

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI M. BALAGANESH, AM**

आयकर अपील सं/ I.T.A. No.1984/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2014-15)

ACIT(IT)-2(2)(1) Room No. 1722, 17 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.	<b>बनाम/</b> Vs.	M/s. Erisse Investments Ltd. C/o. G. M. Kapadia & Co. 1007, Raheja Chambers, 213, Nariman Point, Maharashtra-400021.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCE6866D</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nitesh Joshi
Revenue by:	Shri Milind Chavan (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 07/12/2022

घोषणा की तारीख /Date of Pronouncement: 30/01/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

The revenue has filed this appeal challenging the action of the Ld. CIT(A)-56, Mumbai dated 16.06.2022 the assessment order passed by the AO u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter "the Act") for AY. 2014-15.

2. The revenue has challenged the validity of the action of Ld CIT(A) wherein the Ld. CIT(A) was pleased to hold that the assessment order passed by the AO dated 07.02.2017 was time barred because it was passed after the time barring date 31.12.2016. According to Ld. CIT(A), since there was no variation in the returned income by the assessee/foreign non-resident company (eligible assessee), the AO ought not to have passed the draft assessment order and should have straight away proceeded to pass the assessment order before 31.12.2016 rather than on 07.12.2017. Accordingly, the



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assessee's contention that the assessment order passed by the AO dated 07.12.2017 was void and is liable to be quashed was upheld by the Ld. CIT(A). Aggrieved by the impugned action of Ld. CIT(A) the revenue has filed this appeal before this Tribunal and has preferred the grounds of appeal which reads as under: -

(i) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in quashing the assessment order passed by the AO u/s 143(3) r.w.s. 144C(3) on technical ground raised by way of additional ground when the order passed by the AO enhancing the tax liability of the assessee by four times was clearly prejudicial to the interest of the assessee.

(ii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in quashing the assessment order passed by the AO without appreciating the fact that-

- application of tax rate of 40% on the interest income earned by the assessee from India as per the I. T. Act in place of tax rate of 10% on this interest income offered by the assessee, tantamount to an order/variation which is prejudicial to the interest of the assessee.
- even as per section 143(3) of the IT Act, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee and determine the sum payable by him on the basis of such assessment. Thus even the net result of an assessment u/s. 143(3) is to determine the exact tax liability of the assessee which may arise either by addition to its income or by varying the tax rates on the returned income".

(iii) "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) committed grave error in law by not appreciating the fact that the variation in income means higher tax liability for the



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assessee, in the present case the A.O. has increased the tax rate on the interest income of Rs. 13.87 Cr. from 10% to 40%, thus increasing the tax liability of the assessee, which in effect means the same as varying the income of the assessee".

(iv) "Whether on the facts and circumstances of the cas-, the Ld. CIT(A) committed grave error in law by not adjudicating the issue of 'beneficial ownership of interest' by the assessee on merits and by simply Stating that there is no requirement to adjudicate other issues urged by the assessee",

(v) "Whether on the facts and circumstances of the case, the Ld. CIT(A) committed grave error in law by quashing the assessment order ignoring the fact that the draft assessment order was in substance and effect in conformity with or according to the intent and purpose of the Act being prejudicial to the assessee and such mistake or defect was curable u/s 292B of the 1.T. Income Tax Act, 1961.

(vi) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in not considering and appreciating the factual comments of the AO in the remand report submitted against the additional grounds raised by the assessee. (vii) "Whether the Ld. CIT(A) was correct in not appreciating that the draft order was issued and served on 26.12.2016, well before the date of limitation and that the assessee took advantage of section 144C to respond only on 25.01.2017, and taking advantage of its own delayed response, claimed benefit by raising the additional ground, which allowed by the Ld. CIT(A)."

**3.** We have heard both the parties and perused the records on this legal issue raised by revenue. Facts relevant to the legal issue are that the assessee company which is resident in Cyprus, holds a valid tax resident certificate issued by the Cypriot Tax Authority. Accordingly,



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it is a tax resident of Cyprus under Article 4(1) of the Double Taxation Avoidance Agreement (DTAA) between India and Cyprus (hereinafter “India Cyprus Treaty). The assessee company had invested in an Indian Company M/s. Friends Development Corporation (Imperia) Pvt. Ltd. (the Indian Company) by subscribing to Compulsorily Convertible Debentures (CCD). And the assessee has earned interest income of Rs.13,87,69,300/- during the year under consideration. According to the assessee, even though the interest income accrued has not been paid by the Indian investee company and though tax has been deducted at source, the assessee has offered the same to tax on an accrual basis in its return of income which was filed on 27.11.2014 disclosing income of Rs.13,87,69,300/-. According to the assessee, as per the provisions of Section 90(2) of the Act, the assessee have the option to be governed by the provisions of the India Cyprus Treaty or the provisions of the Act, whichever are more beneficial to the assessee. Accordingly, the assessee opted to be governed by the provisions of the Cyprus Treaty. Accordingly, the interest income was offered to tax @ 10% as per the Article 11(2) of the Cyprus Treaty.

**4.** The Assessing Officer issued draft assessment order u/s 143(3) r.w.s. 144C(1) of the Act on 26.12.2016 wherein he assessed the interest income of Rs.13,87,69,300/- @ 40% by holding that assessee is not the beneficial owner of the interest income by applying the provisions of the Act i.e. 40% instead of the rate of 10% provided under the DTAA. Thereafter, the AO passed the final assessment order u/s 143(3) r.w.s. 144C(3) of the Act on 07.02.2017 as proposed in the



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draft assessment order. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein it assailed the action of the AO to have framed the draft assessment order by resorting to Section 144C(I) of the Act which according to the assessee was illegal because condition for invoking the same has not been satisfied i.e, only if there is variation in the income or loss returned, which is prejudicial to the interest of the assessee the draft assessment order need to be framed and not otherwise. The assessee pointed out to the Ld. CIT(A) that the AO did not change the income returned by the assessee and hence there was no variation of income returned, which is prejudicial to the interest of assessee. Accordingly, the assessee submitted that the essential condition prescribed u/s 144C(1) of the Act was not satisfied. And therefore, the AO ought not to have issued the draft assessment order and ought to have passed the assessment order within the twenty one (21) months from the end of the assessment year i.e. on or before 31<sup>st</sup> December, 2016 as per Section 153 of the Act. And since the final assessment order has been passed by the AO in the instant case on 7<sup>th</sup> Feb, 2017, the action of the AO is barred by limitation. And therefore, the assessee pleaded before the Ld. CIT(A) that the assessment framed by the AO, after 31<sup>st</sup> Dec, 2016 was barred by limitation and hence need to be quashed. The Ld. CIT(A) by passing the impugned order has held that since there was no variation in the income or loss returned which is prejudicial to the interest of the assessee, the AO ought to have framed the final assessment order u/s 143(3) of the Act before time barring dated 31.12.2016 and since the AO passed the final



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assessment order 07.02.2017 it is time barred. For taking such an action, the Ld. CIT(A) took note of the judicial precedents on the issue viz ITAT decision in M/s. IPF India Property Cyprus (No.1) Ltd. Vs. DCIT, ITA. No. 6077/Mum/2018, dated 25.02.2020. And therefore he allowed the appeal preferred by the assessee on the legal issue. Aggrieved by the aforesaid action of the Ld. CIT(A), the revenue is before us.

**5.** The Ld. CIT-DR assailing the action of the Ld. CIT(A) has submitted that the Ld. CIT(A) erred in finding that there was no variation in the income returned by the assessee when the fact was that the AO's action enhanced the tax liability of the assessee by four (4) times, which was clearly prejudicial to the interest of the assessee. According to him, the AO's action of applying the tax rate of 40% interest income earned by the assessee from India as per the Act in place of tax rate of 10% on the interest income offered by the assessee tantamount to variation as contemplated u/s 144(1) of the Act and since tax liability has increased, it is definitely prejudicial to the interest of the assessee. And in the instant case according to the Ld. DR, the issuance of draft assessment order could be cured u/s 292(b) of the Act since draft assessment order was issued on 26.12.2016 well before the date of limitation. Therefore, according to the Ld. DR, the action of the Ld. CIT(A) need to be reversed and the Ld. CIT(A) directed to adjudicate the action of the AO on merits.

**6.** Per contra, the Ld. AR of the assessee drew our attention to the provisions of Section 144C(1) of the Act and submitted that in the case



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of “eligible” assessee (admittedly, assessee is a eligible assessee being a Foreign Company) the AO in the first instance, forward the draft of the proposed order of assessment, (Draft Order) to the assessee, if there is variation in the income or loss returned, which is prejudicial to the interest of the assessee. He drew our attention to the draft order and pointed out that the AO at page no. 2 has acknowledged that the assessee has returned an income of Rs.13,87,69,300/- and drew our attention to the page no. 19 of that order wherein at para 11 i.e, the computation of income also the same income is adopted by him, which shows that AO has not varied the income returned by the assessee. Accordingly, he submitted that the condition prescribed u/s 144C of the Act was not satisfied. And therefore, the AO ought not to have issued in the first instance the draft order u/s 144C(1) of the Act. Rather, he ought to have passed the assessment order u/s 143(3) of the Act on or before 31<sup>st</sup> Dec, 2016. Thus according to the Ld. AR, it can be seen that the AO has not changed the quantum of interest income and hence there is no variation of income or loss returned by the assessee, which is prejudicial to the interest of the assessee. Accordingly, the Ld. AR submitted that the AO was not legally correct in adopting the procedure prescribed u/s 144C(1) of the Act and thus extended the time for passing the final order on 7<sup>th</sup> Feb, 2017, which action of the AO was clearly barred by limitation. And therefore the Ld. AR does not want us to interfere in the action of the Ld. CIT(A).

**7.** As noted (supra), the assessee foreign company resident of Cyprus has returned income of Rs.13,87,69,300/- and the AO has not



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varied the returned income (accept the returned interest income) but applied the higher tax rate of 40% in place of assessee's claim of concessional rate of tax under the India – Cyprus Treaty (DTAA) of 10%. According to the assessee, since there was no variation in the returned income of Rs.13,87,69,300/-, the AO could not have proceeded with framing of draft order u/s 144(1) of the Act because the condition for adopting such a course of action was not satisfied. And therefore AO ought to have framed the assessment order u/s 143(3) r.w.s. 153(1) of the Act by framing assessment within the twenty one (21) months from the end of the assessment year i.e. on or before 31<sup>st</sup> December, 2016 (twenty one (21) month from 31<sup>st</sup> March, 2014) as per section 153 of the Act. And since the AO has framed the assessment only on 7<sup>th</sup> Feb, 2017, the action of the AO was clearly barred by limitation. The Ld. CIT(A) has allowed the appeal of the assessee by finding that the AO's action of framing the draft assessment order u/s 144C(1) of the Act was illegal since the condition prescribed for adopting such a course of action was not satisfied viz since there was no variation of returned income or loss which was prejudicial to the interest of the assessee. And therefore according to the Ld. CIT(A), the AO ought to have framed the assessment order u/s 143(3) of the Act on or before 31<sup>st</sup> Dec, 2016 and since AO passed the assessment order only on 07 Feb, 2017, it was held to be bad in law being time-barred and consequently allowed the appeal of the assessee. For doing so, the Ld. CIT(A) has taken note of the decision of this Tribunal wherein an identical issue came up for consideration before



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this Tribunal and the Co-ordinate Bench of this Tribunal in the case of M/s. IPF India Property Cyprus (No.1) Ltd. Vs. DCIT, supra, wherein also the AO had passed the draft order without there being any variation of income returned by assessee which action of AO (to have passed the draft order despite there being no variation of returned income) was challenged before this Tribunal, which was allowed; and the Tribunal held by observing as under:

“We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. 5. So far as the first issue is concerned, we find that, in the present case, there are no variations in the returned income and the assessee income. The controversy is thus confined to the question as to what will be the rate on which income returned by the assessee is to be taxed. While the assessee has claimed taxation @ 10% under article 11(2) of the India Cyprus DTAA, the Assessing Officer has declined the said treaty protection on the ground that the assessee was not beneficial owner of the said interest, and, accordingly, brought the income is to tax@ 40% thereof. There is, quite clearly, no variation in the quantum of income. The question whether it was a case in which the Assessing Officer could have issued the draft assessment order, on the facts of this case, needs to be examined in the light of provisions of Section 144C(1) which provides that, “The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward5 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,



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any variation in the income or loss returned which is prejudicial to the interest of such assessee [Emphasis, by underlining, supplied by us]. The assessee before us is a non-resident company incorporated, and fiscally domiciled, in Cyprus. Accordingly, in terms of Section 144C(15)(b)(ii), the assessee is an eligible assessee but then there is no change in the figure of income returned by the assessee vis-a-vis the income assessed by the Assessing Officer. Clearly, there is no variation in the income returned by the assessee. There is, therefore, no question of a draft assessment order being issued in this case. It is also important to note that the Finance Bill proposes to make the issuance of draft assessment orders in the case of eligible assesseees mandatory even when there is no variation in the income or loss returned by the assessee but then this amendment seeks to amend the law with effect from 1st April 2020. Explaining this amendment, Memorandum Explaining Amendments in the Finance Bill 2020 states as follows:

Amendment in Dispute Resolution Panel (DRP). Section 144C of the Act provides that in case of certain eligible assesseees, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act, the Assessing Officer (AO) is required to forward a draft assessment order 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. Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income tax. DRP has nine months to pass directions which are binding on the



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AO. It is proposed that the provisions of section 144C of the Act may be suitably amended to:- (A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of section 144C; (B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company. This amendment will take effect from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.

6. Once this amendment is being introduced with effect from 1st April 2020, it is beyond any doubt of controversy that so far as the period prior to 1st April 2020 is concerned, the cases in which no variations in the returned income or loss were proposed, the draft assessment orders were not required to be issued. We, therefore, uphold the plea of the assessee on this point.”

**8.** We note that similar view has been expressed by the Co-ordinate Benches of this Tribunal in the case of Mausmi SA Investments LLC Vs. ACIT (ITA. No. 7026/Mum/2018) dated 10.04.2019. We note that this Tribunal in the case of IPF India Property Cyprus (supra), after taking note of the amendment made of Section 144C(1) of the Act w.e.f. 1<sup>st</sup> April 2020 which has held that such amendment would not apply to any period prior to 1<sup>st</sup> April, 2020. We also note that Chennai Bench of this Tribunal in the case of Mosbacher India LLC Vs. ACIT (2016) (76 Taxmann.com 31) wherein the Tribunal examined the scope of provisions of Section



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144C(1) of the Act. In that case, the returned income was not varied by the AO, but only higher tax rate was applied on the total income. Therefore, the AO passed the order u/s 143(3) of the Act, which was challenged before the Ld. CIT(A) and then before Tribunal. Before the Tribunal, the assessee took the plea that the AO should have passed draft assessment order u/s 144C(I) of the Act. However, the Tribunal rejected the same with the following observations as under: -

“[10] We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position

[11] We will first take up the assessee’s grievance against non issuance of a draft assessment order under section 144C. Section 144C, to the extent relevant for our discussion, provides as follows:

Reference to dispute resolution panel.

144C. (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. [Emphasis, by underlining, supplied by us] (15) For the purposes of this section, ..... (b) "eligible assessee" means,—

(i) any person in whose case the variation referred to in subsection (1) arises as a consequence of the order of the



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Transfer Pricing Officer passed under subsection (3) of section 92CA; and (ii) any foreign company.

[12] In order to successfully invoke the provisions of Section 144C, thus, two basic conditions are required to be fulfilled: - the assessee is an eligible assessee [i.e. (i) any person in whose case the variation referred to the income or loss in the returned income or loss, which is prejudicial to the interest of the assessee, is made on account of an order under section 92A(3) i.e.an ALP adjustment], or (ii) any foreign company]; and - the Assessing Officer proposes to make “any variation in the income or loss returned by the assessee which is prejudicial to the interest of such assessee”.

[13] There is no dispute that the assessee is an eligible assessee inasmuch as the assessee is a foreign company. The first condition for giving a choice to the assessee to follow the DRP route, which, in turn, requires issuance of draft assessment order, is thus clearly fulfilled.

[14] As for the second condition, i.e. the Assessing Officer proposing to make “any variation in the income or loss returned by the assessee which is prejudicial to the interest of such assessee”, since the Assessing Officer has merely accepted the returned income, as filed by the assessee, the second condition is not fulfilled. In the present case, while making the impugned assessment under section 143(3), the Assessing Officer has not made any variation in the income or the loss returned by the assessee. The Assessing Officer has simply accepted the income returned by the assessee, and the variations, if at all, are in the computation of tax payable in respect of income returned by the assessee. The variation, as the statutory provision unambiguously states, has to be vis-à-vis returned income or



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loss. That is certainly not the case before us. The assessee's contention is that the income returned by the assessee was an inadvertent mistake and the Assessing Officer ought to have corrected the mistake as all the relevant facts were on record and what the Assessing Officer can bring to tax is income of the assessee in accordance with the law. We will deal with that aspect of the matter separately as and when the occasion comes to deal with the matter on merits. So far as the application of Section 144C is concerned, in our considered view, it is a condition precedent that the Assessing Officer proposes a "variation in the income or loss returned by the assessee which is prejudicial to the interest of the assessee", and since this condition is admittedly not satisfied on the facts of this case, no fault can be found in the path taken by the Assessing Officer.

[15] Coming to the judicial precedents relied upon by the learned counsel, the common thread in all these judicial precedents, i.e. in the cases of *Vijay Television (P.) Ltd. v. Dispute Resolution Panel* [(2014) 46 taxmann.com 100 (Mad)], *Jazzy Creations Pvt Ltd Vs ITO* [(2016) 133 DTR 1 (Mum)] and *Capsugel Healthcare Ltd Vs ACIT* [(2015) 152 ITD 142 (Del)], is that all these precedents pertain to the situations in which applicability of Section 144C was not in slightest doubt and yet the Assessing Officer did not issue the draft assessment order- as is required to under the scheme of Section 144C. That is not the case here. It was a conscious, and in fact correct, decision of the Assessing Officer, as he has discussed in fair detail in the impugned order, that since there is no variation in the income returned by the assessee, the provisions of Section 144C cannot be invoked. Given these crucial variations in the facts of the



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case, the judicial precedents cited at the bar donot come to the rescue of the assessee.

[16] We, therefore, reject the plea of the assessee that since the Assessing Officer has issued the impugned assessment order directly, without first issuing a draft assessment order, the impugned assessment order should be quashed and treated as non est.”

9. We note that the Pune Bench of ITAT in the case of DCIT Vs. Magna International Inc. (ITA. No. 2098/Pun/2016 dated 21.01.2019) noted that the Ld. CIT(A) had quashed the assessment order on the ground that the AO did not follow the provisions of Section 144C(I) of the Act while examining the merit of Ld. CIT(A)’s action, the Tribunal found that there was no variation in the income returned by the assessee, which was prejudicial to the interests of assessee. Hence Tribunal reversed the order of the Ld. CIT(A) on the legal issue wherein the Tribunal observed as under: -

“11. We have heard the rival contentions and perused the record. The assessee is a foreign company. For the year under consideration, the assessee had furnished return of income declaring total income at ₹ 11,75,89,802/- on 25.03.2015. The said fact is mentioned in the statement of facts filed by the assessee before the CIT(A). On the other hand, the Assessing Officer starts assessment order with a remark that the assessee had furnished the return of income at nil, which is incorrect. The assessee being a Non-resident had offered the said income to tax under section 115A of the. 6 at 10% (plus surcharge and cess), which was applicable for the year under consideration. The assessee during the course of assessment ITA



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No.2098/PUN/2016 CO No.54/PUN/2018 Magna International Inc Association Vs. DCIT (supra) had quashed the assessment order passed by the Assessing Officer.

12. The relevant provisions of the Act are in section 144C(1) of the Act, which provide that the Assessing Officer in the first instance forward a draft of the proposed 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. The term “eligible assessee” is defined under section 144C(15)(b) of the Act. As per definition, “eligible assessee” means any person (i) in whose case variation referred to in sub-section (1) arises as a consequence of the order of Transfer Pricing Officer passed under section 92CA(3); and (ii) in foreign company.

13. The issue which arises before us is whether in the present set of facts is there any variation in the income or loss returned by the assessee and the Assessing Officer not having passed draft assessment order had violated the provisions of section 144C(1) of the Act. Admittedly, the assessee is a foreign company and is “eligible assessee”. As pointed out in the paras hereinabove, the assessee had filed the return of income declaring total receipts of ₹ 11.76 crores (approx.) in the return of income filed on 25.03.2015. Thereafter, on its own motion the assessee had offered additional income of ₹ 62,12,060/- i.e. on account of receipts which were received by the assessee during the year but by an inadvertent error, were not offered in the return of income. We have already referred to the statement of facts in the paras above; the assessee suo motu and in good faith claims to have offered additional income to tax at the beginning of assessment proceedings itself. The assessee claims that the said offer was



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made even before the questionnaire was raised. In such scenario when the Assessing Officer passes the order after including sum of ₹ 62,12,060/- to the receipts offered in the return of income, then income totals to ₹ 12,38,01,862/-. The Assessing Officer has assessed the aforesaid income in the hands of assessee under section 143(3) of the Act. In such facts and circumstances, variation in the income is not on account of any addition made by the Assessing Officer but is on account of voluntary offer of additional income by the assessee and it cannot be said that the Assessing Officer has made variation in the income returned, which is prejudicial to the interest of such assessee. The variation in the income is qualified by the words which is prejudicial to the interest of such assessee.

14. In the facts of present case, addition, if any is made to the returned income is on account of suo motu offer by the assessee of the receipts received by the assessee during the year under consideration from an Indian entity and by an inadvertent error, the same were not offered in the return of income. So, it does fail the test of prejudicial to interest of assessee. Hence, there is no merit in the order of CIT(A) in quashing the assessment order. The same is thus, reversed. The grounds of appeal raised by the Revenue are thus, allowed.”

**10.** In the light of the aforesaid judicial precedents on the issue, we note that though the assessee herein is an eligible assessee u/s 144C(1) of the Act, however the condition required to be satisfied for issuance of draft order u/s 144C(1) of the Act has not been satisfied because there was no variation of returned income which is prejudicial to the interest of the assessee. Therefore, we find that the aforesaid condition



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prescribed u/s 144C(1) of the Act was not satisfied. Therefore, the AO ought to have passed the assessment order u/s 143(3) of the Act within the limitation time prescribed u/s 153(1) of the Act i.e. within the twenty one (21) months from the end of the assessment year i.e. on or before 31<sup>st</sup> December, 2016. And since the assessment order was framed on 7<sup>th</sup> Feb, 2017, the action of the AO is barred by limitation. Therefore, we do not find any infirmity in the impugned order of the Ld. CIT(A). Therefore, we confirm the action of the Ld. CIT(A) and decline to interfere with the order of the Ld. CIT(A). Hence the appeal of the revenue is dismissed.

**11.** In the result, the appeal of the revenue stands dismissed.

Order pronounced in the open court on this 30/01/2023.

Sd/-

(M. BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30/01/2023.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai