

**IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI**  
**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.5328/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2009-10)

ACIT, CC-3(2), Central Range-3, Mumbai Room No. 1913, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.	<b>बनाम/</b> Vs.	M/s. World Sports (India) Pvt. Ltd. 602, Sapphire, Plot No. 82, S. V. Road, Khar West, Mumbai-400052.
---	---------------------	--

Cross Objection No. 266/Mum/2019  
Arising out of I.T.A. No.5328/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. World Sports (India) Pvt. Ltd. 602, Sapphire, Plot No. 82, S. V. Road, Khar West, Mumbai-400052.	<b>बनाम/</b> Vs.	ACIT, CC-3(2), Central Range-3, Mumbai Room No. 1913, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW6355R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Madhur Agrawal & Shri Mathrudev Vasudevan
Revenue by:	Shri Karan P. Unavekar (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 21/02/2023  
घोषणा की तारीख /Date of Pronouncement: 09/05/2023

**आदेश / ORDER**

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

The captioned appeal has been filed by the revenue and the cross objection (CO) by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-58, Mumbai [in short 'Ld. CIT(A)'] dated 26.05.2017 for AY 2009-10.

2. At the outset, the Ld. AR drew our attention to the additional ground raised by the assessee wherein it has raised the legal issue challenging the Transfer Pricing Officer's (TPO) order as well as



*ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.*

Assessing Officer's (AO) order as bad in law, being barred by limitation. The additional grounds raised in this regard are reproduced as under:-

“1. The Transfer Pricing Officer [ACIT-TP-II(6)] erred in passing the Transfer pricing Order under section 92CA(3) dated 30.01.2014, beyond the time limit prescribed under section 92CA(3A). The Appellants submit that the Transfer Pricing Order is barred by limitations and, therefore, void ab initio. The Appellant pray that the same be quashed.

2. The Assessing Officer erred in passing the final order dated 27.05.2014, beyond the period of limitation prescribed under section 153 of the Act. The Appellants submit that the Assessment Order is barred by limitations and, therefore, void ab initio. The Appellant pray that the same be quashed.

In the Additional Ground No.2, due to typographical error instead of 153B only 153 have been mentioned.”

**3.** Even though, the Ld. CIT-DR objected to the admission of the afore-stated additional grounds, the same are admitted being purely legal issues; and for doing that, we rely on the decision of the Hon'ble Supreme Court in the case of NTPC Vs. CIT (229 ITR 383) (SC).

**4.** Relevant facts pertaining to the legal issue are that the assessee had filed original return of income u/s 139(1) of the Income Tax Act, 1961 (hereinafter “the Act”) on 30.09.2009 declaring total income at Nil. Thereafter, search u/s 132 of the Act was carried out at assessee's premises by the Investigation wing on 21.04.2010. Consequently, notice u/s 153A of the Act dated 21.02.2011 was issued by the AO followed by statutory notices u/s 143(2) of the Act on 05.04.2011 & on



ITA Nos. 53284478/Mum/2017  
 C.O. 266/Mum/2019  
 A.Y. 2009-10  
 World Sports (India) Pvt. Ltd.

26.09.2011; and notice u/s 142(1) of the Act was issued on 30.01.2012, 25.10.2012 & 13.01.2014 were also issued. The AO also made reference to Transfer Pricing Officer (TPO) on 27.06.2012, and pursuant thereto, the TPO passed the order u/s 92CA(3) of the Act on 30.01.2014. Thereafter, the AO passed a draft order u/s 144C(1) of the Act on 25.03.2014; and the final assessment order u/s 143(3) r.w.s. 144C & 153A of the Act on 27.05.2014. According to assessee, passing of TPO order on 30.01.2014 and the final assessment order by AO dated 27.05.2014 is bad in law, since both orders were passed beyond the period of limitation prescribed by the Statute.

5. For buttressing the legal issue, the Ld. AR pointed out that time limit prescribed u/s 153 of the Act for passing the assessment order u/s 143(3) r.w.s. 153A of the Act by AO was 31<sup>st</sup> March 2014; and, accordingly, the time limit for passing the order by TPO u/s 92CA(3A) of the Act was 29.01.2014 i.e. before *sixty* (60) days **prior** to the date on which the period of limitation referred to u/s 153B of the Act **expires**. And to drive this point, he drew our attention to Section 153B of the Act (relevant extract) is reproduced as under: -

“Time-limit for completion of assessment u/s 153A.

153B (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or re-assessment –

- (a) in respect of each assessment year falling within six assessment years referred to in clause (b) of [sub-section (1) of] section 153A, within a period of two years from the end of financial year in which the last



*ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.*

of the authorizations for search under section 132 or for requisition u/s 132A was executed.

- (b) in respect of the assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A, within a period of two years from the end of the financial year in which the last of the authorizations for search u/s 132 or for requisition u/s 132A was executed;

.....

Provided also that in case where the last of the authorization for search u/s 132 or for requisition u/s 132A was executed during the financial year commencing on the 1<sup>st</sup> day of April, 2009 or any subsequent financial year and during the course of the proceeding for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of clause (a) or clause (b) of this sub-section shall notwithstanding anything contained in clause (i) of the second proviso, have effect as if for the words “two years”. The words “three years” had been substituted.”

- 6.** Thereafter, the Ld. AR drew our attention to section 92CA(3A) of the Act which prescribes the time limit (the relevant provision) are reproduced below:

Reference to Transfer Pricing Officer.

92CA.(1).....

(2).....

(3A) where a reference was made under sub-section (1) before the 1<sup>st</sup> 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-



ITA Nos. 53284478/Mum/2017  
 C.O. 266/Mum/2019  
 A.Y. 2009-10  
 World Sports (India) Pvt. Ltd.

section (1) is made on or after the 1<sup>st</sup> 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.....”

7. Thereafter, the Ld. AR drew our attention to the chart which gives the relevant date of events to decide the legal issue which is raised in the present appeal before us:

<b>Calculation of due date for passing transfer pricing order u/s 92CA(3)</b>		
Asst. Order due date as per section 153 of the Act for AY. 2009-10.	31.03.2014	
Transfer Pricing Order due date: (At least sixty days before the period of limitation referred to in section 153 of the Act)	No. of Days in March 2014	30
	No. of Days in Feb 2014	28
	No. of Days in Jan 2014	2
	Total no. of days	60
Deadline for passing TP Order for AY. 2009-10	29 <sup>th</sup> January 2014	
Date of TP order passed for AY. 2009-10	30 <sup>th</sup> January 2014	
Delay	1 Day Delay in passing TP Order	

8. Explaining the date of events (supra), the Ld. AR, pointed out that time limit prescribed u/s 153B of the Act for passing the assessment order by AO u/s 143(3) r.w.s. 153A of the Act was 31<sup>st</sup> March 2014; and, accordingly, the time limit for passing the order by TPO u/s 92CA(3A) of the Act was 29.01.2014 i.e. before **sixty** (60) days **prior** to the date on which the period of limitation referred to u/s 153B of the Act **expires**. Accordingly, the TPO ought to have passed TP order u/s 92CA by 29<sup>th</sup> January, 2014. And since he has passed the



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

order on 30<sup>th</sup> January, 2014, the TP order is barred by limitation and for such a proposition, the Ld AR of the assessee relied on the following judicial precedents:

Decision in the case of	Hon'ble High Court/Tribunal	Citation
Pfizer Healthcare	Madras HC	320 CTR 812
Saint Gobian (I) P Ltd	Madras HC	328 CTR 387
Mondeleze India	Mumbai ITAT	1492/Mum/2015 (Unrep)
Emerson Electric	Mumbai ITAT	141 Taxmann.com 186
Accenture Solution	Mumbai ITAT	141 Taxmann.com 426
Louis Dreyfus	Mumbai ITAT	138 Taxmann.com 556
Sigma Aldrich	Bangalore ITAT	141 Taxmann.com 431
Tata Power Solar	Bangalore ITAT	140 Taxmann.com 272

**9.** The Ld. AR on the strength of the aforesaid judicial precedents submitted that the legal issue raised by assessee is no larger *re-integra*; and the Hon'ble Madras High Court and this Tribunal have been held that the TP order which is not passed with the time limit prescribed under the Act is bad in law and liable to be quashed; and in view of the above factual and legal position, it was urged that the order passed by TPO u/s 92CA of the Act be quashed being barred by limitation.

**10.** And regarding Additional Ground No. 2, the Ld. AR submitted that the AO passed the draft assessment order u/s 144C(1) of the Act on 25.03.2014, and thereafter passed the final order on 27.05.2014, which was bad in law being barred by limitation. According to Ld. AR, as per section 144C(1) of the Act, the draft assessment order need to be passed only if the assessee is an '*Eligible Assessee*' and drew our attention to section 144C(1) of the Act (relevant provision) are extracted as under: -



*ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.*

“(1) The AO 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 the proposes to make, on or after the 1<sup>st</sup> day of Oct, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.”

**11.** The term “Eligible assessee” is defined u/s 144C(15) of the Act which is reproduced as under: -

(b) “eligible assessee” means –

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any foreign company.”

**12.** Explaining how the assessee is not as “Eligible assessee,” the Ld. AR pointed out that the assessee company is not a ‘foreign company’; and so, sub clause (ii) is not applicable (supra) and therefore it needs to be seen whether assessee falls in sub clause (i). And as seen above, the same is not attracted because, the TP order is barred by limitation and being non-est in the eyes of law, the assessee cannot be termed as Eligible Assessee as per section 144C(15) of the Act (supra); and therefore in this case, the AO could not have framed draft assessment order u/s 144C(1) of the Act and ought to have passed the assessment order by 31.03.2014. However, in the present



*ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.*

case, the AO framed the [final] assessment order on 27.05.2014 which is beyond the limitation period and so, bad in law. And for such a proposition, the Ld AR relies on the recent decision of this Tribunal in the case of M/s. Mondeleze India Food Pvt. Ltd. (1492/Mum/2015) (un-rep) dated 14<sup>th</sup> Nov, 2022 wherein the Tribunal made the following observation at para 16-17 of the order: -

“16. The Id. 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) 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 reference to DRP could have been made. Once the substratum for making the assessment under transfer pricing mechanism erodes the



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

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.”

**13.** Therefore, the Ld AR urged us to allow the legal issue and quash the TPO/AO order. Per Contra, the Ld DR supports the action of TPO and AO and submitted that the department has already preferred appeal against the Hon’ble Madras High Court in Hon’ble Supreme Court and is awaiting its outcome. Till that time, the Ld DR doesn’t want us to interfere with the impugned action of TPO/AO.

14. Having heard both the parties and after perusal of the records and case-laws cited before us, we find that the legal issue raised before us are, no longer res-integra. For adjudicating the legal issue it would be gainful to look at the relevant provisions of section 92CA(3A) and section 153B of the Act and the third proviso as is applicable to the impugned assessment year which 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)**



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

*“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*

*(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”*

**14.** 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.

**15.** The Hon'ble Madras High Court in the case of M/s 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:



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

*“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 31st 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”.*

**16.** The aforesaid decision of the Hon’ble Single Judge was assailed by the Department in writ appeal before the Division Bench; and the Division Bench of the Hon'ble Madras High Court in the case of DCIT vs. Saint Gobain India (P) Ltd. (supra) has upheld the decision of the Hon’ble 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*



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

*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*



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

*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*



ITA Nos. 53284478/Mum/2017  
 C.O. 266/Mum/2019  
 A.Y. 2009-10  
 World Sports (India) Pvt. Ltd.

*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*



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

*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.*



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

*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*



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

*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*



ITA Nos. 53284478/Mum/2017  
 C.O. 266/Mum/2019  
 A.Y. 2009-10  
 World Sports (India) Pvt. Ltd.

*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.”*

**18.** Applying the ratio/decision (supra), 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 to in section 153B of the Act expires. Thus, the limitation in the present case for passing the TP order u/s. 92CA(3) of the Act expires on 29/01/2014. And since the TPO has passed the order u/s. 92CA(3) of the Act on 30/01/2014, consequently, the order passed by T.P.O. u/s. 92CA(3) of the Act is time barred by one day and we hold it to be bad in law and so is non-est in eyes of law.

**19.** Coming to the 2<sup>nd</sup> legal issue i.e, the assessment order (final) framed by AO on 27.05.2014 as barred by limitation, the Ld. DR has referred to Finance Act 2007 – Explanatory Notes on provisions relating to Direct Taxes issued vide Circular No.3/2008 dated 12/03/2008, to support the action of AO. However, on a perusal of clause 43 of said circular reveals 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



ITA Nos. 53284478/Mum/2017  
 C.O. 266/Mum/2019  
 A.Y. 2009-10  
 World Sports (India) Pvt. Ltd.

specified in the Act. It is trite that 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 necessarily used in Circulars. Since delegated power of Board, cannot over-ride the Act passed by the Parliament/Legislature. Therefore, “*Two months*” as mentioned in Circular can be more or even less than sixty days. Therefore, expression stipulated in Act to calculate limitation period has to be scrupulously adhered to.

**20.** Assailing the action of AO in this case to frame draft assessment order, when the TPO order was bad in law, the Ld. AR pointed out that assessee is not qualifying as *eligible assessee* as per the definition given in sub-section (15) to section 144C of the Act. For convenience 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”

**21.** It is admitted position that assessee would not fall in sub clause (ii) supra. So, we need to examine whether assessee falls in sub clause (i). A perusal of sub-clause (i) of the definition would show that “*eligible assessee*” means any person in whose case variation arises as a consequence of the order of the TPO passed u/s. 92CA(3) of the Act. However, in the instant case since we have already found that the order



ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.

of TPO was passed beyond the period of limitation, it is not a valid order/non-est order. Therefore, assessee is not an “eligible assessee” in terms of the definition provided as per sub-section (15) to section 144C of the Act. When assessee is not an *eligible assessee*, AO need not frame draft assessment order and instead, ought to have framed the assessment order on or before 31.03.2014. However, the AO framed the assessment (final) order on 27.05.2014, which is after the limitation date i.e, 31.03.2014, which is bad in law and we hold accordingly.

**22.** In the light of facts of the case as discussed, and case-laws referred above, we find merit in the additional legal grounds raised by assessee in its CO and is allowed. Consequently, the department appeal is academic and so is dismissed.

**23.** No arguments were made by Ld. AR for the assessee or by Ld DR in respect of original grounds of appeal/other additional grounds of CO/appeal, hence, they are left open for adjudication, if the occasion arises.

**24.** In the result, CO of the assessee is allowed and departments appeal stands dismissed.

Order pronounced in the open court on this 09/05/2023.

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

Mumbai; Dated 09/05/2023.  
Vijay Pal Singh, (Sr. PS)



*ITA Nos. 53284478/Mum/2017  
C.O. 266/Mum/2019  
A.Y. 2009-10  
World Sports (India) Pvt. Ltd.*

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

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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