IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal Nos. 1517, 1519, 1609, 1610 and 1854 of 2021
and
CMP. Nos.9656, 9658, 10022, 10023 and 11720 of 2021

W.A. Nos. 1517 and 1519 of 2021

1. The Commissioner of Income Tax
   The Dispute Resolution Panel-2
   BMTC Building, 80 Feet Road, 6th Block
   near KHB Games Village
   Koramangala, Bengaluru
   Karnataka – 560 095

2. The Deputy Commissioner of Income Tax
   Large Taxpayer Unit – 1
   Nungambakkam
   Chennai – 600 034 .. Appellants

Versus

M/s. Roca Bathroom Products Private Limited
rep. by its Managing Director Mr. K.E. Ranganahan
No.62, 4th Floor, KGN Towers
Ethiraaj Salai, Egmore
Chennai – 600 105 .. Respondent

W.A. Nos. 1609 & 1610 of 2021

1. The Dispute Resolution Panel-2
   Kendriya Sadan, 4th Floor
   Koramangala
   Bangalore – 560 034

2. The Deputy Commissioner of Income Tax
   Large Taxpayer Unit – 1
   Nungambakkam
   Chennai – 600 034 .. Appellants

Versus

M/s. Roca Bathroom Products Private Limited
rep. by its Managing Director Mr. K.E. Ranganahan
No.62, 4th Floor, KGN Towers
Ethiraaj Salai, Egmore
Chennai – 600 105 .. Respondent

W.A. No. 1854 of 2021

1. The Deputy Commissioner of Income Tax
   Corporate Circle-II (1)
   Room No.511, 5th Floor
   Main Building, Aayakar Bhawan
   121, Uttamar Gandhi Road
   Nungambakkam
   Chennai – 600 034

2. The Secretary
   Dispute Resolution Panel – Panel – II
   4th Floor, Kendriya Sadan
   Koramangala, Bengaluru – 560 034 .. Appellants

Versus

M/s. Freight Systems (India) Private Limited
rep. by its National Head – Finance & Accounts
Mr. P. Vijaya Kumar
New No.257, Old No.125/2
Angappa Naicken Street
Chennai – 600 001 .. Respondent

W.A. No. 1517 of 2021:- Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 23.12.2020 passed in WP No. 1068 of 2020 on the file of this Court.

W.A. No. 1519 of 2021:- Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 23.12.2020 passed in WP No. 1070 of 2020 on the file of this Court.

W.A. No. 1609 of 2021:- Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 23.12.2020 passed in WP No. 922 of 2020 on the file of this Court.

W.A. No. 1610 of 2021:- Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 23.12.2020 passed in WP No. 919 of 2020 on the file of this Court.

W.A. No. 1854 of 2021:- Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 16.02.2021 passed in WP No. 6202 of 2019 on the file of this Court.

For Appellants : Mrs. Hema Muralikrishnan
Senior Panel Counsel
and Mr. Prabhu Mukunth Arunkumar
in all the Writ Appeals

For Respondents : Mr.R.V. Eshwar, Senior Counsel
for Mr. R. Sandeep Bagmar
in WA Nos. 1517, 1519, 1609 & 1610/2021

Mr. Kamal Sawhney, Senior Counsel
for Mr. Arun Karthick Mohan
in W.A. No. 1854 of 2021

COMMON JUDGMENT

R. MAHADEVAN, J.

The Revenue is the appellant(s) in all the appeals. WA.Nos.1517, 1519, 1609 and 1610 of 2021 have been filed against a common order dated 23.12.2020 passed by the learned Judge in the respective WP Nos.1068, 1070, 922 and 919 of 2020, whereas WA.No.1854 of 2021 arises from the order dated 16.02.2021 made in WP No.6202 of 2019.

2. The issues raised in all these writ appeals are identical and inter-related to each other as the order in one batch has been relied and followed in the other case. The learned counsel on either side have putforth common arguments in all the appeals. Therefore, all the writ appeals were taken up for hearing together and disposed of by this common judgment.

3. The respondent in these writ appeals namely WA Nos. 1517, 1519, 1609 & 1610 of 2021 / M/s. Roca Bathroom Products Private Limited is a private limited company incorporated during August 1983 and a subsidiary of Roca Sanitario S.A., Spain. They are engaged in the business of manufacturing and marketing of bathroom products, such as, sanitary ware, tap fittings and other allied products. For the assessment year 2009-2010, they filed their return on 26.09.2009, declaring an income of Rs.21,44,96,661/-. Similarly, for the assessment year 2010-2011, they filed their return on

30.09.2010 declaring an income of Rs.50,75,32,362/-. The returns of income were taken up for scrutiny and were referred to Transfer Pricing Officer (in short, "TPO") under Section 92CA of The Income Tax Act, 1961 (in short, "the Act").

4. The TPO passed an order dated 23.01.2013 in respect of assessment year 2009-2010, making a downward adjustment of Rs.4,66,00,000/- on import of goods. Following the same, the Assessing Officer passed a draft assessment order dated 30.03.2013, in conformity with the adjustment proposed by the TPO and also made addition for (i)disallowance under Rule 14A (ii) disallowance on connectivity expenses and (iii) disallowance on unabsorbed depreciation of amalgamating company, to which, the respondent submitted their objections before the first appellant / DRP and the Assessing Officer. However, the DRP rejected the same and confirmed the additions made in the draft assessment order and issued directions under section 144C. Based on the same, the second appellant passed the final assessment order on 16.01.2014 and raised a demand under section 156 of Rs.1,46,07,560/-.

5. For the assessment year 2010-2011, the TPO passed an order under Section 92CA of the Act on 29.01.2014, making adjustment of Rs.19,38,25,457/- in respect of 3 issues viz., (i) downward adjustment on

import of goods (ii) downward adjustment of advertisement, marketing and promotion expenses and (iii) downward adjustment on interest paid on Compulsorily Convertible Debentures. Accordingly, the Assessing Officer passed a draft assessment order on 24.03.2014 in conformity with the adjustment proposed by the TPO and also made addition for (i) disallowance under Rule 14A and (ii) disallowance on connectivity expenses. Aggrieved by the same, the respondent filed their objections before the first appellant / DRP, but the objections were rejected by the DRP and directions were issued under section 144C. Based on the same, the second appellant passed the final assessment order on 17.02.2015 and raised a demand under section 156 of Rs.10,93,31,070/-.

6. Assailing the assessment orders relating to the assessment years 2009-2010 and 2010-2011, the respondent approached the Income Tax Appellate Tribunal by filing appeals. By a common order dated 18.12.2015, the Tribunal allowed the appeals by setting aside the orders of the assessing officer and remanding the matter to the assessing officer to refer the same to the DRP for fresh examination, after giving sufficient opportunity to the assessee. In respect of the assessment year 2010-2011, the respondent/assessee filed Miscellaneous Petition No. 71/Mds/2016 stating that certain grounds raised by them have not been adjudicated. By order dated 10.08.2016, the

Tribunal allowed the Miscellaneous Petition and reopened the appeal in respect of grounds 4 to 7 for fresh adjudication. Pursuant to the same, the Tribunal by order dated 23.09.2016, allowed the appeal and directed the assessing officer to reexamine the issue afresh, after providing reasonable opportunity to the assessee.

7. According to the respondent, they did not receive any notice, pursuant to the orders of the Tribunal and therefore, they sent a letter dated 21.08.2019 to the second appellant stating that the remand proceedings have become time barred under Section 153 of the Act and hence, requested for refund of the tax already paid by them for the assessment years 2009-2010 and 2010-2011 along with interest. Thereafter, they received separate notices dated 06.01.2020 from the Dispute Resolution Panel (in short, "the DRP") calling upon them to appear for enquiry on 10.01.2020. Stating that as per the orders of the Tribunal, the assessing officer ought to have passed the draft assessment orders afresh, within the time limit prescribed under section 153 of the Act, but he failed to do so and hence, the notices dated 06.01.2020 issued by the first appellant are barred by limitation, the respondent filed Writ Petitions to quash the notices dated 06.01.2020 and consequently, direct the second appellant to refund the tax amount along with interest under section 244A of the Act and also restraining the appellants from proceeding further in relation

to the assessment years 2009-10 and 2010-11.

8. According to the respondent in WA.No.1854 of 2021 viz., M/s. Freight Systems (India) Private Limited, they are an assessee on the file of the Deputy Commissioner of Income Tax. For the assessment year 2006-07, they filed return of income on 29.11.2006 and subsequently, filed revised return of income on 19.10.2007. The return of income was taken up for scrutiny and was referred to Transfer Pricing Officer under Section 92CA of the Act. The TPO passed an order on 31.10.2009 and based on the same, the assessing officer passed a draft assessment order on 31.12.2009, to which, the respondent/assessee filed their objections before the DRP/ first appellant and on 17.09.2010, the DRP disposed of the objections. Subsequently, the assessing officer passed the final assessment order on 29.10.2010, which was put to challenge before the Income Tax Appellate Tribunal. The Tribunal, by an order dated 24.01.2013, remanded the matter back to the DRP by concluding that the freight forward segment had been omitted to be considered by the DRP. On remand, the DRP heard the respondent initially on 10.03.2014 and on several dates. When the matter was pending on the file of DRP, Chennai, it was ordered to be transferred to DRP, Bangalore, a newly constituted division. After such transfer, no order has been passed and therefore, the respondent sent a representation to the Chief Commissioner of

Income Tax (International Taxation) Bangalore for annulment of the entire proceedings and for refund of the amount collected from them by placing reliance on Section 153 of the Act. Thereafter, the respondent filed writ petition No. 6202 of 2019 to quash the final assessment order dated 29.10.2020 passed under Section 143 (3) read with Section 144-C (13) of the Act and consequently direct the appellants to grant refund of Rs.4,72,88,068/- along with interest.

9. Opposing the relief (s) sought for in the writ petitions, a counter affidavit was filed by the appellants contending that the writ petition was filed on misconception that the proceedings initiated by the department are barred by limitation in respect of the assessment year 2009-2010. It is well settled that the challenge made to show cause notice is not maintainable inasmuch as it is only a proposal to initiate action and it has not finally determined the rights and liabilities of the parties to the writ. The respondent/assessee ought to have submitted their objections to the show cause notice and it is for the appellants to decide as to whether the proceedings are barred by limitation or not. Therefore, it was submitted that the writ petitions have been filed hastily and the reliefs sought for need not be granted. It was also submitted that the Assessing Officer was directed by the DRP to re-examine the issues and therefore, the provisions of Section 153 of the Act would not be applicable to

the present case, inasmuch as the DRP is not an authority within the purview of Section 153 of the Act. Further, the Dispute Resolution Panel (DRP) is not an assessing officer against whom the time limit does not apply. As per Section 2 (7A) of the Act, the DRP is not an assessing officer and Section 144C (15) of the Act clarifies that the DRP is a collegium comprising of three Principal Commissioners or Commissioner constituted by the Board for resolution of the disputes.

10. The learned Judge, on examining the rival submissions, held that after the order of remand passed by the Tribunal, the Assessing Officer has not taken up the assessment proceedings within a reasonable time and therefore, the entire proceedings are vitiated by reason of delay. Accordingly, by order dated 23.12.2020, the learned Judge allowed WP Nos. 919, 922, 1068 and 1070 of 2020 filed by the respondent/M/s. Roca Bathroom Products Private Limited with the following observations:-

> *"11. There is no doubt in my mind that the orders of the Tribunal have not been given effect to in a proper manner by the Assessing Authority. The Tribunal, in the order for AY 2009-10, has set aside the order of assessment directing the DRP to re-examine the issue afresh on the basis of available documentation and after affording an opportunity to the assessee. The direction is to the DRP though the DRP was not a party to the proceedings and only the Joint Commissioner of Income Tax, was arrayed as appellant/respondent in the appeals. The order of the Tribunal has also not been marked to the DRP, as copies are marked routinely only to the appellant/respondent/CIT(A)/CIT/DR/GF. This is perhaps the reason for the inaction of the DRP even though the direction of the Tribunal is specifically addressed to it.*

12. As far as AY 2010-11 is concerned, the Tribunal set aside the order of assessment and remanded the matter to the file of the Assessing Officer, who, though being a party to the proceedings did nothing to give effect to the same. In my view, the proper course of action would have been for the Assessing Authority to have given effect to the order of the Tribunal by way of a consequential order and thereafter taken proceedings up in accordance with the procedure prescribed in Section 144C. However, it was only after receipt of the petitioner's communication seeking a refund that the Department has woken up, with the DRP issuing notices to the petitioner for both years, though for AY 2010~11, the matter was remanded to the file of the Assessing Officer.

....

15. No doubt, Section 144C is a self contained code of assessment and time limits are inbuilt each stage of the procedure contemplated. Section 144C envisions a special assessment, one which includes the determination of Arms Length Price (ALP) of international transactions engaged in by the assessee. The DRP was constituted bearing in mind the necessity for an expert body to look into intricate matters concerning valuation and transfer pricing and it is for this reason that specific timelines have been drawn within the framework of Section 144C to ensure prompt and expeditious finalisation of this special assessment.

16. The purpose is to fast-track a specific type of assessment. This does not however lead to the conclusion that overall time limits have been eschewed in the process. In fact, the argument to the effect that proceedings before the DRP are unfettered by limitation would run counter to the avowed object of setting up of the DRP a high powered and specialised body set up for dealing with matters of transfer pricing. Having set time limits every step of the way, it does not stand to reason that proceedings on remand to the DRP may be done at leisure sans the imposition of any time limit at all.

17. Sub-section (13) to Section 144C, in my view, imposes a restriction on the Assessing Officer and denies him the benefit of the more expansive time limit available under Section 153 to pass a 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, even without hearing the assessee concerned.

18. Barring this, I find nothing in the language of Section 144C or 153 to lead me to the conclusion that the latter is operated from the operation of the former. The specific exclusion of Section 153 from Section 144C(13) can be read only in the context of that specific sub~section and once again, reiterates the urgency that sets the tone for the interpretation of Section 144C itself.

19. The Bombay High Court, in PCIT V. Lion Bridge Technologies Pvt. Ltd. (260 Taxmann 273) was dealing with a challenge to a final order of assessment. It was held that such a 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.

20. In Lion Bridge (supra) the Income Tax Appellate Tribunal had set aside the order of assessment and remanded the matter to the file of the Assessing Officer directing him to pass orders de novo. In appeals filed by the revenue under Section 260A, the substantial question raised was "Whether on the facts and in the circumstance of the case and in law, the Tribunal is correct in entertaining the objection that the assessment order is without jurisdiction null and void and unenforceable?" While dismissing the appeals, the Division Bench proceeds on the basis that the draft assessment order ought to have been passed within the time frame stipulated under Section 153(2A) of the Act, also supporting the conclusion arrived at by me.

21. In Nokia India Private Ltd. V. DCIT (298 CTR 334) a Division Bench of the Delhi High Court held that where the matter had been remanded to be re~done, it would hardly make a difference as to whether the remand had been to the TPO or the DRP, thus indicating that the provisions of Section 144C were also governed by the limitation of time set out in Section 153 of the Act.

22. The issue before the Delhi High Court concerned the effect of Section 153(2A) in a matter where the Tribunal had remanded the assessment in respect of five out of seven issues to the Assessing Officer. Upon receipt of the order of the Tribunal, the Assessing Officer referred the transfer pricing issues to the TPO. The assessee took a stand that the TPO would be bound by the limitation prescribed under Section 153(2A) and requested the TPO to take the provision into consideration in the proceedings before him. The time limits under Section 153(2A) were however violated by the Department leading to Writ Petitions being filed by Nokia. In that context, the Court, while accepting the stand of the assessee that the time limits specified in Section 153(2A) would apply, states as follows:

> *"25. In the present case, of the seven issues, the assessment in respect of five was set aside and the issues remanded for a fresh determination. Whether the remand was to the TPO or the DRP would not make a difference as long as what results from the remand is a fresh assessment of the issue. Clearly, therefore, the time limit for completing that exercise was governed by Section 153 (2A) of the Act."*

23. It is brought to my notice that the above order has not been accepted by the revenue and has been challenged before the Supreme Court. Delay in filing the SLP has been condoned and leave granted Civil Appeal in C.A.No.6755 of 2018 is pending though without any order of stay.

24. Nothing has been stated in the course of the arguments in this matter, to persuade me to take a different view from what I have already

taken. Additionally, the Bombay High Court, in Vodafone India Services (P) Ltd., Vs. Union of India (361 ITR 531), paragraph 47, states that the process before the DRP is a continuation of assessment proceedings as only thereafter would a final appealable assessment order be passed."

11. Similarly, while allowing WP No. 6202 of 2019 on 16.02.2021, the learned Judge observed as follows:

"7. Nothing has been stated in the course *of the arguments in this matter, to persuade me to take a different view from what I have already taken. Additionally, the Bombay High Court, in Vodafone India Services (P) Ltd., Vs. Union of India (361 ITR 531), paragraph 47, states that the process before the DRP is a continuation of assessment proceedings as only thereafter would a final appealable assessment order be passed.*

8. An alternative argument putforth is that even if one were to take the view that the provisions of Section 153 would not apply to the scheme of assessments under Section 144C, Courts have consistently held that a reasonable limitation should be read into provisions dealing with the finalisation of assessments and, by no stretch of the imagination, can seven years be construed to be a reasonable period. I agree, though there is really no necessity for me to consider the alternate argument, in the light of my having accepted the primary argument.

9. This Writ Petition is allowed. The impugned final assessment order dated 29.10.2010 is quashed. There is a direction to R1 to refund the amounts remitted by the petitioner in connection with the demand raised under the impugned order, along with applicable interest in terms of Section 244A of the Act, within a period of four (4) weeks from today."

12.(i) Mrs. Hema Muralikrishnan, learned senior panel counsel appearing for the appellants would submit that the DRP is entirely governed by the provisions contained under Section 144-C of the Act. As per Section 144-C, the Assessing Officer shall forward a draft order of assessment to the eligible assessee, if he proposes to make any variation in the income or loss returned, which is prejudicial to the interest of such assessee. On receipt of such draft order, the assessee shall file his acceptance or objections and

thereafter the Assessing Officer shall complete the assessment on the basis of such draft order, if no objections are filed and based on the directions issued by DRP, if objections are filed. The Assessing Officer, notwithstanding anything contained in Section 153 or Section 153B, shall pass assessment order under Section 144C(3) within a month from the end of the month in which the period for filing objections under sub-section (2) of Section 144C expires. Therefore, it is contended that Section 144-C has to be considered independently as far as DRP is concerned. Adding further, the learned counsel submitted that section 153 is a genus and section 144C is a specie which is independent. Firstly, the marginal note to Section 144-C states that “Reference to dispute resolution panel”and secondly, sub-section 12 specifies the time limit which the DRP shall give suggestions. Though under sub-section (5), the DRP can issue directions only upon receipt of objections, the time limit mentioned under sub-section (12) begins from the month in which the draft order is forwarded to the assessee by the Assessing Officer and not the month in which the assessee chooses to file objections. The significance of marginal note and beginning of time limit is that the DRP's action begins only upon reference, which means an action initiated by the Assessing Officer. Such reference is made when the Assessing Officer forwards the draft assessment order to the assessee.

(ii) It is further submitted by the learned senior panel counsel appearing for the appellants that when transfer pricing issues are involved and the matter is referred to TPO as per Section 92CA, the TPO shall pass an order after hearing the assessee, either confirming or modifying the arm's length price between the associated enterprises. On receipt of such order, as per Section 144C of the Act, the Assessing Officer has to pass a draft assessment order after incorporating the adjustments suggested in the order of the TPO and also pass orders with respect to other issues. Thereafter the assessee has two options (i) he can file objections before the DRP against the draft assessment order or accept the assessment proceedings and (ii) if the assessee conveys his acceptance of the variations to the Assessing Officer, then the Assessing Officer can proceed to pass a final order, against which, a remedy of appeal is available before the Commissioner of Income Tax. However, in case, the assessee objects to the draft assessment order before the DRP, then the DRP shall, after hearing the assessee, issue directions to the Assessing Officer to complete the assessment, based on which the Assessing Officer has to complete the assessment proceedings. Such an order can be passed by the Assessing Officer, notwithstanding anything to the contrary contained in Section 153 of the Act. Section 153 of the Act stipulates time limit for completion of assessment or re-assessment and re-computation by an assessing

officer in different circumstances i.e., time limit for completion of original assessment, completion of assessment on the basis of the order passed by the Commissioner under Section 263 or 264 of the Act or in compliance with the order of the Appellate Authorities or Tribunal or the Court. Section 153 of the Act is silent with respect to the period of limitation, within which time, the assessment has to be made by the assessing officer on the basis of the directions of the DRP. The time limit is specifically excluded because the proceedings before the DRP as well as the proceedings initiated on the basis of the directions issued by DRP are separate and distinct. In this context, reliance was placed on Section 144C (13) of the Act, which reads as follows:-

> *"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."*

(iii) By pointing out Section 144 C (13) of the Act, it is submitted by the learned senior standing counsel for the appellants that the limitation prescribed under Section 153 of the Act applies only to a draft assessment order and not final assessment order passed under Section 144C and that is the reason why the draft assessment orders are passed within a period of 33 months from the expiry of the relevant assessment year. Wherever assessment proceedings were dependent on extraneous data or extraneous proceedings like

grant of interim stay of operation of initiation of the assessment proceedings or where accounts are to be audited, reference will be made to Valuation Officer. In this context, Explanation to Section 153 has extended the period of limitation by providing for exclusion of period. However, Section 153 is specifically silent with respect to limitation in respect of cases pending before DRP and this clearly shows that legislature has consciously refrained from providing for limitation under Section 153 of the Act. Thus, the learned Judge erred in concluding that Section 144C (13) imposes a restriction on the Assessing Officer to pass the final order within the time limit available under Section 153 of the Act. According to the learned Senior Panel counsel, the period of 21 months indicated in Section 153 (1) of the Act from the end of the assessment year is for the purpose of completion of assessment, whereas, Section 153 (4) stipulates that where reference under Section 92CA(1) of the Act has been made, the period for completion of assessment or re-assessment shall be extended by 33 months. This period of 33 months relates to draft assessment order and not final order. While so, the observations made by the learned Judge that the Assessing Officer ought to have given effect to the order of the Tribunal by way of passing order within the time limit prescribed under Section 144C of the Act, are contrary to the statute.

(iv) The learned senior panel counsel also submitted that the Tribunal set aside the order of the DRP, as a consequence of which, the Assessing Officer cannot take up the Arm's length price adjustment. In such event, there would be absolutely no Arms Price adjustment proceedings and consequently, the assessee would not be aggrieved by the order.

(v) The learned senior panel counsel for the appellants also submitted that the decision of Bombay High Court in ***Principal Commissioner of Income Tax vs. Lion Bridge Technologies Private Limited [*****2019 (260) Taxman 273]** has no application to the facts of the present case. In that case, the Bombay High Court did not consider the effect of Section 144C (13) which specifically uses the words "notwithstanding anything to the contrary contained in Sec.153 or Sec.153B" but the Court had an occasion to consider whether the Assessing Officer could, by issuance of a Corrigendum, convert a final assessment order into that of a draft assessment order. Similarly, the decision of the Delhi High Court in ***Nokia India Private Limited v. DCI [2018 (407) ITR 20]*** is not applicable to the case on hand, where the Court has not considered the effect of Section 144C (13). Therefore, the reliance placed by the learned Judge on the aforesaid two decisions is improper. In any event, when Section 153 of the Act does not apply to DRP and the Assessing Officer has no control over DRP, it has to be construed that there is no time limit

prescribed in the Act for the DRP to complete the proceedings. Therefore, Section 153 of the Act cannot be interpreted as if it imposes limitation to the Assessing Officer to pass orders upon remand of the matter by the Tribunal by obtaining order from DRP within the time prescribed under Section 153 of the Act. The order passed by the learned Judge, in effect, would mean prescribing a limitation of one month prior to the date on which the period specified in Section 153(2A) expires for completion of proceedings by the DRP, when such limitation has not been prescribed by the legislature. The learned Senior Panel Counsel therefore prayed for allowing the writ appeals by setting aside the order passed by the learned Judge.

13. (i) Mr.R.V.Eshwar, learned Senior counsel appearing for the respondent in W.A. No. 1854 of 2021, at the outset, would contend that challenging the order of assessment passed by the Assessing Officer, for the assessment year 2006-2007, the respondent filed an appeal before the Tribunal. By order dated 24.01.2013, the Tribunal allowed the appeal, thereby setting aside the order of the Assessing Officer and remanding the matter to the DRP to decide the issue of TP adjustment to the tune of Rs.8,06,50,795/- in the Freight Forwarding Segment on the file of DRP inasmuch as the Tribunal noticed that DRP has not at all adjudicated this issue. The order of remand was passed with the consent of the counsel for the assessee as well as the

Revenue. The order dated 24.01.2013 was received by the respondent on 08.02.2013. On 19.02.2014, DRP, Chennai issued a notice to the respondent and initiated the remand proceedings. Subsequently, on 11.03.2014, 21.04.2014, 09.12.2014 and 12.12.2014, the matter was heard by DRP, when the assessee concluded their contentions by filing written submissions. At this stage, by a notification dated 31.12.2014, the jurisdiction of the assessment proceedings stood transferred to the file of DRP, Bengaluru. Thereafter, no order was passed in the remand proceedings. Even assuming that the DRP received the order dated 24.01.2013 passed by the Tribunal in the appeal preferred by the respondent on 19.02.2014, on which date, a notice was issued to the respondent for remand proceedings, the 12 months period stipulated under Section 153 (2A) of the Act expired on 31.03.2015. However, before 31.03.2015, no order has been passed by the DRP inspite of the fact that the matter was heard and written submissions were filed by the respondent. Therefore, any order or proceedings that may be initiated after 31.03.2015 is barred by limitation. In other words, the 12 months period from the end of financial year 2013-2014 expired on 31.03.2015 within which date, a final order in the remand proceedings ought to have been passed.

(ii) The learned Senior counsel for the respondent invited the attention of this court to the decision of the Delhi High Court in ***Nokia India Private***

Limited v. DCIT [(2018) 407 ITR 20] and submitted that the provisions contained under Section 152 (3A) of the Act are applicable even to a remand proceedings passed by the Tribunal, directing the DRP to adjudicate the issues afresh. In this case, pursuant to the order passed by the Tribunal, remand proceedings were initiated by the DRP, Chennai and subsequently, by notification dated 31.12.2014, the jurisdiction vested with DRP, Bengaluru. However, it cannot be said that DRP, Chennai which initiated the remand proceedings, has no jurisdiction to adjudicate the issue or in the alternative, should have passed orders even earlier. While so, the appellants ought to have passed an order on or before 31.03.2015 and any order passed subsequent thereto is hit by Section 153 (2A) of the Act.

(iii) The learned Senior counsel also submitted that even assuming that Section 153(2A) does not provide any limitation, it is a settled law that in case where no limitation is prescribed for discharge of certain acts or duties, the authority expected to discharge such duty, has to conclude the proceedings within a reasonable time and the person against whom such proceedings are initiated, will also have a legitimate expectation to get the proceedings concluded at the earliest point of time. In the present case, there was inordinate delay in passing the final order in the remand proceedings which has caused acute prejudice to the respondent. Taking note of the same, the learned Judge

rightly held that non-obstante clause in Section 144C (13) is to exclude the application of Section 153 only in the context of passing final assessment order. It was further held that this is not a general exclusion of Section 153 of the Act at every stage of the proceedings and the non-obstante clause just ensures that the limitation prescribed for passing of final order as provided in Section 153, does not apply at the beginning and the final order is to be passed after the directions are issued to the DRP by the Tribunal.

(iv) The learned senior counsel further submitted that the DRP has sat over the remand proceedings for more than six years and therefore, it is precluded from passing any further order against the assessee in the remand proceedings. The learned Senior counsel placed reliance on the decision in ***GE T&D India Limited v. Deputy Commissioner of Income Tax [(2019) 105 Taxmann.com 286 (Madras) = (2019) 414 ITR 727 (Madras)]*** wherein this Court has annulled the assessment proceedings by pointing out that there is an extraordinary delay of 8 years in concluding the assessment proceedings. The ratio laid down by this Court in the said case squarely applies to the facts of the present case as well.

(v) The learned Senior counsel also placed reliance on the decision of the Delhi High Court in ***Commissioner of Income Tax v. Goyal MG Gases Private Limited (Order dated 23.02.2011 in ITA No.335/2011)*** wherein in

similar circumstances, it was held that the delay of 3 years and 8 months in passing a final order is more than reasonable period and therefore, the order passed thereof is hit by the limitation prescribed under the Act. As against the said order dated 23.02.2011, an appeal in SLP (c) No. 26766 of 2011 was filed by the Department and the same was dismissed by the Hon'ble Supreme Court on 19.09.2021. The learned senior counsel also relied upon the Judgment in ***Vedanta Ltd v. DCIT [(2020) 114 taxman.com 686]*** to buttress the contention that the very object of DRP mechanism is to expedite the assessment proceedings involving transfer pricing and foreign companies. By placing reliance on the aforesaid decision and other decisions, which emphasize the strict adherence to the period of limitation for assessment or revision of assessment, it is submitted by the learned Senior counsel that there is enormous delay in passing a final order pursuant to the order of remand passed by the Tribunal on 24.01.2013. The learned Judge, on appreciation of the said aspects has rightly allowed the writ petition filed by the respondent and it calls for no interference by this court.

14. (i) Mr. Kamal Sawhney, learned senior counsel appearing for the respondent in WA Nos. 1517, 1519, 1609 & 1610 of 2021 would contend that the appellants are not legally justified in not passing a final order in the

remand proceedings within a reasonable time. According to him, the order passed by the TPO is binding on the Assessing Officer in terms of Section 92CA (4) of the Act. On receipt of an order passed by TPO, the Assessing Officer has to complete the assessment by passing a draft assessment order in terms of Section 144C(1) of the Act. The expression used in Section 144C(1) 'at the first instance' would only mean that the Assessing Officer, before passing the final order of assessment, has to pass a draft assessment order at the first instance. The draft assessment order has to be passed within the time limit prescribed under Section 153 of the Act. In case where objections are filed for such draft assessment, then, for issuing the final assessment order alone, the provisions under Section 153 will not apply. In case of an order of remand passed by the Tribunal, Sections 153(2A) or 153 (3) of the Act are applicable. In case where the Final Order of Assessment is set aside by the Tribunal pursuant to the order passed by DRP, the provisions of Sections 153(2A) & 153 (3) of the Act will apply. In the present case, the appeal filed by the respondent as against the order of assessment for the assessment year 2010-2011, was allowed by the Tribunal directing the Assessment Officer to refer the matter to the DRP, which in turn has to re-examine the issue afresh on the basis of available documents. According to the learned senior counsel, the proceedings before the DRP under Section 144C are in continuation of the

assessment proceedings and therefore Section 153 of the Act will apply. In this context, reference was made to the decision of the Bombay High Court in the case of ***Vodafone India Services Private Limited v. Union of India [361 ITR 531]*** wherein it was held that the proceeding before the DRP is not an appeal proceeding, but a correcting mechanism in the nature of a second look at the proposed assessment order by high functionaries of the revenue keeping in mind the interest of the assessee. It was further held that such proceeding before the DRP is a continuation of the assessment proceedings before a final order of assessment, which is appealable, is passed by the Assessing Officer as per Section 144C (6) of the Act.

(ii) The learned Senior counsel further proceeded to contend that the DRP is a specialised body tasked with the matters of transfer pricing. The order of remand passed by the Tribunal to DRP is to ensure that a quickest remedial measures would be arrived at by the expert body, but not to conduct its proceedings in a leisurely manner without any set of limitation. In the present case, for more than five years from the date of order of remand passed by the Tribunal, no order has been passed by the appellants, while so, the notice dated 06.01.2020 issued for continuing the remand proceedings is illegal and it is barred by limitation under Section 153(2A) of the Act.

(iii) The learned Senior counsel also placed reliance on the decision of the Delhi High Court in ***Nokia India (P) Ltd*** **case** (supra) and contended that whether the remand was made to the TPO or the DRP would not make a difference as long as what results from the remand is a fresh assessment of the issue and therefore, the time limit for completing the exercise of assessment is governed by Section 153 (2A) of the Act. According to the learned Senior counsel, the legislature was cautious and well aware of the limitations, which are applicable for completing the assessment under Section 153 and even completing an assessment pursuant to an order of remand. The legislature has provided specific timelines under Section 144C within which the DRP has to act and complete the proceedings. However, in the present case, the Assessing Officer has not issued any draft assessment order pursuant to the directions of the Tribunal and hence, the proceedings are time barred as it was not initiated within a reasonable period. At the same time, it cannot be said that no limitation would apply to DRP and the assessment or re-assessment proceedings can be initiated at any time by the DRP is opposed to the provisions of section 153 and section 144C of the Act, which required the assessment to be completed within a time prescribed. The learned Senior counsel ultimately submitted that having regard to the facts and circumstances of the case coupled with the legal provisions involved, the learned Judge has

rightly allowed the writ petitions filed by the respondent by pointing out the extraordinary delay in concluding the assessment proceedings, which do not require any interference at the hands of this court.

15. We have heard the counsel on either side and perused the materials placed on record.

16. Let us now look at the important timeline of the cases on hand which are not disputed by any of the parties and are primordial for deciding the issues involved herein.

Freight Systems India Private Ltd

Filing of original Return	:	29.11.2006
Revised Return	:	19.10.2007
Order of TPO	:	31.10.2009
Draft Assessment Order	:	31.12.2009
Order of DRP	:	17.09.2010
Final Assessment Order	:	29.10.2010
Order of ITAT	:	24.01.2013
Date of Receipt by Assessee.	:	08.02.2013
First Notice issued by DRP	:	19.02.2014
Hearing date	:	10.03.2014

Roca Bathroom Products Private Ltd AY 2009-10

Filing of original Return	:	26.09.2009
Order of TPO	:	23.01.2013
Draft Assessment Order	:	30.03.2013
Final Assessment Order	:	16.01.2014
Order of ITAT	:	18.12.2015
First Notice issued by DRP	:	06.01.2020

Roca Bathroom Products Private Ltd AY 2010-11

Filing of original Return	:	30.09.2010
Order of TPO	:	29.01.2014
Draft Assessment Order	:	24.03.2014
Final Assessment Order	:	17.02.2015
Order of ITAT	:	18.12.2015 (With respect to one issue)
Order of ITAT in MP	:	23.09.2016 (With respect to other issues)
First Notice issued by DRP	:	06.01.2020

17. Before we venture into the rival contentions, it is but necessary to refer to the certain provisions under the Income Tax Act and the timelines under the Transfer Pricing.

(A) Provisions of law.

Section 92CA - Reference to the Transfer Pricing Officer.

"*Section 92CA. (1) Where any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Principal Commissioner or Commissioner refer the computation of the arm's length price in relation to the said international transaction or specified domestic transaction under Section 92C to the Transfer Pricing Officer*

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction referred to in sub-section (1).

2A. Where any other international transaction other than an international transaction referred under sub-section (1) comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply, as if such other international transaction is an international transaction referred to him under sub-section (1).

2B. Where in respect of an international transaction the assessee has not furnished the report under Section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1)

2C. Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July 2012.

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing

Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

3A. Where a reference was made under sub-section (1) before the 1st day of June 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation, referred to in section 153 or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires.

Provided that in the circumstances referred to in clause (ii) or clause (x) of Explanation 1 to Section 153, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty days, such remaining period shall be extended by sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly

(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of Section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly

(6) Where any amendments is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer

(7) The Transfer Pricing Officer may, for the purpose of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of sub-section (1) of section 131 or sub-section (6) of section 133 or section 133A

Explanation:- For the purposes of this section, Transfer Pricing Officer means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of the Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons."

……

144C. ***Reference to dispute resolution panel***.—

(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(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 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.

(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 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.

(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.'."

Relevant Provisions of Section 153 prior to amendment.

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

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

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

whichever is later.

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

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

1. (i) Was made before the 1st day of June, 2007 but an order under sub-section (3) of that

section has not been made before such date; or

2. (ii) Is made on or after the 1st day of June, 2007,

The provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "thirty-three months" had been substituted:

Provided also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2009

or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "three years" had been substituted.

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

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

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

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

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

Provided also that where the notice under section 148 was served on or after the 1st day of April, 2006 but before the 1st day of April, 2010 and during the course of the proceedings for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA—
(i) Was made before the 1st day of June, 2007 but an order under sub-section (3) of that section has not been made before such date; or (ii) Is made on or after the 1st day of June, 2007,

The provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty one months" had been substituted:

Provided also that where the notice under section 148 was served on or after the 1st day of April, 2010 and during the course of the proceeding for the assessment or reassessment or recomputation of total income, a reference under sub-section (1) of section 92CA is made, the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted

(2A) Notwithstanding anything contained in sub-sections (1) , (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in

pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the [Principal Chief Commissioner orChief Commissioner or [Principal Commissioner or]Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or]Chief Commissioner or [Principal Commissioner or]Commissioner:

Section 153 after 01.06.2016.

153. Time limit for completion of assessment, reassessment and recomputation.—(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable.

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

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

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

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

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

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

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

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

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

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

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

After an international transaction is noticed subject to satisfaction of section 92B, a reference is made to the TPO under sub-Section (1) of Section 92CA of the Act. Though the provision does not state as to when a reference is to be made, a reading of section 153 would explicit that the reference is to be made during the course of the assessment proceedings before the expiry of the period to pass an assessment order. The TPO after considering the documents submitted by the assessee is to pass an order under Section 92CA(3) of the Act. As per Section 92CA (3A), the order has to be passed before the expiry of 60 days prior to the date on which the period of limitation under Section 153 expires. As per Section 153, no order of assessment can be passed at any time after the expiry of 21 months. As per 92CA (4), the assessing officer has to pass an order in conformity with the order of the TPO. After the receipt of the order from the TPO determining ALP, the assessing officer is to forward a draft assessment order to the assessee, who has an option either to file his acceptance of the variation of the assessment or file his objection to any such variation with the Dispute Resolution Panel and also the Assessing Officer. Sub-Section (5) of Section 144C of the Act provides that if any objections are raised by the assessee before the Dispute Resolution Panel, the Panel consisting of top and expert functionaries of the department, is

empowered to issue such direction as it thinks fit for the guidance of the Assessing Officer after considering various details provided in Clauses (A) to (G) thereof. As per sub-section (12), the DRP has no authority to issue any directions under sub-section (5) from the end of the month in which the draft order is forwarded to the eligible assessee and not from the date when the assessee submits the objections. Sub-section (13) of section 144C of the Act provides that upon receipt of directions issued under sub-section (5) of section 144C of the Act, the Assessing Officer shall in conformity with the directions complete the assessment proceedings within one month from the end of the month in which the directions are received. It goes without saying that if no objections are filed by the Assessee to the draft order, the assessing officer has to pass the final assessment order based on the draft order within one month from the end of the month in which the period for filing the objection had expired as per section 144C(4). As per the proviso to Section 92CA (3A), if the time limit for the TPO to pass an order is less than 60 days, then the remaining period shall be extended to 60 days. This implies that not only the time frame is mandatory but also the TPO has to pass an order within 60 days. Further, the extension in the proviso referred above also automatically extends the period of assessment to 60 days as per the second proviso to Section 153. That apart, but for the reference to the TPO, the time limit for completing the

assessment would only be 21 months from the end of the assessment year. It is only if a reference has been made during the course of assessment and is pending, the department gets another 12 months as per second proviso to Section 153 (1) and under Section 153(4) after amendment. In Section 153(2A), a time limit is prescribed to the Assessing officer to complete the fresh assessment within one year prior to amendment and after amendment, as per section 153 (3), the time limit has been reduced to 9 months. As per the proviso to section 153 (3) if the order is received after 1st April 2019, the time limit is one year. From the above provisions, it is very clear that various time limits have been prescribed to various mechanisms which form part of assessment proceedings, either original or on remand to expedite and bring a finality to the assessment proceedings, which can be taken to a logical end.

Discussion and Findings.

18. The main contentions of the Department, through their counsel are that Section 144C is a code in itself and hence on remand by the ITAT, the power of DRP to take up the dispute on additions by TPO, is not circumscribed by Section 153 and that in the absence of any express time limits contemplated under the Act, the time limits under Section 153 for reassessment cannot be read into Section 144C more particularly when the provisions of Section 153 are excluded by the non-obstante clause in section

144C(13) and hence the proceedings are not barred by limitation. Per contra, it has been contended by the learned senior counsels appearing for the respondent(s)/assessees that the outer time limit under Section 153 is applicable to every proceedings on remand and the department having slept over the issue for several years, cannot now redo the proceedings afresh, after certain rights have vested with the assessees. Even if specific provisions are not there to deal with this situation, the proceedings must be concluded within a reasonable time and hence the impugned proceedings are liable to be struck down and rightly done so by the learned Judge.

19. Admittedly, the facts including the dates are not under dispute. As regards the appeal in W.A.No.1854 of 2021, even though the remand was on 24.01.2013 and the assessee had received the order on 08.02.2013, the first notice by the DRP was issued on 19.02.2014 and the first hearing in the Chennai office was on 10.03.2014. Therefore, it is lucid that the DRP had the knowledge of the order before 19.02.2014. The matter was heard on various dates in Chennai office and written submissions were also filed. Thereafter, the files have been transferred to Bengaluru by the CBDT notification dated 31.12.2014. The Learned Judge relying upon the findings in the batch of cases which was decided first and rendered additional findings, which have been extracted in paragraphs 10 and 11 above, has allowed the writ petitions

holding that the time limit under Section 153 (2A) was not adhered to and in any case, the proceedings have not been concluded within a reasonable time.

20. As rightly contended by the learned senior counsels and affirmed by the Learned Judge, the DRP proceedings is a continuation of assessment proceedings. To put it further, it is a part of assessment proceedings, once the objections are filed and under section 144C (12) a period of 9 months is prescribed, within which, directions are to be issued by the DRP, failing which any directions are to be treated as otiose. As seen from the timeline discussed in the earlier paragraphs, the original assessment proceedings are to be completed within 21 months and the additional time of 12 months is granted when proceedings before TPO is pending. The TPO has to pass orders before 60 days prior to the last date. Then 30 days time is given to the assessee to file their objection before the DRP and the DRP is given 9 months time and thereafter, within one month from the end of the month of receipt of directions from DRP, the final order is to be passed. This court is not in consonance with the contention of the learned senior panel counsel for the appellants/ revenue that the time period of 33 months, provided initially is for the draft order and not for the final order. A careful perusal of the timeline would indicate that the time limit is for the final assessment and not for the draft order. The anomaly in the argument is that in the present cases, no fresh draft order was

passed, but the DRP had issued the notices. If the contention of the appellants / revenue was to hold some water, they must have passed the draft assessment order immediately on receipt of the order from the Tribunal, but instead, notice was issued by the DRP. In any case, it is a far cry for the revenue as because no order has been passed for more than 5 years.

21. As held above, the assessment has to be concluded within 21 months when there is no reference and when there is a reference, it has to be concluded within 33 months. In the additional 12 months, the draft order is to be passed, the objections have to be filed, the DRP has to issue the directions and the final order is to be passed. The provisions under section 144C and section 153 are not mutually exclusive as both contain provisions relating to Section 92CA and are inter-dependant and overlapping. On remand, prior to amendment as per Section 153 (2A), the Assessing officer is given 12 months to pass a fresh assessment order. Therefore, it is incumbent on him to do so, irrespective of the fact that DRP has completed the hearing and issued the directions or not. As rightly held by the learned judge, we are of the view that the DRP ought to have concluded the proceedings within 9 months from the date of receipt of the Tribunal's order, when it had issued a notice on 19.02.2014 and conducted the hearing as early as on 10.03.2014 and on several dates. The DRP at Chennai, in fact ought to have passed orders before

19.11.2014, even if the date of receipt of the notice is taken as 19.02.2014. In that event, the assessing officer ought to have passed the order before 31.12.2014 or at the latest before 31.03.2015 considering that the order was received during the Financial year 2013-14. The transfer of the files to Bengaluru, after the lapse of the time, will not indefinitely extend the time and can have no impact on the time lines. It is an inter-department arrangement and it cannot defeat the rights of the assessee.

22. Insofar as the *non-obstante* clause in Section 144C(13) is concerned, we concur with the view of the Learned Judge. The exclusion of applicability of Section 153 or Section 153 B is for a limited purpose to ensure that dehors larger time is available, an order based on the directions of the DRP has to be passed within 30 days from the end of the month of receipt of such directions. The section and the sub-section have to be read as a whole with connected provisions to decipher the meaning and intentions. At this juncture it would be useful to refer to the following decisions:

(i) Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373 at page 381:

> "***11.*** *The statute has to be read as a whole to find out the real intention of the legislature.*
>
> ***12.*** *In Canada Sugar Refining Co. v. R. [1898 AC 735 : 67 LJPC 126] , Lord Davy observed:*
>
> > "*Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."*

…….

14. *This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.*

15. *On a conspectus of the case-law indicated above, the following principles are clearly discernible:*

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

(ii) CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57 : 2002 SCC OnLine SC 1226:

"***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]).*

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.*

19. *The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it*

must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006]).”

(iii) Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg, (2021) 6 SCC 736 : 2021 SCC OnLine SC 88 at page 752:

“***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.]”*

23. Further, similar non-obstante clause is also used in section 144C(4) with a same limited purpose to imply, even though there might be a larger time limit under Section 153, once the order of TPO is accepted or not objected to, causing a deeming fiction of acceptance, the final order is to be passed immediately. The object is to conclude the proceedings as expeditiously as possible and the authority need not wait for the last date to

pass the orders. The limitation prescribed under the statute is for the assessing officer and therefore, it is his duty to pass order in time irrespective of whether the directions are received from DRP or not. As held by us above, the DRP will have no authority to issue directions after nine months and a further period of one month as per section 144C (13) and three months under section 153 (2A) is available, within which period no orders have been passed in the present cases. The reference made by the learned senior counsels on the judgments in ***Nokia India Private Ltd (supra)*** and ***Vedanta Ltd (Supra)*** is well founded. The timeline given under the Act is to be strictly followed.

24. Insofar as the challenge to the show cause notice issued is concerned, though generally, the High Court will be circumspected to interfere at the stage of show cause notice, the law on the point is well settled with exceptions carved in the following cases;

a. when the notice is issued beyond the period of limitation,

b. when the notice is without authority,

c. when notice is issued without following the procedures under the applicable Act or the rules framed thereunder and

d. when the notice is issued with a prejudiced mind.

The challenge must be available ex-facie leaving no room for the court to peruse or discuss intricate facts. In the present case, the challenge is on the ground of limitation and hence, we hold that the proceedings under Article 226 of the constitution are maintainable.

25. As regards the relief sought in other appeals viz., W.A.No.1517/2021 etc. batch, the findings rendered above are equally applicable. In these cases, for the assessment year 2009-10, the order of remand to the Assessing officer was passed on 18.12.2015 and insofar as the assessment year 2010-11 is concerned, for one issue, it was passed on 18.12.2015 and for other two issues, it was passed on 23.09.2016 after the amendment, by which time, the time limit was brought down to 9 months. As such, fresh orders ought to have been passed before 31.03.2017 for the assessment year 2009-10 and for one issue relating to the assessment year 2010-11 reckoning the 12 months from the financial year 2015-16 and on or before 31.12.2017 reckoning 9 months from the financial year 2016-17. Therefore, the Assessing officer ought to have passed a draft assessment order immediately and asked the assessee to file their objections with the DRP. For the mistake and the lapse of the Assessing officer, the vested right of the Assessee cannot be taken away.

26. We are not oblivious of the fact that any finding on the aspect of reasonableness in time in passing orders when no time is provided would be superfluous in view of our decision in earlier paragraphs. It is necessary to decide on the issue as in this case, the revenue has taken more than 5 years in one appeal and 4 years in other appeals, which is unacceptable as rightly held by the learned judge. We are not alone on this issue and are fortified by the following judgments of the Hon'ble Supreme Court in this regard.

(i) ***Bharat Steel Tubes Ltd. v. State of Haryana, [(1988) 3 SCC 478 : 1988 SCC (Tax) 409 at page 487]***

> *"**15.** Before we part with the case, we would like to indicate that assessment of tax should be completed with expedition. It involves the revenue to the State. In the case of a registered dealer who collects sales tax on behalf of the State, there is no justification for him to withhold the payment of the tax so collected. If a timely assessment is completed, the dues of the State can be conveniently ascertained and collected. Delay in completion of assessment often creates problems. The assessee would be required to keep up all the evidence in support of his transactions. Where evidence is necessary, with the lapse of time, there is scope for its being lost. Oral evidence as and when required to be produced by the assessing authority may not be available if a long period intervenes between the transactions and the consideration of the matter by the assessing authority. Long delay thus is not in the interest of either the assessee or the State. In view of the fact that a period of limitation has been prescribed for bringing the escaped turnover into the net of taxation, such an eventuality cannot be grappled with appropriately unless timely assessment is completed. In several taxing statutes, even in a situation like this, where assessment under Section 11(3) or 28(3) of the respective Acts is contemplated, a period of limitation is provided. Until by statute, such a limitation is provided, it is proper for the State Governments to require, by statutory rules or appropriate instructions, to ensure completion of assessments with expedition and reasonable haste but subject to rules of natural justice."*

(ii) ***Govt. of India v. Citedal Fine Pharmaceuticals*****, [(1989) 3 SCC 483 : 1989 SCC (Tax) 464 at page 487]**

> *"**6.** Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assesee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."*

(iii) ***State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.*****, [(2007) 11 SCC 363 : 2007 SCC OnLine SC 1254 at page 367]**

> *"**17.** A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.*
>
> ***18.** It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*
>
> ***19.** Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11*

of the Act is five years.

21. *In S.B. Gurbaksh Singh v. Union of India [(1976) 2 SCC 181 : 1976 SCC (Tax) 177 : (1976) 37 STC 425] Untwalia, J., speaking for the Bench, opined : (SCC p. 188, para 15)*

> *"15. Apropos the fourth and the last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time-limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course. No time-limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."*

23. *The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretobefore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4-9-2006, it is apparent that the revisional authority did not assign any reason as to why such a notice was being issued after a period of 5½ years."*

Generally, no hard and fast rule can be laid down to indicate what is a reasonable time. It though depends upon the facts of the each case, drawing a clue from Article 113 of the Limitation Act, the residual entry, it would be reasonable to conclude that in such cases, action is to be concluded within 3 years. Needless to say, if the statute prescribes shorter period, the doctrine of reasonable time will not be applicable and the timeline under the statute is to be strictly followed.

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 TPO or the DRP, the duty is on the assessing officer to pass orders.

(b) Even in case of remand, the TPO or the DRP 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 DRP within 9 months as contemplated under Section 144C (12) of the Income Tax Act,

(c) Irrespective of whether the DRP concludes the proceedings and issues directions or not, within 9 months, the Assessing officer is to pass orders within the stipulated time,

(d) In matter involving transfer pricing, upon remand to DRP, the Assessing officer is to pass a denova draft order and the entire proceedings as in the original assessment, would have to be completed within 12 months, as the very purpose of extension is to ensure that orders are passed within the extended period, as otherwise the extension becomes meaningless.

(e) The outer time limit of 33 months in case of reference to TPO under Section 153, would not refer to draft order, but only to final order and hence, the entire proceedings would have to be concluded within the time limits prescribed,

(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 3 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.

28. With the above directions, all the writ appeals are dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D.,J.) **(J.S.N.P.,J.)**
09.06.2022

Index : Yes / No
Internet : Yes / No
rsh

To

1. The Commissioner of Income Tax
   The Dispute Resolution Panel-2
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   near KHB Games Village
   Koramangala, Bengaluru, Karnataka – 560 095

2. The Deputy Commissioner of Income Tax
   Large Taxpayer Unit – 1
   Nungambakkam
   Chennai – 600 034

3. The Dispute Resolution Panel-2
   Kendriya Sadan, 4th Floor
   Koramangala
   Bengaluru – 560 034

4. The Deputy Commissioner of Income Tax
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R. MAHADEVAN, J.
and
J. SATHYA NARAYANA PRASAD, J.

rsh/rk

WA Nos. 1517, 1519, 1609,
1610 and 1854 of 2021

09.06.2022