

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1180/Mum/2021  
(Assessment Year :2016-17)**

M/s. Teleperformance Global Services Private Limited (Formerly known as "Inellenet Global Services Pvt. Ltd.") Teleperformance Towres Plot CST No.1406 A/28, Mindspace Goregaon West, Mumbai Suburban Maharashtra – 400 604	Vs.	The Additional /Joint /Deputy /Assistant/Income Tax Officer – National e-Assessment Centre, Delhi And Deputy Commissioner of Income Tax-circle 5(3)(1), Mumbai
<b>PAN/GIR No.AABCV2572L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Dr. Madhur Agarwal
Revenue by	Shri Manoj Kumar
<b>Date of Hearing</b>	<b>21/03/2023</b>
<b>Date of Pronouncement</b>	<b>24/03/2023</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No. 1180/Mum/2021 for A.Y.2016-17 preferred by the order against the final assessment order passed by the Assessing Officer dated 17/04/2021 u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions of the Id. Dispute Resolution Panel (DRP in short) u/s.144C(5) of the Act dated 20/03/2021 for the A.Y.2016-17.

2. Though the assessee has raised several grounds of appeal before us, first we would like to address ground No.2 wherein the assessee has submitted that the order of the Id. TPO u/s.92CA(3) of the Act dated 01/11/2019 is barred by limitation and hence, invalid in law.

3. The assessee has also filed additional ground before us on 23/04/2022 wherein it had stated that since the order of the Id. TPO is barred by limitation, the assessee does not become "eligible assessee" u/s.144C of the Act and hence, the draft assessment order dated 27/12/2019 and final assessment order passed by the Id. AO on 17/04/2021 using the extended period provided in third proviso to Section 153 of the Act would also be barred by limitation. For the sake of convenience, the original ground No.2 raised by the assessee is reproduced hereunder:-

**"2. Re: Validity of the Order:**

*2.1 On the facts and in circumstances of the case and in law, the impugned transfer pricing order under section 92CA(3) dated 1 November 2019 is barred by limitation and hence invalid in law."*

3.1. The additional grounds raised by the assessee are as under:-

**1:0 Re: Eloat Assessment Order barred by limitation:**

*1:1 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the impugned Order dated 17 April 2021 passed us. 143(3) r.w.s. 144C(13) rws 1448 of the Income-tax Act, 1961 is ab-initio void being barred by limitation and hence, ought to be struck down.*

**2:0 Re: General:**

*2:1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.*

4. We have heard rival submissions and perused the materials available on record. The return of income for the A.Y.2016-17 was electronically filed on 29/11/2016. Thereafter, revised return of income was electronically filed by the assessee on 26/03/2008 enhancing the TDS credit. The assessee is IT enabled and BPO service provider and has shown income of Rs.86,36,70,289/- from the said business during the year. Further, the assessee has shown interest income of Rs.15,11,64,039/- as 'income from other sources'. The case was selected for scrutiny by issuance of notice u/s.143(2) of the Act on 13/08/2018. The Id. AO after obtaining approval from Pr. Commissioner of Income Tax-12, Mumbai referred the case of the Id. TPO on 03/12/2018 u/s.92CA(1) of the Act to determine the Arm's Length Price (ALP) of international transactions carried out by the assessee with its Associated Enterprises (AE). **The Id. TPO passed an order u/s.92CA(3) of the Act on 01/11/2019** making ALP adjustments in respect of provision of IT enabled services to the tune of Rs.64,99,10,482/-; interest on loan given to AE to the tune of Rs.22,35,687/- ; and provision of guarantee to the tune of Rs.2,40,349/-.

4.1. The draft assessment order was passed by the Id. AO u/s.143(3) r.w.s. 144C of the Act on 27/12/2019 determining the total income of the assessee at Rs.259,58,34,100/- which includes the addition made by the Id. TPO towards ALP adjustment in the sum of Rs.65,23,86,518/-; disallowance of depreciation on intangible asset of Rs.90,65,75,040/-; and disallowance u/s.14A of the Act of Rs.7,84,950/-. The assessee preferred objections before the Id. DRP. The Id. DRP issued directions u/s.144C(5) of the Act on 20/03/2021. Pursuant to the directions of the Id. DRP, the Id. AO passed the final assessment order u/s.143(3) r.w.s. 144C(13) of the Act on 17/04/2021 which is same as the income determined in the

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draft assessment order. Against this final assessment order, the assessee is in appeal before us.

4.2. The Id. AR before us stated that the transfer pricing order passed by the Id. TPO u/s.92CA(3) on 01/11/2019 is clearly barred by limitation as it is passed in violation of provisions of Section 92CA(3A) of the Act. He placed on record the following table to buttress this argument:-

Sr. No.	Particulars	Relevant date/ period
	Assessment Year involved	2016-17
1.	Period of limitation for making an order of assessment as per section 153 of the Income-tax Act, 1961 ["the Act"]	21 months from the end of the Assessment Year
2.	Extension of period of limitation in case reference is made u/s. 92CA of the Act.	12 months
3.	Assessment proceedings should be completed on / or before	31.12.2019
4.	Date prior to the date on which period of limitation expires (stated in Sr. No. 3 above)	30.12.2019
5.	Sixty day period expires on <i>December = 30 days (excluding 31.12.2019)</i> <i>November = 30 days</i>	01.11.2019
6.	Transfer Pricing Order u/s. 92CA(3) of the Act to be passed on/ or before	31.10.2019
7.	Date on which Transfer Pricing Order u/s. 92CA(3) is passed	01.11.2019

4.3. For the sake of convenience, the provisions of Section 92CA(3A) of the Act are reproduced hereunder:-

***Reference to Transfer Pricing Officer.***

***92CA.***

*(1) .....*

*(2) .....*

*(2A) .....*

*(2B) .....*

*(2C) .....*

*(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:]***

4.4. From the bare reading of the aforesaid provisions of Section 92CA(3A) of the Act, we find that the time limit prescribed in Section 153 of the Act for completion of assessment is 31/12/2019 for A.Y.2016-17 considering the extended period of one year as per third proviso thereon. The provisions of Section 92CA(3A) mandates that Id. TPO should pass an order u/s.92CA(3) of the Act at any time before 60 days prior to the date on which the period of limitation referred to in Section 153 of the Act for making the order of assessment or re-assessment expires. As stated earlier, the time limit for completion of assessment u/s.153 of the Act is 31/12/2019. In order to reckon 60 days prior to that date, obviously the date of 31/12/2019 should be ignored. Hence, 60 days prior to

31/12/2019 would fall on 31/10/2019 i.e. 30 days in December and 30 days in November. Hence, the due date for passing the order by the Id. TPO u/s.92CA(3) of the Act would be 31/10/2019. In other words, the Id. TPO as per Section 92CA(3A) of the Act is bound to pass an order u/s 92CA(3) of the Act on or before 31/10/2019. In the instant case, since the order of the Id. TPO is passed on 01/11/2019, it is squarely barred by limitation as it is in violation of provisions of Section 92CA(3A) of the Act. In this regard, the Id. AR rightly placed reliance on the decision of the Hon'ble Madras High Court Single Bench decision in the case of Pfizer Healthcare India (P.) Ltd. vs. JCIR reported in 433 ITR 28 (Madras). This decision was subject matter of consideration by the Division Bench of Hon'ble Madras High court in the case of DCIT vs. Saint Gobain India (P.) Ltd. reported in 444 ITR 636 (Madras). This Division Bench approved the decision of Single Bench of Hon'ble Madras High Court. The relevant operative portion of the Division Bench's order is reproduced hereunder:-

*"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 1-11-2019 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 31-12-2019 must be excluded. After excluding 31-12-2019, if the period of 60 days is calculated, the 60th day would fall on 1-11-2019 and the TPO must have passed the order on or before 31-10-2019 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.*

*Mandatory or Directory*

**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 (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. 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 proviso 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. Nos.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 the interpretation of statutes, *Principles of Statutory Interpretation* (1st 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 7-9-2020, 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.

*V. Conclusion.*

*40. Ergo, we find no reasons to interfere with the order of the Learned Judge, which is impugned herein and accordingly, dismiss these intra-court appeals, but without costs. Consequently, connected miscellaneous petitions are closed."*

4.5. Now yet another issue that arises for our consideration which is subject matter of additional ground raised by the assessee vide letter dated 23/04/2022. In our considered opinion, the ground raised by the assessee goes to the root of the matter and is purely a legal issue and does not require any verification of facts. Hence, in view of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383, the additional ground raised by the assessee is hereby admitted and taken up for adjudication.

4.6. We find that once we hold that the order of the Id. TPO dated 01/11/2019 is barred by limitation, then the assessee would be outside the ambit of becoming "eligible assessee" u/s.144C(15)(b)(i) of the Act. Accordingly, the extended time period provided in Section 153 of the Act vide third proviso thereof would not be applicable to the facts of the instant case. By this process, the draft assessment order passed by the Id. AO on 27/12/2019 for A.Y.2016-17 also becomes barred by limitation. Because of the draft assessment order getting barred by limitation, it becomes an order *void ab initio*. Accordingly, any subsequent proceedings emanating from the illegal and invalid order i.e. DRP directions dated 20/03/2021 and final assessment order dated 17/04/2021 also becomes *void ab initio*. In support of this, the Id. AR before us placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of Mondelez India Foods Pvt. Ltd. vs. Addl. CIT in ITA No.1492/Mum/2015 and Atos India Pvt. Ltd vs. DCIT in ITA

No.1795/Mum/2017. Per contra, the Id. DR placed reliance on the report of the Id. AO on the additional ground raised by the assessee. The said report is received in e-mail from the Id. AO by the Id. CIT DR which is placed on record. The Id. DR placed reliance on the decision of the Co-ordinate Bench of the Delhi Tribunal in the case of Louis Dreyfus Commodities India Private Ltd. vs DCIT in ITA No.2381/Del/2014 dated 11/03/2021 which is also reported in 138 taxmann.com 556. In the said decision of the Delhi Tribunal in para 27 thereon it has been held as under:-

*“27. Consequent additions made on account of transfer pricing adjustment by way of determining the ALP transaction by the TPO are also not sustainable in the eyes of law, the order of the TPO (supra) being barred by limitation. Since vide assessment order dated 24-2-2014 AO has made addition on account of determination of ALP of international transaction, such addition stands deleted being order of Id. TPO barred by limitation, but the assessment order u/s 143 (3) passed by AO is in time, it stands except those additions proposed by Id. TPO. Thus, additions made by AO, based on order of Id. TPO, stand deleted without entering into grounds raised on merits by the taxpayer. Consequently, the appeal filed by the taxpayer is allowed.”*

4.7. Accordingly, the Id. CIT DR vehemently argued that even if it is held that the order of Id. TPO is barred by limitation pursuant to the decision of the Hon'ble Madras High Court, still the corporate tax issues that had been added by the Id. AO would survive and that had to be independently adjudicated upon. We find that the Co-ordinate Bench of this Tribunal in the case of Mondelez India Foods Pvt. Ltd referred to supra after considering the decision of Delhi Tribunal (relied by the Id. DR herein) had ultimately distinguished the decision of the Delhi Tribunal and rendered the decision in favour of the assessee. The relevant operative portion of the said order of this Mumbai Tribunal dated 14/11/2022 are reproduced hereunder:-

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“7.5 The ld.Counsel for the assessee further submits that the provisions of section 144C of the Act are applicable only to the “eligible assessee” as defined in sub-section (15), clause(b) to section 144C of the Act. The ld.Counsel for the assessee again draws support from the decision of Hon'ble Madras High Court in the case of Saint Gobain India (P) Ltd.,(supra) to buttress his arguments, that the assessee in the present case is not “eligible assessee”as there is no valid order under section 92CA(3) of the Act in the case of assessee. Therefore, the assessment framed on the basis of non-est order of TPO is unsustainable. The ld.Counsel for the assessee further asserted that the assessment order dated 21/05/2015 is time barred as the limitation of passing the assessment order got over on 31/03/2014.

8. Per contra, Ms. Vatsala Jha representing the Department vehemently submitted that the order passed by TPO u/s.92CA(3)of the Act is a valid order passed within the period of limitation. The ld. Departmental Representative submits that CBDT vide Circular No.3/2008 dated 12/03/2008 in the Explanatory Notes on the provisions of the Finance Act, 2007 has explained that with a view that TPO gets sufficient time to make the audit of Transfer Pricing and also to provide the Assessing Officer sufficient time to make assessment in the case involving international transactions, the time limit specified in section 153 of the Act has been extended by 12 months, where reference is made to the TPO. Further, it has also been provided that the TPO shall determine the ALP at least two months before the expiry of statutory time limit for making the assessment. In appeal under consideration, due date for completion of assessment under third proviso of section 153(1) of the Act was 31/03/2014 and the time limit for passing an order u/s. 92CA(3A) of the Act is two months prior to the date of limitation. The TPO passed the order on 30/01/2014 which is two months prior to 31/03/2014, therefore, the order passed by TPO is within the period of limitation. The ld. Departmental Representative further referred to the Central Action Plan for Financial Year 2014-15 and 2015-16, wherein the period prescribed to frame transfer pricing audit is 31/01/2015 and 31/01/2016, respectively, and the limitation for order u/s.143(3) r.w.s. 153 of the Act is 31/03/2015 and 31/03/2016, respectively. The same principle would apply to A.Y. 2010-11. The ld. Departmental Representative submits that in line with the Boards Central Action Plan the TPO has passed the order within the period of limitation. The ld. Departmental Representative placed reliance on the decision of Delhi Bench of Tribunal in the case of M/s. Louis Dreyfus Commodities India Ltd. vs. DCIT in ITA No.2381/Del/2014 for Assessment Year 2009-10 decided on 11/03/2021.

9. Shri Mistry, Sr. Advocate rebutting the submissions made on behalf of the Revenue asserted that Hon'ble Madras High Court in the case of Pfizer Healthcare India (P) Ltd. vs. JCIT (supra) has considered Central Action Plan issued by CBDT. The ld. Counsel for the assessee further asserts that in the case of Louis Dreyfus Commodities India Ltd.(supra) the Bench has not considered the provisions of section 144C of the Act, hence, the aforesaid decision is distinguishable.

10. We have heard the submissions made by rival sides on the limited issue of validity of order passed by TPO u/s. 92CA(3) of the Act and the subsequent proceedings arising there from. The ld.Counsel for the assessee has restricted his submissions to the legal grounds raised in additional grounds of appeal No.48 & 49.

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11. The assessee has questioned the validity of order passed u/s.92CA(3) of the Act alleging the same to be barred by limitation. Before proceeding further to adjudicate this issue it would be imperative to have a glance on the relevant dates.

Date	Events
30/01/2014	TPO passed order u/s. 92CA of the Act
28/03/2014	A.O Passed draft assessment order
19/12/2014	Directions of the DRP u/s.144C(15) of the Act
29/01/2015	Final assessment order.

The contention of the assessee is that the order passed u/s.92CA(3) of the Act is time barred by one day. The period of limitation for passing the order u/s. 92CA(3) of the Act is computed by the assessee as under:-

<u>Events</u>	<u>Relevant Dates</u>
Assessment Year ('AY')	2010-11
End of Assessment Year	31-03-2011
Due date for completion of assessment under Third Proviso to section 153(1) of the Act (i.e. 3 years from the end of AY)	31-03-2014
Time limit for passing the order under section 92CA(3A) of the Act	60 days
Less: Date on which limitation expires under section 153 of the Act i.e. 31-03-2014	1 day
Less: Remaining days of March 2014	30 days
Less: Number of days February 2014	28 days
Less: Number of days January 2014	2 days
Last date for passing the order under section 92CA(3) of the Act	29-01-2014
Date of passing the transfer-pricing order ('TP order') under section 92CA(3) of the Act	30-01-2014

12. The relevant extract of the provisions of section 92CA(3A) and section 153(1) of the Act and the third proviso as was applicable to the impugned assessment year are reproduced herein below:

**Section 92CA (3A)**

“(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:”

**Section 153(1)**

“ Time limit for completion of assessment and reassessments- (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

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*(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 1<sup>st</sup> 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 xxxxxxxxxxxx*  
*Provided further xxxxxxxxxxxx*

*Provided also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1<sup>st</sup> 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"*

*A conjoint reading of the relevant provisions of section 92CA(3A) and 153(1) of the Act would show that the TPO is required to pass order u/s. 92CA(3) of the Act at any time before sixty days prior to the date on which the period of limitation referred to in section 153 of the Act for making assessment order expires.*

*13. The Hon'ble Madras High Court in the case of Pfizer Healthcare India (P) Ltd. vs. JCIT (supra) has explained as to how period of limitation for making the order u/s. 92CA(3) of the Act has to be worked out. The relevant extract of the same is reproduced herein below:*

*"30. Now, coming to the question of how the 60 day period is to be computed, the critical question would be whether the period of 60 days would be computed including the 31<sup>st</sup> of December or excluding it. Section 153 states that no order of assessment shall be made at any time after the expiry of 21 months from the end of the assessment year in which the income was first assessable. The submission of the revenue is to the effect that limitation expires only on 12 am of 1-1-2020. However, this would mean that an order of assessment can be passed at 12 am on 1-1-2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31-12-2019. The period of 21 months therefore, expires on 31-12-2019 that must stand excluded since section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to section 153 expires'. Excluding 31-12-2019, the period of 60 days would expire on 1-11-2019 and the transfer pricing orders thus ought to have been passed on 31-10-2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31-10-2019. The impugned orders are thus, held to be barred by limitation".*

*14. The aforesaid decision of Single Judge was assailed by the Department in writ appeal before the Division Bench. The Division Bench of the Hon'ble Madras High Court in the case of DCIT vs. Saint Gobain India (P) Ltd. (supra) upheld the decision of Single Judge and observed as under:-*

**28.** *The word "date" in section 92CA(3A) would indicate 31-12-2019. 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 taxmann.com 1803, 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 sententia legis 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 1 : 4 MIA 179] "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 1747] , *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] , *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 : JT (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 1-11-2019 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 31-12-2019 must be excluded. After excluding 31-12-2019, if the period of 60 days is calculated, the 60th day would fall on 1-11-2019 and the TPO must have passed the order on or before 31-10-2019 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.*

*Mandatory or Directory*

**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 (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. 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 proviso 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. Nos.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 the interpretation of statutes, Principles of Statutory Interpretation (1st 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 7-9-2020, 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.”*

*The period of limitation for passing the assessment order in the instant case expires on 31/03/2014. The time limit for passing the order u/s. 92CA(3A) is sixty days prior to the date on which the limitation referred in section 153 of the Act expires. Thus, the limitation in the present case for passing the order u/s. 92CA(3) of the Act expires on 29/01/2014. The TPO passed the order u/s. 92CA(3) of the Act on 30/01/2014. Ergo, the order u/s. 92CA(3) of the Act is surely time barred by one day.*

15. *The Ld. Departmental Representative has referred to Finance Act 2007 – Explanatory Notes on provisions relating to Direct Taxes issued vide Circular No.3/2008 dated 12/03/2008. A perusal of clause 43 of said circular would show that the expression used to depict time limit is “months”. Whereas in the Act, the Legislature has specified the period of limitation in “days”. The expression two months used in clause 43(2) in the aforesaid circular to specify the period of limitation may not necessarily be equal to sixty days as specified in the Act. The words/expressions used in statute cannot be substituted in Explanatory notes or Board Circulars. If the limitation period is mentioned in days in the Act, the same expression has to be used in Circulars. Otherwise it will lead to confusion and ambiguity. “Two months” as mentioned in Circular can be more or even less than sixty days. Therefore, expression issued to evaluate limitation period as specified in the Act has to be strictly followed.*

16. *The ld.Counsel for the assessee has further pointed that reference to DRP can only be made by “eligible assessee”. The expression “eligible assessee” has been defined in sub-section (15) to section 144C of the Act . The definition of eligible assessee is reproduced herein below:*

*“(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) (ii) any non-resident not being a company, or any foreign company”*

*A perusal of the above definition would show that eligible assessee mean any person in whose case variation arises as a consequence of the order of the TPO passed u/s. 92CA(3) of the Act. The order has to be a valid order. In the instant case since, the order of TPO was beyond the period of limitation it is not a valid order. Therefore, there is no “eligible assessee” in terms of the definition provided in sub-section (15) to section 144C of the Act . If there is no eligible assessee, no*

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*reference to DRP could have been made. Once the substratum for making the assessment under transfer pricing mechanism erodes the subsequent proceedings emanating from flawed foundation is without jurisdiction.*

*17. In the light of facts of the case and decisions referred above, we find merit in the additional grounds of appeal No.48 & 49. The assessee succeeds on the aforesaid legal grounds.*

*18. No arguments were made by ld. Counsel for the assessee in respect of original grounds of appeal / other additional grounds of appeal at this stage. Hence, they are left open for adjudication, if the need arises.*

*19. In the result, appeal by the assessee is allowed."*

4.8. Similar view has been rendered in the recent decision of this Tribunal in the case of Atos India Pvt. Ltd. vs. DCIT in ITA No.1795/Mum/2017 dated 23/02/2023 independently without considering the aforesaid decision of the Tribunal. The relevant operative portion of the said decision is reproduced hereunder:-

*"30. Now another issue which crops up, is, whether, once the TPO order is held to be nullity or quashed on the ground of being barred by limitation, then could AO have passed the draft order treating it to be as 'eligible assessee'. Section 144C was brought on the statute as special scheme of assessment and to provide alternative dispute resolution scheme to certain categories of 'eligible assessee'. Section 144C provides that the AO has to pass and forward a draft assessment order in the case of 'eligible assessee' if he proposes to make any variation which is prejudicial to the interest of such assessee, Sub-section 15 has defined 'eligible assessee' for the purpose of section 144C. The relevant provisions of section 144C(1) and sub section 15 reads as under:-*

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

- .
- .
- .
- (15) *For the purposes of this section,—*
- (a) *"Dispute Resolution Panel" means...*
- (b) *"eligible assessee" means,—*

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- (i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and
- (ii) any non-resident not being a company, or any foreign company."

31. The aforesaid section envisages that, AO in the first instance has to forward a draft of the proposed order of assessment to the "**eligible assessee**", if he proposes to make any variation which is prejudicial to the interest of such assessee. The draft assessment order is to be forwarded to an "eligible assessee", which means that, for this section to apply a person has to be an "eligible assessee" Here, the draft assessment order is to be forwarded **only to an "eligible assessee" and not to every assessee under the Act.**

32. Thus, under the aforesaid provision, the expression "eligible assessee" is followed by an expression "**means**" and there are two categories referred therein (i) any person in whose case the variation arises as a consequence of TPO's order and (ii) any NR or Foreign company. The use of the word "means" indicates that the definition "eligible assessee" for the purposes of Section 144C(15)(b) is a hard and fast definition and can only be applicable in the above two categories. Ostensibly, the expression 'eligible assessee' has a restrictive meaning as it covers only the two types of persons mentioned above.

33. Further, considering the express language employed in defining the term 'eligible assessee' under section 144C(15)(b) and section 144C(1) in forwarding a draft assessment order to such an 'eligible assessee' only, is plain, clean and unambiguous; the said statute must be interpreted strictly without there being any role of 'equity or intendment' in such interpretation.

34. In the present case, the assessee is an Indian company and, thus, a resident in India under section 6 of the Act. Thus, the second condition under section 144C(15)(b)(ii) of the Act for qualifying as an 'eligible assessee' is not applicable. As regards the first condition under section 144C(15)(b)(i) of the Act, the same applies where there is a transfer pricing variation arising as a consequence of the order of the Ld. TPO under section 92CA(3) of the Act. In the instant case, it will be apparent that there is no transfer pricing variation arising as a consequence of the order of the Ld. TPO once the said transfer pricing order is held to be time-barred, non-est and void-ab-initio from the very date of its existence and inception. The entire premise to adopt the special procedure under section 144C of the Act and treat the appellant an 'eligible assessee' rests on the fact that the order passed under section 92CA(3) of the Act has resulted in transfer pricing variations prejudicial to the interest of the appellant. However, once the transfer pricing order under section 92CA(3) of the Act, per-se, becomes a nullity, there remains no transfer pricing variation arising/ resulting or remaining as a consequence thereto. The effect of passing a null and void transfer pricing order here is that it has to be considered as non-est, meaning thereby, that it entails all the consequences of not having been passed at all and is ignored for all practical purposes. Thus, in absence of any transfer pricing order being passed at all and any variations arising there from, the entailing consequence in instant case is that the

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*appellant cannot be said to be an 'eligible assessee' under section 144C(15)(b)(ii) of the Act.*

*35. Accordingly, once the assessee becomes an 'ineligible assessee', the very foundation for proceeding to pass the draft assessment order does not survive, meaning thereby, that the draft assessment order passed in the instant case becomes legally invalid and hence, all consequential proceedings on the basis of the said order fail. In the instant case, a reference was made by the Ld. AO to the Ld. TPO as per the provisions of section 92CA(1) of the Act and accordingly the timelines prescribed u/s 153 of the Act remain extended by a year in view of the 3<sup>rd</sup> proviso of section 153 of the Act. Accordingly, the time limit to complete assessment proceedings u/s 143(3) of the Act in the instant case expired on **31 March 2016**. As on the date of passing **draft assessment order** u/s 144C(1) of the Act i.e. on **29 March 2016**, the Ld. AO had already received the order passed by the Ld. TPO dated **31 January 2016**, which as discussed above, is time barred, illegal and void ab initio, thereby making the Appellant **not an eligible assessee** u/s 144C(15) of the Act. In view of the same, the Ld. AO was ostensibly required to pass the final assessment order u/s 143(3) of the Act on that day. Having said that, the draft assessment order passed by the Ld. AO under the provisions of law is also illegal and void ab initio which deserves to be quashed.*

*36. It is a well-settled proposition now that a draft order passed in case of an 'ineligible assessee' vitiates the entire exercise of assessment and all subsequent proceedings are liable to be quashed has been held in the following cases:*

- (i) **Honda Cars India Ltd. v. Dy. CIT [2016] 67 taxmann.com 29/240 Taxman 707/382 ITR 88 (Delhi);***
- (ii) **Pankaj Extrusion Ltd. v. Asstt. CIT [2011] 10 taxmann.com 17/198 Taxman 6 (Guj.)***
- (iii) **FedEx Express Transportation and Supply Chain Services (India) (P.) Ltd. v. DCIT [2019] 108 taxmann.com 542 (Mumbai - Trib.)***

*In case of FedEx Express, the relevant portion of which has been reproduced in the foregoing paras, wherein the Tribunal has expressed the provision and finally deleted the corporate grounds also. We accordingly follow the same reasoning here in this case also.*

*37. Similarly, in a reverse case scenario, i.e., where a draft assessment order was required to be passed on an 'eligible assessee' as per section 144C(1) of the Act but the same was not so passed, in the following decisions as well, the entire assessment proceedings have been held to be invalid and liable to be quashed:*

- (i) **Vijay Television (P.) Ltd. v. DRP [2014] 46 taxmann.com 100/225 Taxman 35/369 ITR 113 (Madras)** affirmed by the Division Bench of the Hon'ble Madras HC in [2018] 95 taxmann.com 101 (Madras);*
- (ii) **International Air Transport Association v. Dy. CIT [2016] 68 taxmann.com 246 (Bombay);***
- (iii) **Zuari Cements Ltd. v. ACIT [Writ Petition No. 5557 of 2012, dated 21-2-2013] (Andhra Pradesh)- Revenue's SLP dismissed by the***

*Hon'ble Apex Court in CC No. 16694/2013 on 27th September 2013*

38. What culminates from the aforesaid two sets of parallel decisions is that the provisions of section 144C of the Act are specific and provides for a special code which must be strictly followed since it impacts the rights of an assessee substantively, i.e., the ability to accept or object a draft order proposition, file objections before the Dispute Resolution Panel and ensure a speedy disposal thereof. Any lapse in treating an assessee as ‘eligible assessee’ where it is otherwise not one and vice-versa results in fatality, since it becomes a jurisdictional defect and goes on to the roots in deciding the validity of the entire assessment proceedings against the revenue. In this context, on the issue of passing a correct assessment order in first instance (either a draft or a final one), the findings of the **Hon'ble Madras High Court** in case of **ACIT v. Vijay Television (P.) Ltd [2018] 95 taxmann.com 101 (Madras)** are extremely critical which reads as follows:

*“47. The necessity for the Parliament to incorporate Section 144-C is not only to safeguard the Revenue, but also the assessee and **any mistake committed by any one of them, the said party is supposed to face the consequences and cannot put the hands of the clock back and start afresh.**”*

39. Further, in case of **Zuari Cements Ltd. v. ACIT [Writ Petition No. 5557 of 2012, dated 21-2-2013] (Andhra Pradesh)**, the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of the Act would **result in rendering the final assessment order “without jurisdiction, null and void and unenforceable.”** In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was **affirmed by the Supreme Court** by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013.

40. The various judgments which have been cited before us that 144C(1) will not apply and there is no variation in the return of income which cannot be disputed. Thus in our view, Ld. AO to acquire a legal and valid jurisdiction for the purpose of forwarding a draft assessment order at the first instance under section 144C(1) of the Act, it is necessary that the **assessee must be an ‘eligible assessee’** within the restrictive and strict four corners of how the said expression has been defined under section 144C(15)(b) of the Act. Here, once it is held that there is no legal or valid transfer pricing order under section 92CA(3) of the Act, there remains no variation arising as a consequence thereto and the case of the assessee, being an Indian company, falls outside the definition of ‘eligible assessee’ as defined under section 144C(15)(b) of the Act. Thus, the Ld. AO cannot be said to acquire a ‘legal or a valid’ jurisdiction under section 144C(1) r.w.s. 144C(15)(b) of the Act to pass or forward a draft assessment order to the appellant who is otherwise an ‘ineligible assessee’. The action of the Ld. AO in passing the impugned draft assessment order in instant case results in non-compliance of section 144C of the Act which vitiates the entire assessment exercise.

41. The issue being fairly settled and the intent of legislature in strictly interpreting the provision of section 144C of the Act being repeatedly held so, the act of the Ld.

*AO in proceeding to pass a draft assessment order on the basis of an order by the Ld. TPO which is barred by limitation and thus bad in law/ non-est, results in an incurable illegality which is liable to be held as null and void, and thus, consequentially holding the final assessment order to be bad in law as well.*

*42. Thus, despite the fact that the reference made to the Ld. TPO is valid, in absence of a legally valid transfer pricing order and a valid draft assessment order, the Ld. AO cannot assume jurisdiction to proceed with the assessment under Section 144C of the Act and pass the consequential final assessment order. The decisions of the Hon'ble jurisdictional High Court in case of International Air Transport Association (supra) and Dimension Data Asia Pacific PTE Ltd. (supra) forties appellant's contentions and the irresistible conclusion that the draft assessment order imbibes a jurisdictional power in terms of Sec. 144C(1) of the Act and creates/ envisages special rights upon the 'eligible assessee'. If such an order is passed on an assessee who is not an 'eligible assessee' as defined in section 144C(15)(b)(i) of the Act, then it would render the entire proceedings pursuant to such order null and void.*

*43. We find that section 153(1) of the Act, as it stood applicable for the AY 2012-13, provided a time limit of 3 years from the end of AY 2012-13 for completion of assessment under section 143(3) of the Act, i.e., on or before **31 March 2016**.*

*44. In such a case if the Ld. AO invokes the provisions of section 144C of the Act and passes the final assessment order after **31 January 2016** i.e. beyond the period of limitation as stated above, such final assessment order u/s 143(3) r.w.s 144C of the Act is liable to be quashed as being barred by limitation.*

*45. In a recent decision of the **Hon'ble Madras High Court** in case of **Virtusa Consulting Services Put. Ltd [TS-474-HC-2022(MAD)] dated 9 June 2022**, it has been held in context of period of limitation under section 153 of the Act as under:*

*"17. Further, it is to be noted that the different timelines to be adhered by the TPO, Assessing Officer to pass a draft order, assessee to file their objections, DRP to issue directions and the assessing officer to pass final order, would commence only on a reference to the TPO and not otherwise. At **this juncture, it is not to be forgotten that the period of 33 months is to pass the final order of assessment after the directions from the DRP**. In this case, we find from the undisputed dates and events that not only was the reference to the TPO made after the period of expiry of the period of limitation to pass assessment orders, but also that **the assessing officer has failed to pass final assessment orders in time**. The time to pass the original assessment would end on 31.12.2008 being 21 months from the end of the assessment year 2006-07 i.e., 31.03.2007. Then the last date for the assessing officer to pass the final assessment order would end on 31.12.2009, even considering the extension by twelve months. In the present case, the order of the DRP itself is only 24.09.2010 much beyond the permissible period."*

*46. Thus taking into the provisions of law and the judgment referred to above, we hold that the final assessment order passed on 31 January 2017 is beyond the*

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*prescribed period of limitation under section 153 of the Act expiring on 31 March 2016, thus, barred by limitation and is hereby quashed.*

*47.In the result, the appeal filed by the assessee stands **allowed on the additional grounds.** “*

4.9. In view of the above observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the order of the Id. TPO dated 01/11/2019 and draft assessment order dated 27/12/2019 as barred by limitation, thereby resulting in assessee not being an eligible assessee u/s.144C(15)(b)(i) of the Act and consequentially the final assessment order dated 17/04/2021 is also bad in law. Accordingly, the ground No.2 of original grounds and additional grounds raised by the assessee are hereby allowed.

5. Since the entire assessment proceedings are quashed as *void ab initio*, the other grounds raised by the assessee on merits of the additions need not be gone into and they are left open.

**6. In the result, appeal of the assessee is allowed.**

Order pronounced on 24/03/2023 by way of proper mentioning in the notice board.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 24/03/2023  
 KARUNA, sr.ps

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*(Formerly known as "Inellenet Global Services Pvt. Ltd. ")*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai