking at such a situation is to ascertain which is the leading provision and which is the subordinate provision and which must give way to the other, but only if a harmonious construction of two apparently contradictory provisions is possible which will not lead to any absurdity or give rise to practical inconvenience or make well-established provision of existing law nugatory, then the same should be resorted to. In

other words, an interpretation which would dilute the intention of the Parliament or give rise to an absurdity or lead to any provision of law being rendered nugatory has to be eschewed.

(***Source: GP Singh – Principles of Statutory Interpretation, 15th Ed. LexisNexis***).

Non-Obstante Clause:

10. A non-obstante clause is generally incorporated in a statute to give an overriding effect to a particular section or the statute as a whole. While interpreting a non-obstante clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the non-obstante clause is used. This rule of interpretation has been applied in several decisions.

10.1 In ***R.S. Raghunath vs. State of Karnataka, (1992) 1 SCC 335***, a three-Judge Bench of this Court referred to the earlier judgments and observed as under:

> "11. … the non obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non obstante clause need not necessarily and always be coextensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non obstante clause cannot cut down the construction and restrict the scope of its operation. In

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such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."

10.2 In ***A.G. Varadarajulu vs. State of T.N., (1998) 4 SCC 231 ("A.G. Varadarajulu ")*** this Court relied on the judgment in ***Aswini Kumar Ghose vs. Arabinda Bose, (1952) 2 SCC 237***. This Court while interpreting the non-obstante clause contained in Section 21-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 held:

"16. It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In *Aswini Kumar Ghose* v. *Arabinda Bose* [(1952) 2 SCC 237 : AIR 1952 SC 369] Patanjali Sastri, J. observed: (AIR p. 377, para 27)

'*27.* ... The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously';"

10.3 In ***Interplay Between Arbitration Agreements under A&C Act, 1996 and Stamp Act, 1899, (2024) 6 SCC 1***, a sevenJudge bench of this Court observed in Paragraphs 83-84 as under:

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> "83. .... A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment.' [As observed in *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram*, (1986) 4 SCC 447, at pp. 477-78, para 67.]
>
> 84. Although a non obstante clause must be allowed to operate with full vigour, its effect is limited to the extent intended by the legislature. In *Icici Bank Ltd.* v. *Sidco Leathers Ltd.* [*Icici Bank Ltd.* v. *Sidco Leathers Ltd.*, (2006) 10 SCC 452] a two-Judge Bench of this Court held that a non obstante clause must be interpreted by confining it to the legislative policy. Thus, even if a non obstante clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy. [*JIK Industries Ltd.* v. *Amarlal V. Jumani*, (2012) 3 SCC 255 : (2012) 2 SCC (Civ) 82 : (2012) 2 SCC (Cri) 125] In view of this settled legal position, the issue that arises for our consideration is the scope of the non obstante clause contained in Section 5 of the Arbitration Act."

The seven-Judge Bench was considering the non-obstante clause in Section 5 of the Arbitration Act, which for immediate reference, is extracted as under:

> "**Section 5. Extent of judicial intervention.—** Notwithstanding in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this part."

10.4 It was further observed in reference to ***ICICI Bank Ltd. vs. Sidco Leathers Ltd., (2006) 10 SCC 452 : (2006) 131 Comp Cas 451,*** that even if a non-obstante clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy.

Further, the utility of non-obstante clause is where there is a conflict between what is stated in a provision and any other law for the time being in force, or anything else contained in the said enactment. As already noted, only in the case of a conflict, the object is to give the enacting or operative portion of the section an overriding effect, not otherwise. In other words, only in a case of a conflict, a provision in an enactment containing a non-obstante clause, would be given its full operation and what is stated in the non-obstante clause will not be an impediment for the operation of the particular provision in the enactment. This would mean that what is stated in the non-obstante clause would not take away the effect of any provision of the Act which follows the same.

10.5 In ***Aswini Kumar Ghose vs. Arabinda Bose, (1952) 2 SCC 237 : AIR 1952 SC 369,*** this Court speaking through Patanjali Sastri, C.J. observed that only when there is any inconsistency between what is contained in a provision of an enactment and a non-obstante clause would make the latter in what is to yield to what is stated in the provision following the same. In other words, it is only when the enacting part of the statute cannot be read harmoniously with what is stated in the non-obstante clause, would the non-obstante clause result in yielding to what is stated in the enacting part. Similarly, in ***Municipal Corpn., Indore vs. Ratnaprabha, (1976) 4 SCC 622 : AIR 1977 SC 308,*** it was observed that there should be a clear inconsistency between a special enactment or rules and a general enactment.

10.6 In the matter of interpretation of a non-obstante clause, paragraphs 82 and 83, in the judgment authored by me in ***Muhammad Abdul Samad vs. State of Telangana, (2025) 2 SCC 49*** can be usefully extracted as under:

> "82. A non obstante clause is usually appended to a section in the beginning with a view to give the enacting part of the section, in case of a conflict, an overriding effect over the provision or the Act mentioned in the non obstante clause. In other words, in spite of the provision or the Act mentioned in the non obstante clause, the

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> enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment. Thus, a non obstante clause is a legislative device used by a Parliament or legislature sometimes to give an overriding effect to what has been specified in the enacting part of a section in case of a conflict with what is contained in the non obstante clause as stated above.
>
> 83. Further, a non obstante clause has to be distinguished from the expression "*subject to*" where the latter would convey the idea of a provision yielding place to another provision or other provisions to which it is made subject to. Also, the expression "*notwithstanding anything in any other law*" in a section of an Act has to be contrasted with the use of the expression "*notwithstanding anything contained in this Act*", which has to be construed to take away the effect of any provision of that particular Act in which the section occurs but it cannot take away the effect of any other law. [Source : *Principles of Statutory Interpretation* by Justice G.P. Singh, 15th Edn., Chapter 5.4, p. 284.]"

In the above case, this Court was considering the non-obstante clause in Section 3 of the Muslim Women (Protection of Rights of Divorce), Act 1986 *vis-à-vis* Section 125 of the Code of Criminal Procedure, 1973 in the matter of the entitlement of a divorced Muslim woman to maintenance.

10.7 Recently, a two-Judge Bench of this Court speaking through Oka, J. in ***Chief Commissioner of Central Goods and Service Tax vs. Safari Retreats Private Limited, (2025) 2 SCC 523*** dealt

on rules regarding the interpretation of taxing statutes in paragraph 27 which can be usefully extracted as under:

> "27. Regarding the interpretation of taxation statutes, the parties have relied on several decisions. The law laid down on this aspect is fairly well settled. The principles governing the interpretation of the taxation statutes can be summarised as follows:
>
> 27.1. A taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise;
>
> 27.2. If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity;
>
> 27.3. While dealing with a taxing provision, the principle of strict interpretation should be applied;
>
> 27.4. If two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the Revenue;
>
> 27.5. In interpreting a taxing statute, equitable considerations are entirely out of place;
>
> 27.6. A taxing provision cannot be interpreted on any presumption or assumption;
>
> 27.7. A taxing statute has to be interpreted in the light of what is clearly expressed. The Court cannot imply anything which is not expressed. Moreover, the Court cannot import provisions in the statute to supply any deficiency;
>
> 27.8. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly;

> 27.9. If literal interpretation is manifestly unjust, which produces a result not intended by the legislature, only in such a case can the Court modify the language;
>
> 27.10. Equity and taxation are strangers. But if construction results in equity rather than injustice, such construction should be preferred;
>
> 27.11. It is not a function of the Court in the fiscal arena to compel Parliament to go further and do more;
>
> 27.12. When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject. It should be understood in its commercial sense. Unless defined in the statute itself, the words and expressions in a taxing statute have to be construed in the sense in which the persons dealing with them understand, that is, as per the trade understanding, commercial and technical practice and usage."
>
> (underlining by me)

That was a case concerning interpretation of the expression *"plant and machinery"* and "*plant or machinery*" in Sections 17(5)(c) and 17(5)(d) of the Central Goods and Services Tax Act, 2017.

Paragraph 36 of the said judgment also observed on the use of non-obstante clause as under:

> "36.....A non obstante clause is a device used by the legislature that is usually employed to give an overriding effect to certain provisions over some contrary provisions that may be found in the same or some other enactments. Such a clause is used to indicate that the said provision should prevail despite anything to the contrary in the provisions mentioned in the non obstante clause. ..."

10.8 Further, in ***RBI vs. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424,*** this Court observed, that interpretation is best which makes the textual interpretation match the contextual. Chinnappa Reddy, J. speaking for the Bench stressed on the importance of rule of contextual interpretation and observed as under:

> "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'prize chit' in *Srinivasa* [*Srinivasa Enterprises* v. *Union of India*, (1980) 4 SCC 507] and we find no reason to depart from the court's construction."
>
> (underlining by me)

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The above approach is useful while interpreting a non-obstante clause in a statute.

10.9 This Court has in a number of cases relied on the following words of Rowlatt, J. in ***Cape Brandy Syndicate vs. Inland Revenue Commissioner [(1921) 1 KB 64]*** :

> "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

10.10 In ***Central India Spg., Wvg. & Mfg. Co. Ltd. vs. Municipal Committee, 1957 SCC OnLine SC 18***, it was observed that in construing the words of the statute if there are two possible interpretations then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him. In ***CIT vs. Shahzada Nand & Sons, (1966) 60 ITR 392,*** this Court reiterated the applicability of the aforesaid principle in context of fiscal statute. In ***CIT vs. Jargaon Electric Supply Co. Ltd., (1960) 40 ITR 184,*** this Court speaking through Hidayatullah, J. repelled the contention of the Revenue that it would be unjust to allow escapement of tax in the facts therein by observing that there

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is no question of unjustness involved if the income tax law is deficient due to the legislature failure's to express itself clearly.

Bearing in mind the above principles of interpretation of statutes, I shall proceed to analyse the relevant provisions of the Act having a bearing on the controversy.

Analysis of the Provisions:

11. Section 143 of the Act deals with assessment, while Section 144 thereof speaks of Best Judgment Assessment. Section 143 of the Act speaks of an assessment made when a return has been filed under Section 139 or in response to a notice under sub-section (1) of Section 142 and the return is processed leading to an assessment order being passed by the Assessing Officer. However when any person fails to make the return required under sub-section (1) of Section 139 and has not made a return or a revised return of that section or fails to comply with all the terms of a notice issued under Section 142 or having made a return fails to comply with all the terms of a notice issued under sub-section (2) of Section 143, then the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make an

assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment. It is not necessary to go into the other aspects of Section 143 or Section 144 of the Act.

11.1 The other relevant provisions which could be referred to are Section 144A which deals with power of Joint Commissioner to issue directions in certain cases; Section 144B which speaks of faceless assessment and Section 144C discusses a reference to a DRP with which we are concerned in the present cases.

11.2 The time limit for completion of an assessment, re-assessment and re-computation is delineated in Section 153 of the Act. The said Section has been substituted by the Finance Act, 2016 w.e.f. 01.06.2016. Sub-section (1) of Section 153 refers to an assessment being made under Section 143 or Section 144, while sub-section (1A) has a non-obstante clause to sub-section (1) of Section 153, so also sub-section (1B) has a non-obstante clause with reference to sub-section (1) of Section 153. Sub-section (2) of Section 153 deals with an assessment, re-assessment or re-computation made under Section 147 wherein the limitation period

has been prescribed. This is in the case of income escaping assessment which is dealt with under Section 147 of the Act.

11.3 Sub-section (1) to Section 153 prescribes the limitation period for making of an order of assessment under Section 143 or Section 144 which is twenty-one months. However, various provisos to the said sub-section prescribe reduced limitation periods having regard to the commencement of the respective assessment years. In certain cases, the period of limitation is reduced from twenty-one months to eighteen months while in other cases to twelve months and as also nine months. Having regard to the facts of the present two cases, the period of limitation under first proviso to sub-section (1) of Section 153 is 18 months as the applicable assessment year is 2018-2019.

Sub-section (3) of Section 153 is relevant for the purposes of this case. It states that notwithstanding anything contained in sub-sections (1), (1A), and 2, an order of fresh assessment or fresh order under Section 92CA, as the case may be, in pursuance of an order under Section 250 or Section 254 (relevant to the present cases) or Section 263 or Section 264, setting aside or cancelling an assessment or an order under Section 92CA, as the case may be,

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shall be made at any time before the expiry of nine months 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, as the case may be, 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, as the case may be.

11.4 However, the proviso to sub-section (3) of Section 153 states that where the order under Section 250 or 254 **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 on or after **the 1st day of April, 2019**, the provisions of this sub-section should have been, as if for the words "nine months", the words "twelve months" have been substituted.

11.5 Sub-section (3A) of Section 153 also begins with a non-obstante clause with reference to sub-sections (1), (1A), (2) and (3). Sub-section (4) states that notwithstanding anything contained in

sub-sections (1), (1A), (2), (3) and (3A), where a reference under sub-section (1) of Section 92C A is made during the course of the proceedings for the assessment or re-assessment, the period available for completion of assessment or re-assessment, as the case may be, under the said sub-sections (1), (1A), (2), (3) and (3A) shall be extended by twelve months. This sub-section was added by an amendment with effect from 01.04.2023. However, the same is not applicable to the facts of the case. Section 92CA deals with a reference to the Transfer Pricing Officer. Sub-section (3A) of Section 92CA, *inter alia,* refers to Section 153 of the Act, which deals with the period of limitation for the purpose of Section 92CA.

11.6 Explanation (1) to Section 153 deals with certain situations in reference to which certain periods shall be excluded while computing the period of limitation prescribed under the said Section. For instance, under clause (2) to Explanation (1), the period during which the assessment proceeding is stayed by an order of injunction of any court has to be excluded while calculating the period of limitation under Section 153.

11.7 For the purposes of this case, Section 254 and sub-section (3) of Section 153 including the proviso thereto are relevant. This

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is because where an assessment order has been set aside and the matter has been remanded under Section 254 by the Tribunal (as in the present case), then, in terms of the proviso to sub-section (3) of Section 153, a fresh assessment order shall have to be made at any time before the expiry of twelve 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 etc. as the case may be.

11.8 Thus, on a reading of the proviso to sub-section (3) of Section 153, along with the main provision, it becomes clear that the period of twelve months has to be calculated from the end of the financial year in which the order is received by the Principal Chief Commissioner or Chief Commissioner etc., as the case may be. Therefore, what is of significance is the date of the commencement of the limitation period of twelve months which commences from the end of the financial year in which the order passed under Section 254 by the Tribunal, setting aside or cancelling an assessment is received by the Principal Chief Commissioner or Chief Commissioner etc. For example, if the order is passed by the Tribunal on 01.02.2021 and it is received by the concerned

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commissioner on 01.03.2021, then the limitation period of twelve months would be from the end of the financial year in which the order under Section 254 was received, i.e., twelve months from 31.03.2021, which would be 31.03.2022, within which the fresh assessment order would have to be made. This would effectively mean thirteen months in total from the date of receipt of the order.

11.9 However, in a case where Section 144C applies, i.e., where a reference to the DRP applies, then in such a case the time frame has been given for the conclusion of the proceedings initiated under the said provision which is totally only eleven months from the date of passing the draft order. The procedure contemplated under Section 144C applies to only two categories of assesses, who are called as eligible assessees under clause (b) of sub-section 15 to Section 144C. The first category of eligible assessee is any person in whose case the variation referred to in sub-section (1) of Section 144C arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of Section 92CA and the second category is in the case of any non-resident not being a company or any foreign company. The proviso thereto states that such eligible assessee shall not include persons referred to in sub-

section (1) of Section 158BA or other persons referred to in Section 158BD. Therefore, in the case of only the aforesaid two categories of eligible assesses, the procedure contemplated under Section 144C applies.

11.10 When Section 92CA applies to any eligible assessee, then sub-section (4) of Section 153 states that the period available for completion of an assessment or re-assessment, as the case may be, under sub-sections (1), (1A), (2), (3) and (3A) of Section 153 shall be extended by twelve months. This sub-section is applicable with effect from 01.04.2023 and not for the period prior thereto. Further, in the case of any other eligible assessee, who is a non-resident, there is no such extension of the period of limitation.

11.11 The question then is, how the limitation period prescribed under Section 153(3) of the Act can be reconciled with the procedure as well as the period contemplated under Section 144C of the Act in a case where Section 254 of the Act applies.

Scheme of Section 144C:

12. Before answering the above question, it is necessary to dilate on the scheme of Section 144C of the Act. Sub-section (1) of Section 144C contains a non-obstante clause. It states that the Assessing

Officer shall, notwithstanding anything to the contrary contained in the Act, in the first instance, forward a draft of the proposed order of assessment (draft order) to the eligible assessee, if he proposes to make, on or after 01.10.2009 any variation which is prejudicial to the interest of such assessee. It must be noted that this non-obstante clause is notwithstanding anything to the contrary contained in the Act and not with reference to only Section 153 which deals with only the limitation period for making an assessment or re-assessment. As already extracted above, sub-section (1) of Section 144C prescribes that the Assessing Officer shall forward a "draft" of the proposed "order of assessment". The careful drafting by the legislature must be given heed to. The provision for forwarding of a draft of the proposed order of assessment speaks plainly that this sub-section is only concerned with a "draft order" and cannot be a final order of assessment. Therefore, any provisions that would relate to an order of assessment have no bearing on any interpretation to be given to such a draft order.

12.1 On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order—(a) file

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his acceptance of the variation to the Assessing Officer; or (b) file his objections, if any, to such variation with—(i) the DRP and (ii) the Assessing Officer, [vide Section 144C(2)]. Therefore, the eligible assessee has thirty days' time from the date of receipt of the draft order to either file his acceptance or his objections. If no objections are received within the aforesaid period of thirty days or the assessee intimates to the Assessing Officer the acceptance of the variation, then in terms of sub-section (3) of Section 144C, the Assessing Officer shall complete the assessment on the basis of the draft order within the prescribed period of limitation as per sub-section (4) of Section 144C.

12.2 Sub-section (4) is significant inasmuch as it contemplates a limitation period within which the Assessing Officer has to pass an assessment order in terms of sub-section (3) of Section 144C. This sub-section again contains a non-obstante clause. This non-obstante clause is however notwithstanding anything contained in Section 153 or Section 153B. The Assessing Officer shall, notwithstanding the aforesaid provisions, pass the assessment order under sub-section (3) within one month from the end of the month in which—(a) the acceptance is received, or (b) the period of

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filing objections under sub-section (2) expires. Thus, the stipulation of period of one month in sub-section (4) is for the Assessing Officer to complete the assessment order having regard to either clauses (a) or (b) of sub-section (2) of Section 144C, as the case may be, although under the proviso to sub-section (3) of Section 153 the period of limitation prescribed to make a fresh assessment order is twelve months.

12.3 What would be the next step when objections are received under sub-section (2) of Section 144C? In a case where objections are received under sub-section (2), the DRP shall issue directions as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment. The directions to be issued by the DRP under sub-section (5) of Section 144C shall be having regard to certain material which are enumerated in sub-section (6) of Section 144C. The procedure to be followed by the DRP is contemplated under sub-section (7) of Section 144C and the nature of the order to be passed by the DRP is as per sub-section (8) of Section 144C. The Explanation to sub-section (8) of Section 144C is for the purpose of removal of doubts.

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12.4 The following paragraph from the Manual of Office Procedure, 2019 of the Income Tax Department throws useful light on the nature of a draft order forwarded by the Assessing Officer to the Assessee under Section 144C(1) and the proceedings before the DRP inasmuch as it clarifies that the DRP:

> "5.7 It needs to be emphasized that the proceeding before the DRP is not an appeal proceeding but a correcting mechanism through which the proposed assessment order is reviewed by a Panel of higher Income-tax Authorities. It is a continuation of the Assessment proceedings till such time a final order of assessment which is appealable is passed by the Assessing Officer. This also finds support from Section 144C(6) which enables the DRP to collect evidence or cause any enquiry to be made before giving directions to the Assessing Officer under Section 144C(5). The DRP procedure can only be initiated by an assessee objecting to the draft assessment order. This would enable correction in the proposed order (draft assessment order) before a final assessment order is passed."

12.5 Sub-section (10) of Section 144C states that every direction issued by the DRP shall be binding on the Assessing Officer. Sub-section (11) of Section 144C contemplates that an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the Revenue before passing any such direction.

12.6 Sub-section (12) of Section 144C is significant inasmuch as it states that no direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee. Therefore the DRP is rendered *functus officio* on completion of the period of nine months as stipulated. Thus, this period of limitation is to be strictly complied with by the DRP.

12.7 As already noted, a draft order is forwarded to the eligible assessee under sub-section (1) of Section 144C and thirty days' time is granted to pass a final order, if no objections are received or if there is an acceptance of the variation of the draft order by the assessee in a month's time. Thus, in the above circumstances the period of limitation is thirty days from date of forwarding the draft orders to an eligible assessee. This is as opposed to sub-section (3) of Section 153 and the proviso thereto where the period of limitation is twelve months to make a final order. Hence, the non-obstante clause under sub-section (4) of Section 144C of the Act. However, if there are objections, which have to be made within thirty days from the date of receipt of the draft order, then within nine months from the end of the month in which the draft order is

forwarded to the eligible assessee, the DRP has to issue directions. If directions are issued by the DRP to the Assessing Officer within a period of nine months, on receipt of the said directions issued under sub-section (5) of Section 144C, the Assessing Officer shall in conformity with the said directions, complete the assessment without providing any further opportunity of being heard to the assessee within one month from the end of the month in which such directions are received. However, there is again a non-obstante clause in sub-section (13) of Section 144C i.e., the completion of the assessment order shall be notwithstanding anything contrary contained in Section 153 or Section 153B.

12.8 What emerges on a conjoint reading of the aforesaid provisions is that the Assessing Officer has only thirty days' time to pass a final assessment order, irrespective of whether the draft assessment order is accepted or in the face of objections raised by the eligible assessee, the DRP issues directions to the Assessing Officer. The submission of learned senior counsel for the respondents is that in the instant case, the Assessing Officer passed the assessment order within a period of twenty days from the date of receipt of the directions from the DRP but nevertheless

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breached the limitation period prescribed under sub-section (3) of Section 153 of the Act and hence, the High Court granted relief to the assessee.

12.9 Thus, it is noted that there are three non-obstante clauses in Section 144C. Sub-section (1) is notwithstanding anything to the contrary contained in the Act, while sub-section (4) and (13) are notwithstanding anything contained in Section 153 or 153B of the Act. The object and purpose of having the non-obstante clause in the aforesaid manner has to be ascertained inasmuch as the interpretation to sub-section (3) of Section 153 in light of Section 144C has to be made in the present cases in order to answer the rival contentions advanced at the Bar.

12.10 As already noted, Section 144C applies to an eligible assessee. The respondents in these cases are eligible assessees and there is no dispute about the said fact. When an order is passed under Section 254 by the Tribunal setting aside or cancelling an assessment, then a re-assessment has to be made within twelve months as stipulated in the proviso to sub-section (3) of Section 153 which delineates the time frame for completion of assessment or a re-assessment etc. As already noted, the period of twelve

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months commences from the end of the financial year in which the order under Section 254 is received by the Principal Chief Commissioner or Chief Commissioner etc. On receipt of such an order from the Tribunal, when a re-assessment has to be made and Section 144C is applicable, then a fresh draft assessment order has to be forwarded to the assessee as per sub-section (1) of Section 144C of the Act.

12.11 There is no time limit stipulated under sub-section (1) of Section 144C for forwarding a draft order to the eligible assessee after receipt of the order from the Tribunal under Section 254 of the Act. The question that would arise is, whether, the Assessing Officer can forward the draft order at any point of time or take his own sweet time to do so, since sub-section (1) of Section 144C contains a non-obstante clause which is notwithstanding anything contained under the Act or, on the contrary, the Assessing Officer is bound to follow a timeline for forwarding a draft order to the eligible assessee.

12.12 No doubt, sub-section (3) of Section 153 which prescribes the limitation period does not make any distinction between an eligible assessee and any other assessee. The limitation

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period of twelve months prescribed under Section 254 applies to all categories of assessees without any distinction being made between any particular category of assessee as per the proviso thereto. Then, within what time the Assessing Officer has to forward a draft order to the eligible assessee while acting under sub-section (1) of Section 144C pursuant to an order under Section 254 of the Act. Although sub-section (1) of Section 144C states "notwithstanding anything to the contrary contained in this Act" does the said expression refer to Section 153 which prescribes the limitation period for completion of assessment or re-assessment or, whether the non-obstante clause has been used in sub-section (1) of Section 144C in order to emphasize on a distinct and different procedure contemplated under the Act in the case of only eligible assessees as opposed to other categories of assessees. In my view, the non-obstante clause in sub-section (1) of Section 144C implies that it overrides all sections of the Act contrary to the procedure contemplated under Section 144C of the Act inasmuch as it contemplates a special procedure insofar as eligible assessees are concerned. This means that insofar as the eligible assessees are concerned, their assessment is subject to a distinct procedure

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under Section 144C, wherein a draft assessment order has to be made in the first instance. This is opposed to the case of other assessees, wherein such a procedure of making a draft order is not envisaged and only a final assessment order is passed by the Assessing Officer. Therefore, the requirement of a non-obstante clause *vis-à-vis* eligible assessees has been met by the Parliament under Section 144C of the Act as a legislative device. This is because the procedure and process of assessment/re-assessment in the case of eligible assesses is different from that of other categories of assessees inasmuch as a draft order has to be made and communicated to an eligible assessee under sub-section (1) of Section 144C of the Act in the first instance, which is not so in the case of other category of assessees. That is the precise object for insertion of a non-obstante clause under sub-section (1) of Section 144C of the Act.

12.13 To reiterate, the non-obstante clause in sub-section (1) of Section 144C of the Act has been invoked by the Parliament in order to make a distinction between eligible assessees and other category of assessees in the matter of assessment/re-assessment where a draft assessment order has to be made by the Assessing

Officer in the first instance leading to DRP directions being issued to the Assessing Officer in case there is a reference to the DRP, which is not so in the case of other assessees. The discussion in this regard has been made above and hence would not call for a repetition. Thus, the non-obstante clause in sub-section (1) of Section 144C is not related to the overall limitation period prescribed under Section 153 of the Act but with the aspect of there being a distinct procedure which has been envisaged in the case of only eligible assessees.

12.14 On the other hand, if the non-obstante clause under sub-section (1) of Section 144C is to be construed only in the context of the limitation period under Section 153 inasmuch as the procedure contemplated under Section 144C would be a time frame to be considered over and above what is contemplated under Section 153(3), it would lead to an absurd result. That is why, the non-obstante clause in sub-section (1) of Section 144C cannot be held to be with reference to Section 153(3) at all. This is because a non-obstante clause is with regard to anything contrary contained in the Act *vis-à-vis* sub-section (1) of Section 144C and Section 153 is not contrary to Section 144C. The scope and ambit of the two

provisions are distinct inasmuch as Section 153 deals with limitation period with respect to completion of assessments and re-assessments while Section 144C deals with a procedure to be complied with for making an assessment order only in the case of eligible assessees. There is no contradiction between Section 144C and Section 153 of the Act. Therefore, sub-section (1) of Section 144C has to be read as prescribing a unique procedure insofar as eligible assessees are concerned inasmuch as notwithstanding anything contrary contained in the Act vis-à-vis various categories of assessees, Section 144C is applicable only in the case of eligible assessees and not to any other category of assessee.

12.15 This intention of the Parliament to make a distinction between eligible assessees and other category of assessees under Section 144C(1) has to be borne in mind. This aspect would become clearer when the two other non-obstante clauses in sub-section (4) and sub-section (13) of Section 144C are compared with sub-section (1) thereof. In the aforesaid two sub-sections, the non-obstante clause is with specific reference to Section 153 or Section 153B only and in relation to any other Section of the Act. This is because under sub-section (4) of Section 144C, the period within

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which the assessment order is to be made is stipulated i.e. within thirty days from the date of receipt of the draft order by the assessees in terms of sub-section (1) of Section 144C when there is an acceptance of the draft order made by the Assessing Officer or no objections are filed. This is notwithstanding anything contained in Section 153 or Section 153B. This period stipulated is as opposed to twelve months being available to an Assessing Officer to make an assessment order under sub-section (3) of Section 153 of the Act.

12.16 Similarly, under sub-section (13) of Section 144C the assessment has to be completed within one month from the end of the month in which the direction is received from the DRP under sub-section (5) of Section 144C. This is notwithstanding anything contained to the contrary in Section 153 or Section 153B.

12.17 Therefore, on a comparison of the expressions of the non-obstante clause in sub-section (1) of Section 144C with sub-section (4) and sub-section (13) thereof, it is clear that the Parliament has applied the legislative device of the non-obstante clause in different ways to bring out distinct legislative intents. Therefore, sub-section (1) of Section 144C is not relatable to

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Section 153 i.e., the limitation period at all. It deals with a totally distinct procedure to be adopted in the case of an eligible assessees as compared to other category of assessees in terms of the procedure contemplated under the said Section by initially making a draft assessment order, whereas sub-section (4) and sub-section (13) of Section 144C directly refer to and have a bearing on Sections 153 or 153B, which deal with limitation period. This is because narrower limitation periods are prescribed to do certain things as contemplated under the said sub-sections. The object and purpose of prescribing narrower limitation periods (one month) in sub-section (4) of Section 144C and one month in sub-section (13) of Section 144C is to ensure that the proviso to sub-section (3) of Section 153 is ultimately complied with as it prescribes the overall limitation period of twelve months for completion of an assessment or re-assessment, *inter alia*, when Section 254 of the Act applies.

12.18 If Section 144C applies to an eligible assessee, then the maximum period that is contemplated for passing the final assessment order is eleven months from the date of receipt of the draft order by the eligible assesses; the shortest period would be two months, when the draft order is accepted by the eligible

assessee, for passing the final order. Also, nine months is the maximum period for the DRP to issue directions to the Assessing Officer in case objections are received to a draft assessment order from an eligible assessee.

12.19 In cases where Section 144C applies, the maximum period stipulated for completion of a final assessment order under the said provision being eleven months would still be within the limitation period of twelve months prescribed under the proviso to Section 153(3) of the Act. This would mean that a draft assessment order has to be forwarded by the Assessing Officer to the eligible assessees within one month from the end of the financial year in which the order under Section 254 of the Act is received by the Principal Chief Commissioner, Chief Commissioner etc., as the case may be. Then, one month's time is the shortest period of time to prepare the draft assessment order under Section 144C of the Act by the concerned Assessing Officer.

12.20 Therefore, there has to be a system put in place, if not already in place, under which the order of the Tribunal passed under Section 254 of the Act is communicated to the concerned Assessing Officer of a particular eligible assessee. As soon as the

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papers are received by the Principal Chief Commissioner or Chief Commissioner etc., pursuant to an order passed under Section 254 of the Act, the same has to be forwarded and ultimately the final assessment order has to be made within twelve months from the end of the financial year in which the order under Section 254 was received by the Principal Chief Commissioner or Chief Commissioner etc., as the case may be. In which event, this would imply that a copy of the same would also have to be simultaneously sent to the Assessing Officer concerned and the minimum period that the Assessing Officer would have for making the draft order would be thirty days, depending on when the order is received by the Principal Chief Commissioner or Chief Commissioner, etc., as the case may be.

12.21 In this context, it is relevant to note the non-obstante clause in sub-section (4) of Section 153 of the Act which applies when a reference under sub-section (1) of Section 92CA is made during the course of the proceeding for the assessment or re-assessment, then the period available for completion of assessment or re-assessment, as the case may be, under sub-section (3) of Section 153 shall be extended by twelve months. This provision

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applies with effect from 01.04.2023. However, such a provision is wholly conspicuous by its absence in the case of an eligible assessee who falls under the category of any non-resident not being a company, or a foreign company. Therefore, what follows is that in the case of any non-resident not being a company, or a foreign company, there is no extension of the period of limitation beyond twelve months as stipulated under the proviso to sub-section (3) of Section 153.

12.22 To reiterate, whether or not the Assessing Officer has adequate or negligible time to deliver on the statutory obligations under Section 144C, or otherwise, cannot have a bearing on our interpretation of the Act. It is a well settled principle that the legislature is assumed to have the wisdom and knowledge behind promulgating any provision. As it is concluded that the procedure under Section 144C is subsumed within the time limits prescribed under Section 153, it is not for this Court to sit on whether the applicable period of time is adequate or not. A statute cannot be held to be unworkable, or an interpretation said to give rise to absurdity, only because of some asymmetry in time available to the Assessing Officer for passing a draft order in case of an eligible

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assessee under Section 144C as compared to final assessment order in case of an ordinary assessee.

12.23 In the same context, where the statute gives a beneficial option to an assessee, the exercise of such an option cannot be a ground to justify leaving the assessee worse off. Merely because an eligible assessee chooses to exercise their option to file objections before the DRP, that is no ground for extension of the limitation period. At the cost of repetition, to consider any of the aforementioned factors would tantamount to inserting practicable considerations and questions of equity in interpreting fiscal statutes.

12.24 Furthermore, it was contended on behalf of the Revenue that accepting the arguments of the respondent-assessee would defeat the working of the Act as the non-obstante clause in Section 144C(1) would then be limited to the procedure of passing a draft assessment order instead of final assessment order under Section 143(3) without subsuming the associated timelines under Section 153. There is no difficulty in rejecting this submission because Section 144C(1) is not concerned with the passing of a final assessment order in the first place. That the draft order passed

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under Section 144C(1) not be bound by Section 153 is no hindrance to giving effect to the working of the Act, and in particular Section 144C. I do not see any difficulty in a scenario where Assessing Officers assessing a small set of eligible assessees would have to work backwards and accommodate for the entire timelines prescribed under Section 144C. *Arguendo,* that the Parliament could not have conceived such a procedure to be followed by Assessing Officers, it is not for a court to import provisions in the statute to supply any assumed deficiency, especially when the statute is otherwise workable. In the present case, the Act is certainly workable if the proceedings under Section 144C are subsumed within the limitation prescribed under Section 153(1) or (3), or as the case may be.

12.25 It was also argued that if the scheme of Section 144C is interpreted such that the Assessing Officer has to work backwards, then the failure of an Assessing Officer to stick by the timeline would lead to absurdity and render the Act unworkable. In my view, the failure of an Assessing Officer to abide by the statutory timelines cannot be the basis for assuming any absurdity in the statute. A provision in a taxing statute which is ostensibly

beneficial to the assessee must be interpreted as it is and not by hypothetical scenarios.

Relevant Case Law:

13. The judgments cited at the Bar on the provisions under consideration could be discussed at this stage.

13.1 The judgment of the Madras High Court in ***Roca Bathroom Products*** has been a subject matter of discussion and has been referred to extensively during the course of hearing. That was also a case which assailed a notice related to the assessment year 2010-11 as being bereft of jurisdiction and barred by limitation, by way of a writ petition filed before the High Court. Another writ petition was filed by the assessee therein seeking a writ of prohibition restraining the respondent therein from continuing with proceedings for assessment for the very same assessment year. The third and fourth writ petitions were filed seeking quashing of the communication dated 06.01.2020 with respect to the assessment year 2009-10 and a direction for refund of the tax paid by the petitioner therein along with interest in accordance with Section 244A of the Act. In the fourth writ petition, a writ of prohibition was also sought to restrain the respondents therein from

continuing or proceeding further in relation to the assessment year 2009-10.

13.2 It would be useful to refer to the facts of the said case. The petitioner therein filed return of income that was selected for scrutiny and referred to the Transfer Pricing Officer (TPO) and a transfer pricing order was passed on 23.01.2013 and a draft order was passed on 30.03.2013 making various adjustments to the income returned as well as incorporating the adjustments proposed in the transfer pricing order. The petitioner therein filed objections to the draft assessment which was confirmed in terms of Section 144C of the Act. Thereafter, a final assessment order was passed on 16.01.2014. Being aggrieved by this, the petitioner therein filed an appeal. The Appellate Tribunal *vide* its order dated 18.12.2015 remanded the matter to respondent No.1 therein for fresh examination. The contention of the petitioner therein was that as per the provisions of Section 153(2A) [unamended] / 153(3) [post amendment], an order of fresh assessment in pursuance of an order under Section 254 setting aside or cancelling the assessment had to be made at any time before the expiry of one year/nine months respectively from the end of the financial year in

which the order was issued under Section 254 was received by the Principal Chief Commissioner/Commissioner. That the notice was issued pursuant to the remand dated 06.01.2020 which was barred by limitation inasmuch as for the assessment order year 2009-10, the limitation period under Section 153(2A) had expired on 31.03.2017 and for the assessment year 2010-11 the period had expired on 31.12.2017.

13.3 While discussing the procedure contemplated under Section 144C of the Act, the Madras High Court held that sub-section (13) of Section 144C imposes a restriction on the Assessing Officer and denies him the benefit of the more extensive time limit available under Section 153 to pass the final order of assessment as he has to do so within one month from the end of the month when the directions of the DRP are received by him and there is also no requirement for hearing the assessee at that stage. That Section 144C(13) contains a non-obstante clause which is to emphasize the urgency contemplated as compared to Section 153.

13.4 Reliance was placed on the judgment of the Bombay High Court in the case of ***Pr. CIT vs. Lionbridge Technologies Pvt. Ltd. (2019) 260 Taxman 273 (Bom.)***, wherein it was held that the final

assessment could be made only if the draft assessment had been forwarded by the Assessing Officer to the assessee within the time limit prescribed under Section 153(2A) of the Act. ***Nokia India P. Ltd. vs. DCIT, (2018) 407 ITR 20 (Delhi) (HC) ("Nokia India P. Ltd.")*** was also referred to wherein it was observed that where the matter has been remanded to be redone, it would hardly make a difference as to, whether, the remand has been to the Transfer Pricing Officer or the DRP, thus indicating that the provisions of Section 144C were also covered by the limitation of time set out in Section 153(3) of the Act. Although Civil Appeal was admitted before this Court against the judgment of the Delhi High Court in ***Nokia India P. Ltd.***, there had been no stay of the said judgment and the Civil Appeal was finally disposed of due to low tax effect.

13.5 The Madras High Court ultimately held in ***Roca Bathroom Products*** that since the impugned notice issued by the DRP was after a period of four years from the date of the order of the Tribunal, it was barred by limitation under Section 153(2A) of the Act. Consequently, the writ petitions were allowed. The Revenue filed writ appeals before the Division Bench of the Madras High Court against the aforesaid order. The Division Bench of the

Madras High Court speaking through Mahadevan, J. while holding that the facts of the case were not in dispute, by a detailed Judgment dismissed the appeals filed by the Revenue. It would be useful to extract paragraph 27 of the said judgment.

> "**27.** For the reasons set out herein before, we conclude as under :
>
> (a) The provisions of sections 144C and 153 are not mutually exclusive, but are rather mutually inclusive. The period of limitation prescribed under section 153(2A) or 153(3) is applicable, when the matters are remanded back irrespective of whether it is to the Assessing Officer or Transfer Pricing Officer or the Dispute Resolution Panel, the duty is on the Assessing Officer to pass orders.
>
> (b) Even in the case of remand, the Transfer Pricing Officer or the Dispute Resolution Panel have to follow the time limits as provided under the Act. The entire proceedings including the hearing and directions have to be issued by the Dispute Resolution Panel within nine months as contemplated under section 144C(12) of the Income-tax Act.
>
> (c) Irrespective of whether the Dispute Resolution Panel concludes the proceedings and issues directions or not, within nine months, the Assessing Officer is to pass orders within the stipulated time.
>
> xxx
>
> (f) The non obstante clause would not exclude the operation of section 153 as a whole. It only implies that irrespective of availability of larger time to conclude the proceedings, final orders are to be passed within one month in line with the scheme of the Act.

(g) When no period of limitation is prescribed, orders are to be passed within a reasonable time, which in any case cannot be beyond three years. However, when the statute prescribes a particular period within which orders are to be passed, then such period, irrespective of whether it is short or long, shall be applicable."

Meaning of Assessment Order:

14. Sub-section (1) as well as sub-section (3) of Section 153 of the Act use the expression "no order of assessment" and "an order of fresh assessment" respectively. The word "assessment" is the process of determining the total income of the assessee and the sum payable by the assessee as income tax/surcharge/super tax etc. *vide* ***CIT vs. JK Commercial Corpn. Ltd., (1976) 4 SCC 517.*** In ***Auto & Metal Engineers vs. Union of India (1997) 7 SCC 734***, the Supreme Court held that the expression "assessment proceeding" occurring in Section 153 Explanation (1) means the entire process of assessment starting from the stage of filing of return under Section 139 or issuance of notice under section 142(1) till the making of an order of assessment. The word "order of assessment" cannot be construed to mean assessment of total income only. Those words would mean an order in writing whereby the total income of the assessee is assessed and tax payable by him

is determined *vide* ***CIT vs. Purshottamdas T. Patel, (1994) 209 ITR 52 (Guj).***

14.1 In ***Whitney***, Lord Dunedin explained the imposition of tax by the Revenue:

> 'Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is, the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has been already fixed. **But assessment particularises the exact sum which a person liable has to pay.** Lastly comes the methods of recovery if the person taxed does not voluntarily pay."

14.2 In ***Kalyankumar Ray,*** this Court speaking through Ranganathan, J. observed as under:

> "'Assessment' is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial for the assessee as the former. Section 144, which also describes the same process, makes no distinction as suggested. It will not be therefore correct to read the provision as leaving undefined the process of determination of the net sum payable by the assessee. In our opinion, therefore, learned counsel for the petitioner is right in his submission that the ITO has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and that the demand notice under Section 156 has to be issued in consequence of such an order."

14.3 Thus, the expression "the assessing officer shall, in conformity with the directions, complete notwithstanding anything to the contrary contained in Section 153 or 153(B), the assessment…within one month from the end of the month in which such direction is received" in sub-section (13) of section 144C has to be harmoniously read with sub-section (3) of Section 153 wherein it is stated that "an order of fresh assessment" has to be made within twelve 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 etc,… as the case may be. When the aforesaid provisions are harmoniously read, it would inevitably mean that the procedure contemplated under Section 144C applicable to an eligible assessee has to be concluded within a period of twelve months as stipulated in proviso to sub-section (3) of Section 153 as interpreted by me above.

15. Having considered the language of Sections 144C and 153, the High Court refused to accept that the provisions of Section 153 are excluded to the operation of Section 144C. Even when the Assessing Officer has to follow the procedure prescribed under Section 144C of the Act, the same has to be commenced and

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concluded in terms of sub-section (3) of Section 153 of the Act. The said provision is applicable to an eligible assessee inasmuch as when the procedure under Section 144(C)(1) has to be followed. Consequently, the rest of the provisions of Section 144C would become applicable. This is only when the Assessing Officer intends to make any variation which is prejudicial to the interest of the eligible assessee. Then a draft order has to be made in the first instance. In my view, even in such a case, the assessment has to be concluded within twelve months as stipulated in Section 153(3) of the Act where there has been remand by the Tribunal to the Assessing Officer under Section 254 of the Act. Therefore, within the period of twelve months prescribed under Section 153(3), the Assessing Officer has to ensure that the entire procedure under Section 144C is completed (as and when it is applicable) and pass a final assessment order.

15.1 The Assessing Officer has to be prompt, attentive and conscious of passing an order envisaged under Section 144C(1) of the Act and not be reminded about doing so. Therefore, even when Section 144C applies to a case, the twelve month period stipulated under Section 153(3) has to be applied. Thus, the procedure under

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Section 144C has to be concluded within the time frame envisaged under Section 153(3) or Section 153(1) as the case may be. If the above interpretation is made, then, there would be a harmonious interpretation of Sections 144C and 153. Therefore, the non-obstante clauses in sub-sections of Section 144C have been accordingly interpreted.

15.2 The object is to conclude the proceedings and make an assessment as expeditiously as possible. If orders are not made within the time stipulated under Section 153(3), then there would be no final assessment order and the return of income as filed by the assessee would have to be accepted.

Summary of Conclusions:

15.3 The summary of the aforesaid discussion can be made as under:

(i) Section 143 of the Act states that when a return has been filed under Section 139 or in response to a notice of sub-section (1) of Section 142, and the same is processed, it would lead to an assessment order being passed by the Assessing Officer. Section 144 deals with 'best judgment assessment'. Sections 143 speaks of

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final assessment order being made in the case of all category of assessees except eligible assessees.

(ii) On the other hand, Section 144C discusses a reference to a DRP in case when a draft order is made by an Assessing Officer which is not accepted by an eligible assessee. Thus, in so far as only an eligible assessee, as defined under sub-section 15 of Section 144C of the Act is concerned, notwithstanding anything to the contrary contained in the Act, if the Assessing Officer proposes to make, on or after 01.10.2009 any variation in the return which is prejudicial to the interest of such an assessee only a draft order has to be made and not a final assessment order.

Therefore, the non-obstante clause in sub-section (1) of Section 144C has to be juxtaposed with reference to Section 143 of the Act and all other Sections which deal with making of an assessment order. This is because both Section 143 of the Act as well as Section 144C of the Act deal with the passing of assessment orders depending on the category to which the assessee belongs, as already stated: if the assessee is an eligible assessee, sub-section (1) of Section 144C would apply, if a variation is to be made,

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and in all other cases sub-section (3) of Section 143 of the Act would apply.

(iii) On the other hand, the non-obstante clauses in sub-sections (4) and (13) of Section 144C are only with reference to Section 153 of the Act. The time lines provided under the aforesaid sub-sections 144C and the time line provided under Section 153 of the Act deal with respective limitation periods and therefore, the Parliament has used the expression "notwithstanding anything contained in Section 153".

Sub-sections (4) and (13) of Section 144C when juxtaposed with Section 153 of the Act make it evident that they both deal with only the period of limitation in making an assessment order and not the manner of passing an assessment order.

(iv) An assessment order or an order of assessment encompasses the entire process of assessment commencing from the stage of filing of a return till the making of an assessment of the total income and also the determination of the taxes which is contemplated under Section 153 of the Act in so far as the limitation period for the said procedure is concerned. That is not exactly the exercise that is carried out under sub-section (1) of

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Section 144C as the said assessment order is not a final assessment order but only a draft assessment order. This is unlike assessment orders made under sub-section (3) of Section 143 or sub-section (13) of Section 144C of the Act which are final assessment orders.

(v) Therefore, the expressions "assessment" used in Section 143 of the Act and "make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment", and the expression "the assessment" in sub-section (13) of Section 144C as well as the expression "assessment order" in sub-section (4) of Section 144C have to be given an identical meaning under Section 153 of the Act, i.e., final assessment order although, the assessment orders are made in a distinct manner and under a different procedure as they apply to different categories of assessees as noted above.

In view of my aforesaid interpretation of Section 144C *vis-à-vis* Section 153 of the Act, I arrive at the same conclusion as in W.P. 3059-3060/2021 by the Bombay High Court. In these cases, the question pertains not to fresh assessment orders passed on

remand but original assessment orders. On 30.11.2018, the petitioners therein filed their Return of Income declaring total loss for AY 2018-19. According to the time limit in respect of A.Y. 2018-19 under first proviso to Section 153(1) of the Act, any original order of assessment was required to be passed within the period of eighteen months from the end of the assessment year in which the income became assessable. Therefore, the period of eighteen months would have ordinarily expired on 30.09.2020. However, as already noted, due to the operation of the TOLA and the Notifications issued thereunder the due date was extended to 30.09.2021. Finally, draft assessment orders under Section 144C were passed only on 28.09.2021. As we have already held that the period under Section 144C of the Act is to be subsumed within the time prescribed under Section 153(1) of the Act, we find that the High Court was correct in taking the view that since the draft order under Section 144C was passed only on 28.09.2021, the proceedings had become time-barred as no final assessment order in compliance with the provisions of Section 144C could be passed due to the impending expiry of the limitation period on 30.09.2021.

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15.4 I therefore find that the High Court was right in allowing the writ petitions filed by the respondents-assessees by holding that no final assessment orders can be passed in these cases as the same would be time barred and hence the return of income filed by the respondents-assessees have to be accepted. I reiterate the same and also state that this would not preclude the Revenue from taking any other step in accordance with law.

Consequently, I do not find any merit in these appeals filed by the Revenue as the impugned order is correct.

15.5 In SLP(C) No.25798/2024, what is assailed by the Revenue is an interim order passed in WP(L) No.30944/2023. By the said order, the High Court has continued the interim order dated 28.06.2024. The main writ petition is pending before the High Court. I do not propose to interfere with the said interim order and hence, this Special Leave Petition stands dismissed.

.....J.
(B.V. NAGARATHNA)

NEW DELHI;
AUGUST 08, 2025.

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. OF 2025
[Arising out of SLP (C) Nos. 20569-72 OF 2023]

ASSISTANT COMMISSIONER OF INCOME TAX AND ORS. …APPELLANT(S)

VERSUS

SHELF DRILLING RON TAPPMEYER LIMITED …RESPONDENT(S)

WITH

CIVIL APPEAL NO. OF 2025
[Arising out of SLP (C) No. 25798 of 2024]

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. The present appeals challenge the judgment and order dated 04.08.2023 passed by the High Court of Bombay in Writ Petition 2340 of 2021 and other connected matters.

3. The present dispute raises important questions of law relating to the interpretation and interplay between Section 144C and Section 153(3) of the Income Tax Act, 1961. More specifically, what are the periods of limitations prescribed for the revenue authorities to take action against an Assessee and how the limitation periods and procedures prescribed in these two sections coexist.

4. The facts necessary for the adjudication of the present appeals are as follows:

5. The Respondent/Shelf Drilling Ron Tappmeyer Ltd. exercised its option under Section 44BB of the Income Tax Act and declared a total loss of Rs. 120,18,44,672/- for the assessment year 2014-2015. On 28th August 2015, the Appellant issued a notice under Section 143(2) of the Income Tax Act. Pursuant to this, a Draft Assessment Order in terms of Section 144C of the Income Tax Act was passed on 26.12.2016, and rejected the books of Account furnished by the Respondent, and assessed its income at Rs. 4,34,79,980/-. The Dispute Resolution Panel, in terms of Section 144C of the Income Tax Act, gave its recommendations on 28th September 2017, and the final assessment order was passed on 30.10.2017.

6. Aggrieved by this order, the Respondent approached the Income Tax Appellate Tribunal, which remanded the matter

back to the Assessing Officer on the ground that the revenue authorities were not justified in rejecting the books of account furnished by the Respondent and therefore directed them to carry out the assessment afresh. This order came to be passed on 04.10.2019.

7. It is a matter of record that after the remand order passed by the Appellate Tribunal, a notice was issued on 23.09.2021, and a Draft Assessment Order was passed on 28.09.2021. This Draft Assessment Order was challenged before the High Court of Bombay on the ground that the maximum permissible time period as prescribed under Section 153(3) of the Income Tax Act had already expired and that, therefore, subsequent proceedings were vitiated and could not continue, and no final assessment order could be passed.

8. The writ petition filed by the Respondent was allowed by way of judgment and order dated 04.08.2023. The High Court took the view that the time period provided by Section 153(3) of the Income Tax Act is subsumed within the time contemplated in terms of Section 144C of the Income Tax Act. This Court is therefore required to analyze and interpret the maximum permissible time periods prescribed as per the Income Tax Act in terms of proceedings under Section 144C read with Section 153(3) of the Income Tax Act.

9. It is therefore appropriate to refer to Section 153 of the Income Tax Act.

> *"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:*
>
> *[Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:*
>
> *[Provided further that in respect of an order of assessment relating to the assessment year commencing on—*
>
> *(i) the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;*
>
> *(ii) the 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted :]]*
>
> *[Provided also that in respect of an order of assessment relating to the assessment year commencing on [* * *] the 1st day of April, 2021, the provisions of this sub-section shall have effect,*

as if for the words "twenty-one months", the words "nine months" had been substituted :]

[Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2022, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted.]

[(1-A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8-A) of Section 139 is furnished, an order of assessment under Section 143 or Section 144 may be made at any time before the expiry of [twelve months] from the end of the financial year in which such return was furnished.]

[(1-B) Notwithstanding anything in sub-section (1), where a return is furnished in consequence of an order under clause (b) of sub-section (2) of Section 119, an order of assessment under Section 143 or Section 144 may be made at any time before the expiry of twelve months from the end of the financial year in which such return was furnished.]

(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.]

(3) Notwithstanding anything contained in [sub-sections (1), (1-A) and (2)], an order of fresh assessment [or fresh order under Section 92-CA, as the case may be,] in pursuance of an [order under Section 250 or Section 254] or Section 263 or Section 264, setting aside or cancelling an assessment, [or an order under Section 92-CA, as the case may be] 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 250 or Section 254] is received by the Principal Chief Commissioner or Chief Commissioner or [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] 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, as the case may be,]:

[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 Section 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.]

[(3-A) Notwithstanding anything contained in sub-sections (1), (1-A), (2) and (3), where an

assessment or reassessment is pending on the date of initiation of search under Section 132 or making of requisition under Section 132-A, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections shall,—

(a) in a case where such search is initiated under Section 132 or such requisition is made under Section 132-A;

(b) in the case of an assessee, to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to;

(c) in the case of an assessee, to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to,

be extended by twelve months.]

(4) Notwithstanding anything contained in [sub-sections (1), (1-A), (2), (3) and (3-A)], where a reference under sub-section (1) of Section 92-CA 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), (1-A), (2), (3) and (3-A)] 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 [or the Transfer Pricing Officer, as the case may be,] wholly or partly, otherwise than by making a fresh assessment or reassessment

[or fresh order under Section 92-CA, as the case may be,] 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 3407[the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,]:

Provided that where it is not possible for the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] 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, 3409[or the Transfer Pricing Officer, as the case may be,] if satisfied, may allow an additional period of six months to give effect to the order:

[Provided further that where an order under Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 shall be made within the time specified in sub-section (3).]

[(5-A) Where the Transfer Pricing Officer gives effect to an order or direction under Section 263 by an order under Section 92-CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him.]

(6) Nothing contained in [sub-sections (1), (1-A) and (2)] shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of [sub-sections (3), (5) and (5-A)], 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 Chief Commissioner or Chief Commissioner or] 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.

(8) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of Section 153-A or sub-section (1) of [Section 153-B or Section 158-BE], the order of assessment or reassessment, relating to any assessment year, which stands [revived under sub-section (2) of Section 153-A or sub-section (5) of Section 158-BA], shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of [Section 153-B or Section 158-BE], whichever is later.

(9) The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016:

[Provided that where a notice under sub-section (1) of Section 142 or sub-section (2) of Section 143 or Section 148 has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to

exclusion of time referred to in Explanation 1, such assessment or reassessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016 (28 of 2016).]

Explanation 1.— For the purposes of this section, in computing the period of limitation—

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to Section 129; or

[(ii) the period commencing on the date on which stay on the assessment proceeding was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional Principal Commissioner or Commissioner; or]

(iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22-B) or clause (23-A) or clause (23-B) [, under clause (i) of the first proviso] to sub-section (3) of Section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer; or

(iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited [or inventory valued] under sub-section (2-A) of Section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit [or inventory valuation] under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of Section 142-A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of Section 158-A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under Section 245-C and ending with the date on which the order under sub-section (1) of Section 245-D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(viii) the period commencing from the date on which an application is made before the [Authority for Advance Rulings or before the Board for

Advance Rulings] under sub-section (1) of Section 245-Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of Section 245-R; or

(ix) the period commencing from the date on which an application is made before the [Authority for Advance Rulings or before the Board for Advance Rulings] under sub-section (1) of Section 245-Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of Section 245-R; or

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in Section 90 or Section 90-A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of Section 144-BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the [Assessing Officer; or

(xii) the period (not exceeding one hundred and eighty days) commencing from the date on which a search is initiated under Section 132 or a

requisition is made under Section 132-A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under Section 132 or requisitioned under Section 132-A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee,—

(a) in whose case such search is initiated under Section 132 or such requisition is made under Section 132-A; or

(b) to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or

(c) to whom any books of account or documents seized or requisitioned pertains or pertains to, or any information contained therein, relates to; or]

[(xiii) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of Section 143 and ending with the date on which the copy of the order under clause (ii) or clause (iii) of the fifteenth proviso to clause (23-C) of Section 10 or clause (ii) or clause (iii) of sub-section (4) of Section 12-AB, as the case may be, is received by the Assessing Officer,]

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in [sub-sections (1), (1-A), (2)], (3) and sub-section (8) available to the

Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3-A) of Section 92-CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

Provided also that where a proceeding before the Settlement Commission abates under Section 245-HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of Section 245-HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under Sections 149, [* *] 154, 155 and 158-BE and for the purposes of payment of interest under Section 244-A, this proviso shall also apply accordingly:*

[Provided also that where the assessee exercises the option to withdraw the application under sub-

section (1) of Section 245-M, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (5) of the said section, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year:

Provided also that for the purposes of determining the period of limitation under Sections 149, 154 and 155, and for the purposes of payment of interest under Section 244-A, the provisions of the fourth proviso shall apply accordingly:]

[Provided also that where after exclusion of the period referred to in clause (xii), the period of limitation for making an order of assessment, reassessment or recomputation, as the case may be, ends before the end of the month, such period shall be extended to the end of such month.]

Explanation 2.— For the purposes of this section, where, by an order referred to in clause (i) of sub-section (6),—

(a) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of Section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or

(b) any income is excluded from the total income of one person and held to be the income of another

> *person, then, an assessment of such income on such other person shall, for the purposes of Section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed.]"*

10. At this stage, it is relevant to note that Section 153 of the Income Tax Act has been a part of the Income Tax Act for a significantly longer period of time, whereas Section 144C of the Income Tax Act is a relatively new provision, introduced in 2009. Both these provisions have a common salutary objective in mind, which aims to restrict or regulate the powers of revenue authorities to take appropriate steps against assessees.

11. Section 153 of the Income Tax Act prescribes various time limits within which assessment, reassessment, and recomputation of income of Assessees has to take place by the revenue authorities. Section 153(3) of the Income Tax Act specifically deals with orders of fresh assessments passed as a result of setting aside or cancelling an assessment. This is an event likely to happen when an appellate authority such as the Income Tax Appellate Tribunal or the High Court sets aside any order of an assessing officer, and asks for fresh computation. Section 153(3) of the Income Tax Act provides that a fresh order must be passed before the expiry of 9 months from the

end of the financial year in which the order is received by the Commissioner. The proviso to this sub-section also provides that in case the order is received on or after the first day of April 2019, the 9 month period shall be 12 months.

12. In the facts of the present case, it is clear that the Income Tax Appellate Tribunal passed an order of remand on 04.10.2019. The end of the financial year insofar as this order is concerned would be 31.03.2020, as a result of which, in the facts of the present case, if Section 153(3) of the Income Tax Act is to be strictly construed, it would mean that the fresh assessment order had to be passed by or before 31.03.2021. In the facts of the present case, it is also relevant to note that the financial year ended on 31.03.2020 at a time when the entire world was in lockdown as a result of the spread of the coronavirus pandemic.

13. In view of the delays and disruptions caused by the coronavirus pandemic, the Central Board of Direct Taxes issued Notification being S.O. 966(E) dated 27.02.2021, in which the time limit for the completion of assessments, reassessments, and recomputation under Section 153 or Section 153B was extended till 30th day of September 2021.

"MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

S.O. 966(E).—In exercise of the powers conferred by sub-section (1) of Section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020 (hereinafter referred to as the said notification), the Central Government hereby specifies, for the purpose of sub-section (1) of Section 3 of the said Act, that,—

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and the completion of any action, as referred to in clause (a) of sub-section (1) of Section 3 of the said Act, relates to passing of any order—

(a) for imposition of penalty under Chapter XXI of the Income-tax Act, —

(i) the 29th day of June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Income-tax Act falls, for the completion of such action; and

(ii) the 30th day of June, 2021 shall be the end date to which the time limit for completion of such action shall stand extended;

(b) for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under Section 153 or Section 153-B thereof, —

(i) expires on the 31st day of March, 2021 due to its extension by the said notification, such time limit shall stand extended to the 30th day of April, 2021;

(ii) is not covered under (i) and expires on 31st day of March, 2021, such time limit shall stand extended to the 30th day of September, 2021;

(B) where the specified Act is the Prohibition of Benami Property Transaction Act, 1988, (45 of 1988) (hereinafter referred to as the Benami Act) and the completion of any action, as referred to in clause (a) of sub-section (1) of Section 3 of the said Act, relates to issue of notice under sub-section (1) or passing of any order under sub-section (3) of Section 26 of the Benami Act,—

(i) the 30th day of June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Benami Act falls, for the completion of such action; and

(ii) the 30th day of September, 2021 shall be the end date to which the time limit for completion of such action shall stand extended.

[Notification No. 10/2021/F. No. 370142/35/2020-TPL]

SHEFALI SINGH, Under Secy., Tax Policy & Legislation Division"

14. It is the case of the Respondent that the revenue authorities were required to pass the Draft Assessment Order by or before the date prescribed under Section 153(3) of the Income Tax Act, failing which such order could no longer be passed because of the time limit constraint prescribed under Section 153(3) of the Income Tax Act.

15. The Appellant, on the other hand, contends that Section 144C of the Income Tax Act is a complete code in itself which posts various timelines within which the assessing authorities are required to take certain steps failing which their actions will be time-barred.

16. It is therefore relevant to examine the scope, object, and purpose behind the introduction of Section 144C of the Income Tax Act and the ambit within which this section seeks to operate. The memorandum and explanatory notes of Finance Act No.2 of 2009 explained the reasons for introducing Section 144C of the Income Tax Act, which reads as under:-

> ***" Provision for constitution of alternate dispute resolution mechanism***
>
> *The dispute resolution mechanism presently in place is time consuming and finality in high demand cases is attained only after a long drawn litigation till Supreme Court. Flow of foreign investment is extremely sensitive to prolonged uncertainty in tax related matter. Therefore, it is*

proposed to amend the Income-tax Act to provide for an alternate dispute resolution mechanism which will facilitate expeditious resolution of disputes in a fast track basis."

17. Section 144C of the Income Tax Act, 1961 reads as under:-

"[144-C. 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 [* *] which is prejudicial to the interest of such assessee.*

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variation with,—

(i) the Dispute Resolution Panel; and

(ii) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

(a) the assessee intimates to the Assessing Officer the acceptance of the variation; or

(b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained [in Section 153 or Section 153-B], pass the assessment order under sub-section (3) within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it.

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

[Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.]

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained [in Section 153 or Section 153-B], the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

[(14-A) 3363[* *]]*

[(14-A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the [Principal Commissioner or Commissioner] as provided in sub-section (12) of Section 144-BA.]

[(14-B) The Central Government may make a scheme, by notification in the Official Gazette, for

the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

(14-C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14-B), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

[* *]*

(14-D) Every notification issued under sub-section (14-B) and sub-section (14-C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three 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 92-CA; and***
>
> ***[(ii) any non-resident not being a company, or any foreign company:]***
>
> *[Provided that such eligible assessee shall not include person referred to in sub-section (1) of Section 158-BA or other person referred to in Section 158-BD.]*
>
> *[(16) The provisions of this section shall not apply to any proceedings under Chapter XIV-B.]"*
>
> ***(emphasis supplied)***

18. Sub-Section (1) of Section 144C of the Income Tax Act states that an Assessing Officer, notwithstanding anything to the contrary contained in the Income Tax Act, shall forward a draft of the proposed order of assessment to an Eligible Assessee. This expression "Eligible Assessee" has been defined in Sub-Section (15) to mean a person in whose case a variation arises as a consequence of an order of a Transfer Pricing Officer passed under Sub-Section (3) of Section 92CA of the Income Tax Act. It also includes any non-resident not being a company, or a foreign company. In the facts of the present case, Section

144C of the Income Tax Act is applicable to the Respondent as it is a foreign company.

19. Thus, insofar as eligible Assessees are concerned, the Assessing Officer, in terms of Section 144C of the Income Tax Act, is required to pass a Draft Assessment Order and give a copy of this order to the Assessee. This Section provides the Assessee a period of 30 days to either accept the variations proposed by the Assessing Officer or to file its objections to this variation with the Dispute Resolution Panel and the Assessing Officer. If no objections are received within the 30-day time period, or an acceptance is received, Sub-Section (3) mandates that the Assessing Officer complete the assessment, and pass a final Assessment on the basis of the Draft Order. On the other hand, if objections are received by the Dispute Resolution Panel, it must, in terms of Sub-Sections (5) and (6), issue directions as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment. Sub-Section (8) also empowers the Dispute Resolution Panel to confirm, reduce, or enhance variations proposed in the Draft Order. Sub-Section (11) specifically provides that an opportunity of hearing must be given in case directions prejudicial to the revenue or the Assessee are being passed. Sub-Section (12) also prescribes that no direction shall be issued after 9 months from the end of the month in which the Draft Order is forwarded to the eligible

Assessee. Sub-Section (13) provides that the Assessing Officer, in conformity with the directions of the Dispute Resolution Panel, must complete the assessment within one month from the end of the month in which the direction is received, and that no further opportunity of being heard is to be provided to the Assessee at this stage.

20. These provisions make it abundantly clear that Section 144C of the Income Tax Act contemplates and prescribes a specific procedure and also prescribes very specific fixed timelines for the completion of assessment. From the date of the Draft Assessment Order proposing variations, the entire procedure contemplated will result in an order being passed within an outer limit of roughly 11 months, depending on the date on which the directions, if any, are passed by the Dispute Resolution Panel.

21. The question which arises for the consideration of this court is whether this 11-month period contemplated in Section 144C of the Income Tax Act is subsumed within the outer limit of time to pass an Assessment Order as prescribed under Section 153 of the Income Tax Act or any of its Sub-Sections?

22. The learned Additional Solicitor General, Mr. N. Venkatraman, appearing on behalf of the Appellant, has contended that the Income Tax Act contemplates two different

methods of assessment: one for eligible assessees as defined under Section 144C(15)(b) of the Income Tax Act and for other assessees who fall under the normal category. He has submitted that ordinarily an assessment order must be made in terms of Section 153(1) of the Income Tax Act within a period of 21 months from the end of the assessment year in which the income was first assessable. If the variation arises as a result of a proceeding before the Transfer Pricing Officer under Section 92CA of the Income Tax Act, this period of 21 months is further extended by a period of 12 months, giving a total of 33 months to pass the assessment order from the end of the relevant assessment year.

23. He has further argued that because of the special provisions contained within Section 144C of the Income Tax Act, which is a self-contained code and as a procedure is prescribed under Section 144C of the Income Tax Act, its timelines will be in addition to the timelines prescribed in terms of Section 153 of the Income Tax Act. According to the learned Additional Solicitor, the timelines prescribed in Section 153 of the Income Tax Act will apply to the Draft Assessment Order referred to in Section 144C(1) of the Income Tax Act, and that he will be required to ensure that the Draft Assessment Order is passed in terms of the timelines prescribed under Section 153 of the Income Tax Act.

24. It has also been mentioned before this Court that the total tax implication of the decision of the Bombay High Court, which is under challenge before this Court, can have a revenue impact of nearly 1.3 lakh crores, as that is the quantum of dispute in various appeals which are pending in the country which will otherwise be deemed to be time-barred if the interpretation of the High Court of Bombay by way of the impugned order is upheld.

25. A preliminary objection has been taken by the learned Senior Counsel appearing on behalf of the Respondent that the present Special Leave Petition ought to be dismissed on account of the fact that there is a low tax effect. This submission need not detain me any further. Obviously, there is an extremely important question of law which has to be decided by this Court and has country-wide ramifications. The Court is not compelled to dismiss a petition merely because it has a low tax effect.

26. The learned Senior Counsel Mr. Mistry appearing on behalf of the Respondents has contended that Section 153 of the Income Tax Act provides various extended periods of limitations in certain actions. It has been contended that no exception has been carved out in Section 153 of the Income Tax Act in respect of the time taken by the revenue in terms of proceedings under Section 144C of the Income Tax Act.

Reliance has been placed on Section 153(4) of the Income Tax Act, where the period of limitation is extended by 12 months in case a reference has been made to the Transfer Pricing Officer under Section 92CA(1) of the Income Tax Act. Reliance has also been placed on Explanation 1 clauses (iv) to (xiii) 2, all of which have provided extended periods of time within which Assessment Order has to be passed. It has been contended that the Legislature has allowed an extended period of limitation, or excluded a period taken for the proceedings, wherever it intended to give the revenue authorities additional time. He submits that since no such exception has been made for the proceedings contemplated under Section 144C of the Income Tax Act, all the additional time including which is given under Section 144C shall be subsumed under Section 153 of the Income Tax Act, and therefore, the High Court has rightly held that the proceedings challenged before it were barred by limitation.

27. Another ground urged by the Ld. Senior Counsel, is that if it is accepted that the entire procedure contemplated under Section 144C of the Income Tax Act must take place within the overall time period prescribed under Section 153 of the Income Tax Act, it would imply that an Assessing Officer who ordinarily gets a period of 12 months to pass an Assessment Order after an order of remand would now have to pass his

Draft Assessment Order, and also provide for one month for the Assessee to file its objections, 9 months for the Dispute Resolution Panel, and thereafter pass his own final assessment order within this time period of 9 months. Reliance has been placed on the decision of the ***Madras High Court in Commissioner of Income Tax & Anr. v. Roca Bathroom Products Pvt. Ltd.***, 2022 SCC OnLine Mad 8777.

28. Having heard the Ld. Counsel for the parties, I am of the opinion that the Impugned Order is liable to be set aside, and the Judgement of the Madras High Court also deserves to be set aside, as this interpretation of the interplay between Section 153 and 144 C of the Income Tax Act seems wholly incorrect, and unworkable.

29. In the facts of ***Roca Bathroom Products Private Limited (supra)***, it is relevant to mention that the time period under Section 153(4) of the Income Tax Act was applicable, which provides for an additional period of 12 months to complete the assessment and pass the final order in case a reference has been made to the Transfer Pricing Officer in terms of Section 92CA of the Income Tax Act. The High Court took the view that in view of the additional time period of 12 months provided, the proceedings before the Dispute Resolution Panel, the passing of draft assessment and thereafter final assessment order ought to

have taken place within this extended period of limitation. I am of the view that this interpretation is totally erroneous.

30. In interpreting the provisions that form the subject matter of the present controversy, this Court is alive to the fact that a fine balance has to be maintained between ensuring that the revenue authorities have ample time and opportunity to assess income and ensure that those who attempt tax evasion, are prosecuted, and the income escaping taxation, is brought within the tax fold. At the same time, the rights of the Assessees, of not having their returns scrutinized after a substantial period of time, must also be balanced. Uncertainty, and giving the revenue the opportunity to reopen the assessment of any taxation from many years ago, is never good for business or promoting foreign investment. At the same time, unscrupulous persons trying to avoid paying the legitimate tax dues must also be dealt with strictly and all taxes which they have sought to avoid must be recovered.

31. If I take the view that the entire procedure prescribed and contemplated in terms of Section 144C of the Income Tax Act must be subsumed within the overall time period prescribed under Section 153 of the Income Tax Act, I am of the opinion that it would result in a complete catastrophe for recovering lost

tax. The time period within which the Assessing Officers would have to pass orders would be negligible.

32. In my opinion, this would be totally unworkable. The total time prescribed for passing the assessment orders in the ordinary course is only 12 months from the end of the financial year in which the remand order has taken place from the tribunal. In most of the illustrations and situations dealt with in Section 153 and its many sub-sections, a specified timeline has been prescribed within which the assessment order must be passed.

33. Section 153 in its operation does not distinguish between persons who are suffering assessment under Section 144C of the Income Tax Act or otherwise. This Court is mindful of the fact that the procedure adopted and the recourses available to an Assessee in case of proceedings or reassessment in terms of Section 143(3) of the Income Tax Act are very different from those under Section 144C of the Income Tax Act as already explained in detail above.

34. There is an entire procedure which contemplates giving an Assessee a period of one month to choose to file objections as well as provides an Assessee with an opportunity of hearing which may take up to 9 months before the Dispute Resolution Panel. It is important to note that proceedings before the

Dispute Resolution Panel are initiated at the option of the Assessee. It is always open for an Assessee to accept variations proposed by the Assessing Officer in its Draft Order, so therefore it cannot be said that an Assessee is prejudiced by proceedings before the Dispute Resolution Panel or the time that it takes because it is something that an Assessee will initiate and not something that he/she must mandatorily go through.

35. The High Courts of Bombay and Madras have taken the view that the fact that no exception has been carved out for Section 144C of the Income Tax Act in any of the sub-sections of Section 153 of the Income Tax Act makes it clear that the time of Section 144C of the Income Tax Act proceedings must necessarily conclude within the time period prescribed under Section 153 of the Income Tax Act. I agree with this view only to a limited extent, insofar as the timelines prescribed under Section 153 of the Income Tax Act must apply to proceedings under Section 144C of the Income Tax Act, but only insofar as they relate to the passing of the Draft Assessment Order contemplated under Sub-Section (1) of Section 144C of the Income Tax Act.

36. My view in this regard stems from the fact that Sub-Section (4) and Sub-Section (13) of Section 144C of the Income Tax Act provide clear and unequivocal non obstante clauses,

which remove the application of Section 153 of the Income Tax Act and the timelines prescribed thereunder. The High Courts of Madras and Bombay have taken the view that this timeline further reduces the time available to the Assessing Officer to pass an assessment order, and that it further limits it. They have taken the view that the 12-month timeline goes out of the window and that the Assessing Officer has only been given a period of one month either after passing the Draft Assessment Order or after receiving the directions from the Dispute Resolution Panel, and at the same time, the Final Assessment Order also has to be passed within the overall 12 month time period.

37. I find this view difficult to accept. No doubt Sub-Section (4) and Sub-Section (13) of Section 144C of the Income Tax Act prescribe very specific timelines for the Assessing Officer to complete and pass the Final Assessment Order, but I am of the view that these timelines are independent of the timelines contemplated in Section 153 of the Income Tax Act, and operate in addition to the timelines contemplated in Section 153 of the Income Tax Act.

38. The Bombay High Court and the Madras High Court have rightly taken the view that the non obstante clauses are

only limited to the actual final passing of the order, but the conclusions drawn in my opinion are incorrect.

39. In my opinion, the requirements of Section 153 of the Income Tax Act in terms of timeline are strictly applicable to Section 144C (1) of the Income Tax Act, that is the stage at which the Draft Order has to be passed by the Assessing Officer. The non-obstante clauses contained in Sub-Section (4) and Sub-Section (13) of Section 144C of the Income Tax Act only extend the timeline for the passing of the final order and not that of the Draft Order.

40. Sub-Section (4) operates and comes into existence only in cases in situations when an Assessee subjected to Section 144C of the Income Tax Act accepts the variations proposed in the Draft Assessment Order or if the period of filing objections before the Dispute Resolution Panel expires. In my opinion, the conjoint reading of Section 144C(1), Section 153, and Section 144C(4) of the Income Tax Act make it abundantly clear that the Assessing Officer is obliged to comply with the requirements of Section 153 of the Income Tax Act insofar as it relates to passing the Draft Assessment Order and that he must also necessarily pass the Final Assessment Order within an additional period of one month in case the variations are accepted or the period of limitation for filing objections expires.

In my opinion, this would extend the time available to the Assessing Officer from 31st March of any year to 30th April of that year. In the facts of the present case, this would mean that the Assessing Officer ought to have passed his Draft Assessment Order before 30th September 2021, and in case acceptance was received or no objections were filed, the final assessment order by or before 30th October 2021.

41. Similarly, in the event objections were filed, Section 144C(12) of the Income Tax Act states that such objections have to be decided and directions have to be issued within a period of 9 months. Sub-Section (13) makes it clear that regardless of how long it takes the Dispute Resolution Panel to pass its directions, the Assessing Officer will only have an additional period of one month to pass the Final Assessment Order. This means that if the Dispute Resolution Panel disposes of the objections and issues directions within a period of one month from the date of filing of objections, the Final Assessment Order must be passed within one month from such date which will be practically impossible.

42. It is the contention of Ld. Senior Counsel for the Respondent that the non-obstante clause in Section 144C(1) is limited to provisions contrary to what is contained in elsewhere in the Act and submits that the only aspect contrary in Section

144C is passing of a draft assessment order instead of a final assessment order. It was submitted that the non-obstante clause in Section 144C(1) does not extend to the timelines prescribed under Section 153.

43. This submission cannot be accepted. When Section 153(1) is examined, though there is a reference to Section 143 and Section 144, there is no reference to Section 144C. It cannot therefore be held that the timelines under Section 153 also includes the process conceived under Section 144C. The non-obstante clause in Section 144C must be given a construction that would not defeat the working of the Income Tax Act, 1961. Even if the non-obstante clause in Section 144C(1) is limited to passing a final assessment order under Section 143(3), principles of statutory construction would permit an interpretation which would allow the associated timelines for the Section 143(3) exercise prescribed under Section 153 to be covered within the scope of the non-obstante clause in Section 144C. If the Arguments of the Respondents were to be accepted, it would result in an interpretation where the non-obstante clause in Section 144C(1) is limited to a procedure of passing a draft assessment order instead of a final assessment order under Section 143(3) without subsuming the associated timelines attached to such Section 143(3) procedure. In other words, if Section 144C(1) operates notwithstanding the Section 143(3)

procedure, it also operates notwithstanding the timelines prescribed under Section 153 for such Section 143(3) procedure. This construction would preserve the sanctity of the provision and would not result in any absurd outcome.

44. If the procedure under Section 144C and its associated timelines prescribed under sub-clause (4) and sub-clause (13) were to be subsumed within the timelines prescribed under Section 153, it would result in a scenario where every assessing officer in the country would have to complete all assessments by working backwards and would have to allow the period of nine months granted to the Dispute Resolution Panel to issue directions under Section 144C(5) r/w Section 144C(12). This would effectively mean that an assessing officer would have to firstly foresee that an eligible assessee would compulsorily file objections to the draft assessment order under Section 144C(2)(b) and the Dispute Resolution Panel would require the entire nine months period to issue any direction. The Parliament while enacting Section 144C, could not have conceived such a procedure to be followed by an assessing officer in the Country.

45. This can also be approached from another angle. If the contentions of the Respondents were to be accepted, and assuming a scenario where the assessing officer does not accommodate for the entire nine-month period for the Dispute

Resolution Panel to issue directions, it would result in a scenario where an assessing officer would eat into the time available for the Dispute Resolution Panel to issue directions, which would effectively result in amending the Income Tax Act and the timeline of nine months available with the Dispute Resolution Panel available under Section 144C(12).

46. The non-obstante clauses in Section 144C must therefore be harmoniously construed. The timelines prescribed under Section 153 will be applicable upto the stage of passing the draft assessment order under Section 144C(1). Once the procedure under Section 144C(1) gets triggered, the time available with the Dispute Resolution Panel to carry out the process conceived under Section 144C(5) to Section 144C(12) and the time available with the assessing officer under Section 144C(13), will be over and above the timelines prescribed under Section 153. This interpretation would ensure a smooth functioning of Section 153 and Section 144C.

47. Section 153 is not the only provision for prescribing time limits for assessments and reassessments. Even without a non-obstante clause, the erstwhile Section 158BE provided for independent timelines for block assessments. Timelines for assessment under Section 153A is prescribed under Section

153B, which also operates notwithstanding anything contained in Section 153.

48. Section 92CD of the Income Tax Act, 1961 pertains to advanced pricing agreements. Section 92CD(5) operates notwithstanding anything contained in Section 153, Section 153B or Section 144C. Had Section 153 subsumed the timelines prescribed under Section 144C, there was no occasion for the Parliament to specifically mention Section 144C in Section 92CD(5) which too provided alternate timelines, contrary to the timelines prescribed under Section 153. This too is an indication of the intention of the Parliament to operate the timelines under Section 144C over and above Section 153.

49. Ld. Senior Counsel for the Respondent contended that Explanation 1 to Section 153 provides for various time periods arising out of certain circumstances which ought to be excluded while calculating the period of limitation under Section 153 and further contended that there is no reference to Section 144C or to the time-period available to the Dispute Resolution Panel, to be excluded for calculating the limitation under Section 153.

50. This contention too cannot be accepted. Once a draft assessment order is issued under Section 144C, the assessing officer is incapacitated to conduct further independent enquiries or raise any fresh issue in the final assessment order that was

not part of the draft assessment order. On an examination of Section 144C, it becomes clear that the assessing officer simply has to pass an assessment order in conformity with the directions issued by the Dispute Resolution Panel if objections are filed by the assessees or simply reiterate the draft assessment order as a final assessment order if no objections are filed. The assessing officer acts in an executory role once the draft assessment order is issued under section 144C(1).

51. In this context, if Explanation 1 to Section 153 is examined, it deals with situations where the Assessing Officer's Quasi-Judicial Role is eclipsed for a certain period and he is re-vested with the Quasi-Judicial power. The Explanation merely excludes the period of eclipse while computing the limitation under Section 153. The Explanation to Section 153 merely serves this purpose. Since the assessing officer performs an executory role under Section 144C after the draft assessment order is issued, Explanation 1 to Section 153 has no relevance in the context of Section 144C.

52. Even otherwise, since when Section 144C operates not withstanding Section 153, and since the timelines under Section 144C are over and above the timelines under Section 153, Explanation 1 to Section 153 has no relevance.

53. It is settled law that while interpreting statutes the Court must avoid an absurd interpretation and must always strive to interpret the provisions to ensure that the Legislation is not reduced to a futility, and the interpretation must ordinarily be such that it brings about an effective result which was intended by the Legislature. The Supreme Court of India in the case of ***Commissioner of Income Tax v. Hindustan Bulk Carriers,*** (2003) 3 SCC 57, has held as under:-

> *"14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221.]*
>
> *15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See Whitney v. IRC [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)] , AC at p. 52 referred to in CIT v. S. Teja Singh [AIR 1959 SC 352 : (1959) 35 ITR 408] and Gursahai Saigal v. CIT [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)*
>
> *16. The courts will have to reject that construction which will defeat the plain intention of the*

legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1].

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute."

54. The Constitution Bench in the case of ***Franklin Templeton Trustee Services Private Limited & Anr. v. Amruta Garg & Ors.,*** (2021) 6 SCC 736**,** has held as under:-

> *"17. The concept of "absurdity" in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief [See Bennion on Statutory Interpretation, 5th Edn., p. 969.]. Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense. [Bennion on Statutory Interpretation, 5th Edn., p. 986.] When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society [Id, p. 971, quoting Griffiths, L.J.]. Therefore, when there is choice between two interpretations, we would avoid a "construction" which would reduce the legislation to futility, and should rather accept the "construction" based on the view that draftsmen would legislate only for the purpose of bringing about an effective result. We must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences [See Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edn., p. 50.] ."*

55. The Constitution Bench in the case of ***Vivek Narayan Sharma & Ors. (Demonetisation Case-5J.) v. Union of India & Ors.,*** (2023) 3 SCC 1, has held as under:-

> *"134. Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of*

government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose ["Some Reflections on the Reading of Statutes" [(1947) 47 Columbia LR 527] , Columbia LR at p. 538]. This is how Justice Frankfurter succinctly propounds the principle of purposive interpretation.

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137. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfil the object and purport of the legislative intent.

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148. It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their

> *plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction."*

56. Obviously, the two situations contemplated under the Income Tax Act in terms of assessment under Section 144C of the Income Tax Act are vastly different and will obviously take varying amounts of time depending on whether objections are filed before the Dispute Resolution Panel or not. At the cost of repetition, it must be remembered that this option is only exercised by the Assessee. It is also relevant to mention that if adequate opportunity or time is not granted to an Assessee or if the Dispute Resolution Panel is forced to decide the objections in a very quick manner inhibited by the timelines prescribed under Section 153 of the Income Tax Act, it would amount to a violation of the Principles of Natural Justice.

57. It is therefore not possible for this Court to accept the view of the High Courts in this matter.

58. Since I have been informed that this question of law and issue has arisen in a large number of appeals pending in various forums across the country, it is appropriate to clarify and specify

the meaning of Section 144C of the Income Tax Act and its applicability alongside Section 153(3) of the Income Tax Act, including situations where Section 92C of the Income Tax Act is invoked.

59. In cases of assessment proceedings under Section 144C, Section 153 of the Income Tax Act and all its sub-sections are fully applicable, and the timelines prescribed therein apply to the Draft Assessment Order, which is to be passed under Sub-Section (1) of Section 144C of the Income Tax Act. If proceedings under Section 92C are also invoked, the time period in view of Section 153(4) of the Income Tax Act would be extended by a period of 12 months.

60. The fixed time periods prescribed under Section 144C of the Income Tax Act must be adhered to, and a final assessment order must be passed either within one month of the Draft Assessment Order if the situation contemplated under Sub-Section (4) takes place, or within a period of 11 months from the passing of the Draft Assessment Order if the Assessee opts to file objections before the Dispute Resolution Panel.

61. In view of the above, the Judgment and Order of the High Court of Bombay dt. 04.08.2023 passed in Writ Petition Nos. 2340, 2661, 3059 and 3060 of 2021 is set aside. Consequently, the appeals are allowed. The Revenue Authorities

shall be free to pass appropriate orders in accordance with law. In case the assessee is aggrieved by the orders passed by the revenue authorities, the assessee shall also be free to take recourse to the remedies available under the applicable laws.

62. Civil Appeal No. _____/2025 (arising out of Special Leave Petition No.25798 of 2024) is disposed of in terms of the liberty granted to the parties in terms of Paragraph 20 of the Judgment and Order dated 13.08.2024 passed by the High Court of Judicature at Bombay in Writ Petition (L) No. 30944 of 2023.

…….J.
[SATISH CHANDRA SHARMA]

NEW DELHI
AUGUST 08, 2025.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2025
(Arising out of SLP (Civil) Nos.20569-20572 of 2023)

Assistant Commissioner of Income Tax (International Taxation) & Others ... Appellants

Versus

Shelf Drilling Ron Tappmeyer Ltd. Etc. ... Respondent(s)

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.25798 OF 2024

ORDER OF THE COURT

Having regard to the divergent opinions expressed by us, we direct the Registry to place these matters before Hon'ble the Chief Justice of India for constituting an appropriate Bench to consider the issues which arise in these matters afresh.

.....J.
(B.V. NAGARATHNA)

.....J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
AUGUST 08, 2025.