IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, JM & Ms.Padmavathy S, AM

IT(TP)A No.418/Bang/2015 : Asst.Year 2010-2011
IT(TP)A No.596/Bang/2016 : Asst.Year 2011-2012

M/s.Sigma Aldrich Chemicals Private Limited, No.12, Bommasandra-Jagani Link Road, Bommasandra Industrial Area Bangalore – 560 100. **PAN : AAHCS1882L.**	v.	The Deputy Commissioner of Income-tax, Circle 6(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Tata Krishna, Advocate
Respondent by : Sri.Sumer Singh Meena, CIT-DR

Date of Hearing : 07.07.2022		**Date of Pronouncement : 11.07.2022**

O R D E R

Per George George K, JM :

These appeals at the instance of the assessee are directed against two final assessment order dated 19.01.2015 and 28.01.2016 for assessment years 2010-2011 and 2011-2012, respectively. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

2. For the assessment year 2010-2011, 39 grounds are raised (including additional grounds) and for assessment year 2011-2012, 38 grounds are raised (including additional grounds). The additional grounds for both the assessment years are raised vide application dated 03.01.2020. The additional grounds 25 and 30 for assessment year 2010-2011

and 2011-2012 raises the issue that the Transfer Pricing Officer's (TPO) order for the respective assessment years are barred by limitation in terms of section 92CA(3A) of the I.T.Act. Since the above said additional grounds are purely legal and jurisdictional issue, which does not require examination of new facts, we admit the above additional grounds. The additional grounds, namely, grounds 25 and 30 for assessment years 2010-2011 and 2011-2012 are identical and they read as follows:-

> *"25. The order of the learned TPO is bad and void being not as per time limit set out in section 92CA(3A) of the Act."*

3. The brief facts in relation to the above grounds are as follows:

For the assessment years 2010-2011 and 2011-2012, the assessee had entered into international transactions with its Associate Enterprises (AEs) and the matter was referred to the TPO for determination of Arm's Length Price (ALP) of the said transactions. The TPO passed orders u/s 92CA of the I.T.Act on 30.01.2014 and 30.01.2015 for assessment years 2010-2011 and 2011-2012, respectively. According to the learned AR, the TPO ought to have passed orders on or before 29.01.2014 and 29.01.2015 for assessment years 2010-2011 and 2011-2012, respectively. Therefore, it was submitted that the TPO's orders are barred by limitation in terms of provisions of section 92CA(3A) r.w.s. 153 of the I.T.Act. In this context, the learned AR relied on the judgment of the Hon'ble Madras High Court in the case of DCIT v. M/s.Pfizer

Healthcare India Pvt. Ltd. (Writ Petition Nos.1148 and 1149 of 2021 judgment dated 31st March, 2022). The learned AR also placed reliance on the following orders of the Tribunal:-

(i) DCIT v. Tata Power Solar Systems Ltd. [IT(TP)A Nos. 548 & 699/Bang/2016 (order dated 30.03.2022)]
(ii) M/s.Swiss Re Global Business Solutions India Pvt. Ltd. v. DCIT [IT(TP)A No.290/Bang/2015 (order dated 30.12.2021)]
(iii) ECL Finance Ltd. v. ACIT [ITA No.899/Mum/2018 (order dated 22.09.2021)]

4. The learned DR was duly heard.

5. We have heard rival submissions and perused the material on record. Section 92CA(3A) of the I.T.Act provides for the time limit for passing the transfer pricing order. The sub-section (3A) to section 92CA of the I.T.Act reads as follows:-

> *“”(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.”*

6. From the perusal of the above section 92CA(3A) of the I.T.Act, it can be seen that the TPO can pass an order at any time before 60 days prior to the due date u/s 153 of the

I.T.Act for passing the assessment order. Section 153 of the I.T.Act (as applicable to A.Y.2012) prescribes a time limit of 36 (Thirty Six) months from the end of the assessment year for completion of assessment (where a reference is made to the TPO for determination of ALP). Accordingly, the due date for passing the assessment order in the case of the assessee for assessment year 2010-2011 is 31.03.2014 and 2011-2012 is 31.03.2015. Consequently, in terms of section 92CA(3A) of the I.T.Act, the 60th day prior to 30.03.2014 and 30.03.2015 is 29.01.2014 and 29.01.2015. The chronology of events in assessee's case are detailed below:-

Assessee's Case

Assessment Year 2010-2011

Description	Date
Date on which intimation to pass assessment order expires	31.03.2014
"Prior to the date" i.e., date before 31.03.2014	30.03.2014
Sixtieth day (reckoned from 30.03.2014 backwards) Month — Date March, 2014 — 30 February 2014 — 28 January 2014 (balance) — 2	30.01.2014
Any time **before sixty days** (i.e., before 30.01.2014)	By 29.01.2014

Assessment Year 2011-2012

Description	Date
Date on which intimation to pass assessment order expires	31.03.2015
"Prior to the date" i.e., date before 31.03.2015	30.03.2015
Sixtieth day (reckoned from 30.03.2015 backwards) Month — Date	

March, 2014 February 2014 January 2014 (balance)	30 28 2	 30.01.2015
Any time **before sixty days** (i.e., before 30.01.2015)		By 29.01.2015

7. Accordingly, the due date for the TPO to pass the transfer pricing orders for assessment years 2010-2011 and 2011-2012 should be at any time before 30.01.2014 and 30.01.2015, i.e., on or before 29.01.2014 and 29.01.2015. In the present case, the TPO has passed the transfer pricing order on 30.01.2014 and 30.01.2015, i.e., beyond the time limit prescribed under the Act. Hence, the same is barred by limitation in terms of section 92CA(3A) r.w.s. 153 of the I.T.Act. The Hon'ble Madras High Court in the case of DCIT v. M/s.Pfizer Healthcare India Pvt. Ltd. (supra), has dismissed the Writ appeal filed by the Revenue by upholding the judgment of the Hon'ble Single Judge (Writ Petition No.32699 of 2019 dated 07th September, 2020). The assessee in the case considered by the Hon'ble Madras High Court is having facts similar to the present case of the assessee. It was held that transfer pricing order passed during 60 days prior to the due date of completion of assessment is time barred under section 92CA(3A) r.w.s. 153 of the Act. Accordingly, the transfer pricing order was quashed being barred by limitation. The relevant finding of the Hon'ble High Court (Division Bench) reads as follows:-

> *"14. In the present cases, the Financial Year is 2015-16 and the assessment year is 2016-17. The period of 21 months would commence on 31.03.2017, the assessment year ended*

on 31.12.2018 normally and the extended period would end on 3l.12.20 19 and not on 01.01.2020. The contention of the appellants that the time to pass the assessment order would end at 00.00 hours on 01.01.2020, is fallacious as 3l.12.2019 would end at 23:59:59 and 00.00 is regarded as the next day. A day for the purpose of reckoning the date ends before the stroke of midnight and the next date would commence at midnight immediately after the expiry of the previous day. The last date would be the last day of the month (31.12.2019), which cannot be the first day of the next month (01.01.2020). The "date" must not be reckoned with respect to sun rise but with respect to the time of 24 hours in a day. The moment last minute of the day expires, the day ends and the next moment which is the first moment of the next day becomes irrelevant for the purpose of reckoning the period of limitation.

15. As per the details given In the website of National Institute of Standards and Technology of the United States Government, the Times and Frequency Division, while dealing with FAQ's on times of day suggests the following:

> "Is midnight the end of a day or the beginning of a day?
>
> When someone refers to "midnight tonight" or "midnight last night" the reference of time is obvious. However, if a date/time is referred to as flat midnight on Friday, October 20th" the intention could be either midnight the beginning of the day or midnight at the end of the day.
>
> To avoid ambiguity, specification of an event as occurring on a particular day at 11:59 p.m. or 12:01 a.m. is a good idea, especially legal documents such as contracts and insurance policies. Another option would be to use 24-hour clock, using the designation of 0000 to refer to 'midnight at the beginning of a given day (or date) and 2400 to designate the end of a given day (or date). "

16. As per the International Standards Organization, ISO 8601- :2019 midnight may only be referred to as "00:00", corresponding to the beginning of a calendar day. The earlier use of reference to 24.00 hours to mark the end of the day, was dropped.

17. In India, the midnight or 00.00 hours has been always

used to denote the beginning of the next date. A reference could be made to our Independence day, wherein the stroke of midnight at 00.00 hours on 15.08.1947 is considered as the moment of Independence as per the Indian Independence Act, 1947.

18. Also, it is not out of place to mention here that the new year eve of every year, through out the world is celebrated at 00.00 hours and it is regarded as the beginning of a new day and not as an extension of the previous day.

19. A reference can also be made to various insurance policies, wherein the beginning of the day is reckoned as 00.00 hours and the end of the day at 23 :59:59 hours.

20. Even as per the contentions of the appellants, the assessing officer has time upto 23:59:59 hours on 31.]2.20]9 to pass assessment orders. However, according to them, the time limit expires at / on 00.00 hours of 01.01.2020. The fallacy in such contention is that 00.00 hours of 01.01.2020 denotes not only the beginning of the next day of the month, but also the fact that it comes after 23:59:59 hours on 3].12.2019 and by such time, the time limit had already expired. By resorting to such fallacious argument, the department wants to relate 00:00 hours of 0] .01.2020 to 3].] 2.2019 and stretch it to 01.01.2020 to extend the period of limitation for the entire day of 01.01.2020, which cannot be permitted. Even as per Section 153, no order can be passed at any time after expiry of twenty one month's implying that the order has to be passed before 23:59:59 hours on 31.12.2019. The provision cannot be considered ignoring the words "at any time after expiry", in the opinion of this court.

21. It will be useful to refer to the judgment of the Apex Court in B.N. Agarwalla v. State of Orissa, r(1995) 6 see 509], taking into consideration Section 5 of the General Clauses Act and the relevant passage of the same reads as under:

> "6.Sub-section (7) of Section -11 -A provides for automatic transfer to the Arbitration Tribunal of all arbitration proceedings of the kind specified in sub-section (1) which were "pending before any arbitrator on the date of Commencement" of the said Act and "in which no award had been made by the said date". Obviously, the expression "by the said date" here means by the date of commencement of the Arbitration (Orissa Amendment) Act, 1982. The first expression clearly means an arbitration proceeding pending before any arbitrator on the date of commencement of the Act.

namely. 26-3-1983. The meaning of the second expression should he consistent with. that of the first expression since the two could not be used to create a conflict. The purpose of sub-section (7) is to divest the arbitrator of authority to make the award in 011 such arbitration proceedings which were pending before the arbitrator on the date of commencement of / the said Act and to provide for their automatic transfer to the Arbitration Tribunal. The General Clauses Act, 1897 provides that unless the contrary is expressed. (In Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. There being no contrary indication in the Act, it must be held that the said Act come into force on the midnight on the expiration of the day preceding its commencement. i.e., the midnight between 25-3-1983 and 26-3-1983. There can be no doubt that if the second expression "in which 110 award has been made by the said date" was not also present in sub-section (7), then the undoubted result of the first expression would be that an arbitration proceeding in which no award had been made up to the midnight between 25-3-1983 and 26-3-1983 would be a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal. The question, therefore, is whether the further words used in the second expression in sub-section (7) must lead to a different conclusion. The construction of the first expression being unambiguous, the second expression must be construed harmoniously unless that is not a permissible construction of the expression "by the said date".

7. It does appear to us that the second expression, namely, "in which no award has been made by the said date" was further used in sub-section (7) ex abundante cautela to clarify the meaning of pending proceedings by indicating that only those arbitration proceedings in which the award also had been made "by the said date" were excluded from the operation of sub-section (7) and that every other arbitration proceeding including those in which the award alone remained to be made "by the said date" stood transferred to the Arbitration Tribunal. 1n other words, if the arbitration proceedings had been closed but the arbitrator had not made the award till the midnight between 25-3-1983 and 26-3-1983 when the Act came into force, it was a pending arbitration proceeding governed by sub-section (7), Acceptance of

the appellant's contention would amount to holding that even though the Act had come into force on the midnight between 25-3-1983 and 26-3-1983, an award made thereafter on 26-3-1983 was not a pending arbitration proceeding on the date of commencement of the Act, Unless meaning of the expression "by the said date" used in sub-section (7) be only that suggested by learned counsel for the appellant, the construction which would harmonise with the meaning of the earlier expression, must be given to the provision.

8. We may now consider the meaning of the word 'by' for ascertaining the meaning of the expression "by the said date", Meaning of the word 'by' in some of the dictionaries is:

Black's Law Dictionary (Sixth Edn.)

"Before a certain time; ... not later than a certain time; on or before a certain time; .... "

The New Shorter Oxford English Dictionary " ... On or before, not later than. ... "

9.No doubt the word 'by' means "before a certain time" as well as "on or before a certain time". The question is: whether, the word 'by' in the expression "by the said date" would mean in other words 'before' or 'on' 26-3-1983 in the present context? We have already indicated the meaning of the first expression "pending before any arbitrator on the date of commencement" to mean clearly and unambiguously pending up to the midnight between 25-3-1983 and 26-3-1983, i.e., before commencement of the date 26-3-1983 or at the time of expiry of the preceding day i.e. 25-3-1983. The other expression must, therefore. be construed in this context and since the word 'by' means 'before' also, in this context it must be held to mean 'before' and not 'on' the date of commencement of the Act. So construed, the second expression would read as "in which no award has been made before the said date" i.e. in. which no award has been made before the date of commencement of the Act, namely, 26-3-1983. This would be the harmonious construction of the two expressions in the provision.

10. Obviously, an award made on 26-3-1983 cannot be said to be an award made before 26-3-1983 and, therefore, the award in the present case having been

> made on 26-3-1983 and not before 26-3-1983, the date of commencement of the Act, the arbitrator had no jurisdiction to make the award as it was a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal."

22. From Section 153, the regular time for passing the assessment order ends on 31.12.2018 and with extension on the matter being referred to TPO, the time limit to pass assessment order would lapse on 31.12.2019. What is not to be forgotten, while interpreting a taxing statute, is the explicit and clear language used by the parliament while enacting the law. If the language employed in any statute is clear and unambiguous from its plain and natural meaning, external aid for interpretation are unnecessary. In the present case, we are called upon to adjudicate the period of limitation applicable to TPO under Section 92CA(3A) and incidentally under Section] 53. On the applicability of the General Clauses Act, it is relevant to point out the ratio laid down in the Constitutional Bench Judgment of the Hon'ble Supreme Court in Commr. of Customs v. Dilip Kumar & Co., [(2018) 9 SCC 1 : 2018 see OnLine se 747], which reads as under:-

> "17. In doing so, the principles of interpretation have been evolved in common law. 11 has also been the practice for the appropriate legislative body to enact the Interpretation Acts or the General Clauses Act. In a11 the Acts and Regulations, made either by Parliament or Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in the General Clauses Act are to be necessarily kept in view. If while interpreting a statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on the General Clauses Act. Notwithstanding this, we should remember that when there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessarily refer to the provisions of the statute. "

24. The finding so rendered by the Constitutional Bench of the Hon'ble Supreme Court can be related to Article 367 (l) of the Constitution of India, which reads as follows:

"367. Interpretation

(I) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India"

25. The above Article commences with the words, "unless the context otherwise requires". Therefore, the interpretation sought to be projected by the department cannot be accepted as the General Clauses Act cannot override any interpretation propounded by the parliament/Legislature in the clear, distinct and express language with an intention to convey a certainty as to how time is to be calculated. The ratio laid down by the Constitutional Bench of the Apex Court is squarely applicable to this case.

26. Further, the general interpretation by resorting to the meaning conveyed under the General Clauses Act cannot be adopted while interpreting 92CA (3A), because, the context and the language employed therein are completely different and it is pertinent to note that the words "from" and "to" have not been used. Even the employment of the General Clauses Act will not aid the Revenue, the reason of which will be disclosed a little later in this judgment. But, right now, it is relevant to consider the scope of the word "to".

27. The word "to" is used as a preposition or as an adverb. In popular sense, it is used to express the direction in which a person, thing, or time travels. The flow of direction is to be gauged from the preceding word or words used, like "prior to" or "upto". Keeping the same in mind, if we look at the wording of Section 92CA (3A), we cannot accept the contention of the Revenue that the time to be reckoned is from 3l.12.2019 and not 30.12.2019 as has been rightly done by the learned Judge.

28. The word "date" in section 92CA(3A) would indicate 3l.12.2019. But the preceding words "prior to" would indicate that for the purpose of calculating the 60 days, 31.12.2019 must be excluded. The usage of the word "prior" is not without significance. It is not open to this court to just consider the word "to" by ignoring "prior". The word "prior" in the present

context, not only denotes the flow of direction, but also actual date from which the period of 60 days is to be calculated. It is settled law that while interpreting a statute, . it is not for the courts to treat any word(s) as redundant or superfluous and ignore the same. In this connection, it is pertinent to note the judgment of the Apex Court in Grasim Industries Ltd. v. Collector of Customs, [(2002) 4 see 297 : 2002 see OnLine se 413], wherein, it was held as follows:

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententialegis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner [(1846) 6 Moore PC I : -I MIA I79J "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court 'would suffice. (See : Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests [1990 Supp SCC 785 : AIR 1990 SC 1747J, Union ofIndia v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 2-18 : (1992) 19 ATC 219: AIR 1992 SC 96J, Institute of Chartered Accountants of India v. Price Waterhouse[(1997) 6 SCC 312] and Harbhajan Singh v. Press Council of India [(2002) 3 SCC 722 : .IT (2002) 3 SC 21].) "

29. The language employed is simple. 31.12.2019 is the last date for the assessing officer to pass his order under

Section 153. The TPO has to pass order before 60 days prior to the last date. The 60 days is to be calculated excluding the last date because of the use of the words "prior to" and the TPO has to pass order before the 60th day. In the present case, the word "before" used before "60 days" would indicate that an order has to be passed before 1111/2019 i.e on or before 31.10.2019 as rightly held by the Learned Judge.

30. Even considering for the purpose of alternate interpretation, the scope of Section 9 of the General Clauses Act, it is to be noted that an inverted calculation of the period of limitation takes place here. If the last date is taken to be the first date from which the period of 60 days is to be calculated, reading down the provision with the use of the word "from", which denotes the starting point or period of direction in general parlance, would mean that 60 days "from the last date". Even going by Section 9 of the General Clauses Act, when the word "from" is used, then, that date is to be excluded, implying here that 31.]2.2019 must be excluded. After excluding 31.12.2019, if the period of 60 days is calculated, the 60th day would fall on 01.11.2019 and the TPO must have passed the order on or before 31.10.20] 9 as orders are to be passed before the 60th day. Therefore, either way the contention of the Revenue is a fallacy and has no legs to stand.

31. The next contention that has been raised by the learned senior standing counsel for the appellants is that the usage of the word "may" in Section 92CA (3A) indicates that the time fixed is only directory, a guideline, not mandatory and is for the sake of internal proceedings.

32. Let us now examine the relevant procedures relating to Transfer Pricing. 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. 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 92CA(4), the assessing officer has to pass an order in conformity with the order of the TPO. After 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 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. Sub-Section (l3) 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. It goes without saying that if no objections are filed by the Assessee either before the DRP or the assessing officer to the determination by the TPO, section 92CA(4) would come into operation. Therefore, it is very clear that once a reference is made, it would have an impact on the assessment unless a decision on merits is taken by DRP rejecting or varying the determination by the TPO.

33. It would only be apropos to note that as per 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 is the time frame mandatory, but also that the TPO has to pass an order within 60 days.

34. Further, the extension in the provision referred above, also automatically extends the period of assessment to 60 days as per the second proviso to Section 153.

35. Also, 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 is pending, the department gets another 12 months. Once reference is made and after availing the benefit of the extended period to pass orders, the department cannot claim that the time limits are not mandatory. Hence, the contention raised in this regard is rejected.

36. As rightly pointed out by Mr.Ajay Vohra, learned senior counsel for the respondents in WA.N os.1148 and 1149/2021, the word "may" has to be sometimes read as "shall" and vice versa depending upon the context in which it is used, the consequences of the performance or failure on the overall scheme and object of the provisions would have to be considered while determining whether it is mandatory or directory.

37. At this juncture, it is noteworthy to mention the commentary of Justice G.P.Singh on {he interpretation of

statutes, Principles of Statutory Interpretation (1 st Edn., Lexis Nexis 2015), which is quoted below for ready reference:

> "The intention of the legislature thus assimilates two aspects. In one aspect it carries the concept of "meaning" i.e. what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason and spirit" pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. This formulation later received the approval of the Supreme Court and was called the "cardinal principle of construction."

38. In case of assessments involving transfer pricing, fixing of time limits at various stages sets forth that the object of the provisions is to facilitate faster assessment involving such determination. In the present case, as rightly held by the learned Judge in paragraphs 22 to 29 of the order dated 07.09.2020, the order of the TPO or the failure to pass an order before 60 days will have an impact in the order to be passed by the Assessing Officer, for which an outer time limit has been prescribed under Sections 144C and 153 and is hence mandatory. What is also not to be forgotten, considering the scheme of the Act, the inter-relatability and inter-dependency of the provisions to conclude the assessment, is the consequence or the effect that follows, if an order is not passed in time. When an order is passed in time, the procedures under 144C and 92CA(4) are to be followed. When the determination is not in time, it cannot be relied upon by the assessing officer while concluding the assessment proceedings.

39. Upon consideration of the judgments and the scheme of the Act, we are of the opinion that the word "may" used therein has to be construed as "shall" and the time period fixed therein has to be scrupulously followed. The word "may" is used there to imply that an order can be passed any day before 60 days and it is not that the order -must be made on the day before the 60th day. The impact of the proviso to the sub-section clarifies the mandatory nature of the time schedule. The word "may" cannot be interpreted to say that

the legislature never wanted the authority to pass an order within 60 days and it gave a discretion. Therefore, the learned Judge rightly held the orders impugned in the writ petitions as barred by limitation, as the Board, in the Central Action Plan, has specified 31.10.2019 as the date on which orders are to be passed by the TPO, reiterating the time limit to be mandatory."

8. The chronology of events in the case of M/s.Pfizer Healthcare India Pvt. Ltd. (supra) are as follows:-

Sl. No.	Particulars	Relevant Date
A	Assessment Year	2016-17
B	Period of limitation for making an order of assessment as per section 153 of the Act	21 months from the end of the assessment year
C	Extension of period of limitation in case reference is made under section 92CA of the Act.	12 months
D	Proceeding for assessment should be completed on / before this date	31.12.2019
E	A date prior to the date on which period of limitation expires (stated in Sr.No.C)	30.12.2019
F	Sixty day period expires on (See Note 1)	01.11.2019
G	Transfer Pricing Officer's order to be passed any time on / before this date	31.10.2019
H	Date on which Transfer Pricing Officer's order is passed.	01.11.2019

	Note-1: Calculation of break-up of sixty days	December:30 days (excluding 31.12.2019) November: 30 days

9. Similar view has been taken by the Tribunal in the following cases:-

(i) DCIT v. Tata Power Solar Systems Ltd (supra),
(ii) M/s.Swiss Re Global Business Solutions India Pvt. Ltd. (supra)
(iii) ECL Finance Ltd. (supra).

10. Since the order passed by the TPO u/s 92CA of the I.T.Act for A.Y.2010-2011 and 2011-2012 are beyond the period of limitation and bad in law, the addition in respect of international taxation (TP adjustments) stands quashed. Therefore, grounds on merits on TP adjustments in both the appeals of the assessee are not adjudicated.

11. The surviving grounds, namely, grounds 22 to 22.3 relating to corporate tax issues for assessment year 2010-2011, reads as follows:-

> *"22. Disallowance of stock write-off on account of physical difference and errors in receipt of stock amounting to Rs.9,21,745.*
>
> *22.1 That on the facts and in the circumstances of the case and in law, the learned AO has erred in disallowing the amount of Stock write-off on account of physical difference and errors in receipt of stock.*
>
> *22.2 The learned AO ought to have allowed the amounts written off by the Appellant towards shortage in the inventory, arising due to cycle count, wrong receipting difference over shipping of certain items, which has been determined during the physical inventory verification.*
>
> *22.3 The learned AO ought to have appreciated the fact that the expenditure was incurred wholly and exclusively in the normal course of business of the appellant."*

12. The learned AR submitted that on identical issue, the Tribunal in assessee's own case, had restored the matter to the A.O. for verification in accordance with law.

13. The learned Departmental Representative also agreed

that for the earlier year, namely, assessment year 2009-2010 in IT(TP)A No.203/Bang/2014, the Tribunal in assessee's own case has restored the matter to the A.O. for due verification and it was submitted by the learned DR that similar view may be taken in this case also.

14. We have heard rival submissions and perused the material on record. An identical issue was considered by the Tribunal in assessee's own case for assessment year 2009-2010 (supra), wherein the issue was restored to the files of the A.O. for due verification of the matter. The relevant finding of the Tribunal in assessee's own case for assessment year 2009-2010 (supra) reads as follows:-

> *"100. Ground No.11 is in respect ;of disallowance of stock write off on account of physical difference and errors in receipt of stock amounting to Rs.6,89,875/-. We have remanded stock write off issue raised by revenue to Ld.AO, herein above. This being related issues is also remanded to Ld.AO for verification in accordance with law. Accordingly this ground raised by assessee stands allowed for statistical purposes."*

15. In view of the above order of the Tribunal, the issue raised in grounds 22 to 22.3 with regard to corporate tax issue pertaining to assessment year 2010-2011 is restored to the A.O. for *de novo* consideration. The A.O. shall take into consideration the directions of the Tribunal in assessee's own case, referred supra, and take a decision after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly. In the result, grounds 22 to 22.3 are allowed for statistical purposes.

16. The grounds relating to corporate tax issue raised for assessment year 2011-2012, reads as follows:-

> *"11. **Corporate Tax Grounds**:*
> *11.1 The learned AO erred in not considering partial credit for Advance Tax, while passing the final assessment order. The learned AO erred in granting incorrect advance tax amount of Rs.110,000,000/- as against claimed by the assessee amounting to Rs.110,100,000/- which has resulted in short credit of TDS amounting to Rs.100,000/-.*
>
> *11.2 The learned AO erred in not granting interest under section 244A of the Act, on the refund amount received by the Appellant along with intimation under section 143(1) of the Act in January 2012.*
>
> *11.3 The learned AO erred in levying interest under section 234D of the Act. Levy of interest is consequential in nature."*

17. We have heard the rival submissions and perused the material on record. The ground 11.1 is restored to the files of the A.O. The A.O. is directed to examine the matter and give TDS credit in accordance with law. It is ordered accordingly. In the result, ground 11.1 for assessment year 2011-2012 is allowed for statistical purposes.

18. The grounds 11.2 and 11.3 are only consequential and the same are dismissed.

19. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced on this 11th day of July, 2022.

Sd/-	**Sd/-**
(Padmavathy S)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 11th July, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP, Bengaluru.
4. The Pr.CIT-III , Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore