

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND

MS KAVITHA RAJAGOPAL, JM

**ITA No. 1740/MUM/2021**

(Assessment Year 2016-17)

**ITA No. 2779/MUM/2016**

(Assessment Year 2011-12)

**CO No. 33/MUM/2017**

**Arising Out of ITA No. 3015/MUM/2016**

(Assessment Year 2011-12)

Johnson & Johnson Private

Ltd

501, Arena Space, Behind

Majas Bus Depot, Off. J.V.

Link Road, Jogeshwari (East),

Mumbai-400 060

**(Appellant)**

DCIT/ACIT/JT/ITO/NFAC

Delhi

Vs.

**(Respondent)**

**PAN No. AAACJ0866E**

**ITA No. 3015/MUM/2016**

(Assessment Year 2011-12)

DCIT/ACIT/JT/ITO/NFAC

Delhi

Vs.

Johnson & Johnson Private  
Ltd

501, Arena Space, Behind

Majas Bus Depot, Off. J.V.

Link Road, Jogeshwari (East),

Mumbai-400 060

**(Appellant)**

**(Respondent)**

**Assessee by**

: Shri M.P. Lohia, AR

**Revenue by**

: Ms. Vranda U. Matkari, DR

**Date of hearing:** 28.04.2023

**Date of pronouncement :** 13.06.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. These are the four appeals of the same assessee involving common issues for A.Y. 2011-12 and A.Y. 2016-17, assessee has raised common grounds that assessment orders passed are barred by limitation and therefore, these are disposed of by this common order. There are three appeals for A.Y. 2011-12 and one appeal for A.Y. 2016-17.
02. We first take the appeal for A.Y. 2011-12. ITA No.3015/Mum/2016 is filed by the learned Asst. Commissioner of Income Tax (LTU)-1, Mumbai (the learned Assessing Officer) against the direction of the Dispute Resolution Panel -1, Mumbai (learned DRP) dated 30<sup>th</sup> December, 2015 and Cross Objection No.33/Mum/2017 is filed by assessee. ITA No.2779/Mum/2016 is filed by the assessee against the assessment order passed under Section 143(3) read with section 144C (13) of the Income-tax Act, 1961 (the Act), on 26<sup>th</sup> February, 2016.
03. The brief facts of the case shows that Assessee Company is subsidiary of M/s Johnson & Johnson, USA, engaged in the business of manufacturing and marketing of various consumer care, healthcare and diagnostic products. It has five different divisions in India.
04. Assessee filed its return of income on 3<sup>0th</sup> November, 2011, declaring total income of ₹100,83,58,812/- under the normal computation provision and computed the book profit under Section 115JB of the Act at ₹221,99,47,090/-. The return of income was picked up for scrutiny. As

assessee has entered into several international transactions, the learned Assessing Officer referred them to the learned Jt. Commissioner of Income Tax, Transfer Pricing officer, 2(2), Mumbai (the learned TPO) for determination of Arm's Length Price. The learned Transfer Pricing Officer passed order under Section 92CA (3) of the Act on 3<sup>0th</sup> January, 2015, proposing an adjustment of ₹320,13,82,586/-. The learned Assessing Officer incorporating the above adjustment of transfer pricing and also making several other additions, passed the draft assessment order on 2<sup>3rd</sup> March, 2015, determining the total income of the assessee as per normal computation of ₹636,23,59,083/-. The assessee preferred the objections before the learned Dispute Resolution Panel-1, Mumbai. The learned Dispute Resolution Panel issued directions under Section 144C (5) of the Act, on 3<sup>0th</sup> December, 2015. Based on these directions, the assessment order under Section 143(3) read with section 144C(13) of the Act was passed on 2<sup>6th</sup> February, 2016, determining the total income of the assessee at ₹353,09,30,700/-. The transfer pricing adjustment was restricted at ₹89,91,09,379/-.

05. Therefore, the assessee is aggrieved by the various additions/ adjustments contained in the assessment order and is in appeal before us in ITA No.2779/Mum/2016. The learned Assessing Officer is aggrieved by the directions of learned Dispute Resolution Panel and therefore, is in appeal in ITA No.3015/Mum/2016. The cross objection

filed by the assessee in CO No. 33/Mum/2017 against ITA No.3015/Mum/2016, is merely supportive in nature.

06. At the time of hearing assessee preferred an additional ground of appeal as per ground no.40 to 42 as under:-

*"On the facts and in the circumstances of the case, the Appellant wishes to raise the following additional grounds of appeal which is independent of the other grounds of appeal:*

*Time limit for passing order under Section 92CA of the Income-tax Act, 1961 (the Act)*

*40. On the facts and circumstances of the case and in law, the Learned Transfer Pricing Officer erred in passing transfer pricing assessment order under Section 93CA (3) of the Act on 30 January 2015, which was barred by limitation, thereby rendering the transfer pricing order as null and void as per the provisions of Section 92CA (3A) read with Section 153 of the Act.*

*Validity of proceedings under Section 143(3) read with Section 144C of the Act*

*41. On the facts and circumstances of the case and in law, the Learned Assessing Officer has erred in issuing the draft assessment order dated 23 March 2015 as per provisions of Section 144C of the Act, without appreciating the fact that the transfer pricing order being passed on 30 January 2015 is barred by limitation resulting in no transfer pricing adjustments and therefore the condition required to be met for*

*Indian companies to be an "eligible assessee" under the provisions of Section 144C of the Act is not met and hence, the order passed under Section 143(3) read with Section 144C(13) is also barred by limitation and ought to be quashed.*

*Final assessment order barred by limitation*

*42. On the facts and circumstances of the case and in law, the learned AO erred in not appreciating that the time limit prescribed under section 153 is the outer time limit for passing the final assessment order and hence, the final assessment order dated 26 February 2016 is time barred and liable to be quashed.*

*The Appellant craves leave to add, alter, modify or delete or modify the above grounds of appeal"*

07. The additional grounds were filed by letter dated 29<sup>th</sup> September, 2022, stating that all the above additional grounds are jurisdictional in nature, those are available to the assessee based on the judicial precedents later on. It does not require any further investigation of facts and therefore, those should be admitted.
08. The learned Authorized Representative reiterated the application for admission of additional grounds relying on the decision of the Hon'ble Supreme Court in case of National Thermal Company Limited Vs. CIT 229 ITR 383 and Jute Corporation of India Ltd. in 187 ITR 688. Further, decision of the Hon'ble Bombay High Court in case of Ahmedabad Electricity Co. Ltd in 199 ITR 351.



09. The learned Departmental Representative vehemently objected the same, stating that these additional grounds were never raised before the learned Assessing Officer and therefore, should not be admitted.
010. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also carefully perused the application for admission of the additional ground. The assessee has challenged the validity of transfer pricing order stating that the orders are passed under Section 92CA (3) of the Act, late by 1 day and therefore, is not passed within the due time. It is also the claim of the assessee that as the order of the Transfer Pricing Officer is invalid, the assessee cannot be said to be an 'eligible assessee' in terms of explanation to section 144C of the Act and hence, the final assessment order passed on 26 February 2016 is barred by limitation. All these above facts are available on record. Merely, the dates of passing of the order are required to be considered. Therefore, no fresh facts are required to be investigated. Assessee has challenged that the order is barred by limitation, it goes to the root of the jurisdiction which can be raised at any time during the pendency of appeal. The issue of admission of additional ground of appeal has been dealt with by Hon'ble Supreme Court in the decisions cited in the application. In view of this, we admit the additional grounds no. 40 to 42.



011. As these additional grounds admitted, goes to the root of the matter, we first proceed to adjudicate and decide the same.
012. The learned Authorized Representative submitted that in the present case, in A.Y. 2011-12, the learned Transfer Pricing Officer has passed the Transfer Pricing order under Section 92CA(3) of the Act on 30<sup>th</sup> January, 2015. This order is required to be passed on or before 29 January 2015, as per the provision of Section 92CA (3) of the Act read with section 153 of the Act. According to that, the 60 day period expires on 29<sup>th</sup> January, 2015. The order of the learned Transfer Pricing Officer is passed on 30 January, 2015; this order is time barred and requires to be quashed for this proposition. He relied upon the decision of the Hon'ble Madras High Court in case of Saint Gobain India Pvt. Ltd. (2022) 444 ITR 636 (Mad) (HC). He further submitted that as the order of the learned Transfer Pricing Officer barred by limitation, according to provision of Section 144C (15)(b) of the Act, assessee ceases to be an 'eligible assessee' for the purpose of Section 144C of the Act and therefore, the time limit available for making an assessment in the case of the assessee expires on 31<sup>st</sup> March, 2015. However, the final assessment order is passed on 26<sup>th</sup> February, 2016. Therefore, the final assessment order passed is also barred by limitation. Therefore, the assessment order passed by the learned Assessing Officer is also required to be quashed. For this proposition, he relied heavily on the decision of the co-ordinate Bench in ITA No.1795/Mum/2017 for A.Y. 2012-

13 dated 23<sup>rd</sup> February, 2023 in case of ATOS India Private Limited Vs. DCIT 14(1)(1), Mumbai. In view of this, it was submitted that the whole assessment order passed by the learned Assessing Officer deserves to be quashed. He further submitted that if the above view is accepted then other grounds of appeal in case of assessee, grounds of appeal in the cross objection and grounds of appeal in the appeal of the learned Assessing Officer becomes merely academic.

013. The learned Departmental Representative vehemently opposed the argument of the assessee and relied upon the decision of Louis Dreyfus Commodities India (P.) Ltd. (2022) 138 taxmann.com 556, wherein it has been held that even if the learned TPO's order is held to be bad in law, the draft assessment order and subsequent final assessment order cannot be said to be invalid order.

014. The learned Authorized Representative submitted that the decision cited by the learned Departmental Representative does not apply with respect to the final assessment order passed by the learned Assessing Officer as that was not the case before the co-ordinate Bench. He further submitted that in Mondelez India Foods P. Ltd in ITA No.1492/Mum/2015 dated 14 November, 2022 has considered the above case. He further submitted that before the co-ordinate Bench in Louis Dreyfus Commodities India (P.) Ltd. (supra), there were no occasions to consider the definition of 'eligible assessee' and consequent validity of entire assessment proceedings.

Therefore, it does not apply to the facts of the case. It was further stated that co-ordinate Bench recently in case of ATOS India Private Limited (supra) after considering the whole jurisdictional precedents available has decided in favour of the assessee. The learned Authorized Representative further referred to the decision of the co-ordinate Bench in ITA No.1180/Mum/2021 dated 24<sup>th</sup> March, 2023, in case of Teleperformance Global Services P. Ltd. referred to paragraph no.4.6 and 4.8, submitted that the issue is squarely covered in favour of the assessee.

015. We have carefully considered the rival contentions and perused the orders of the lower authorities. The impugned assessment year before us is, A.Y. 2011-12.
016. Provisions of section 153 prescribes time limit for passing assessment order. It provides that no order of assessment shall be made under [section 143](#) or [section 144](#) at any time after the expiry of two years from the end of the assessment year in which the income was first assessable. By virtue of the first proviso, this time limit was curtailed to 21 Months. Therefore for AY 2011-12, the time limit for passing assessment order u/s 143 (3) would be 31/12/2013. By virtue of second proviso if a reference u/s 92CA is made then this time limit is further extended to 33 months from the end of the Assessment year. Thus for A Y 2011-12, it would be 33 months from 31/12/2013 i.e. 31/3/2015. The Id TPO as per provisions of section 92CA (3A) of the Act is bound to

pass the T P Order 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. Therefore, 60 days period from 31/3/2015 expires on 29 January 2015. But the Id TPO has passed TP Assessment order u/s 92CA (3) of the Act on 30th January 2015. Thus, the order of Id TPO is passed beyond statutory time available.

017. Hon'ble Madras HC in case of Saint Gobain India Pvt. Ltd. 444 ITR 636 [2022] 137 taxmann.com 215 (Madras) where in it has been held :-

**"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."*

018. Therefore, the order of the learned Transfer Pricing Officer is passed beyond this statutory time limit available and therefore, the order of the learned Transfer Pricing Officer is quashed
019. Now the issue is that when the transfer pricing order passed by the learned Transfer Pricing Officer is held to be invalid, therefore, there cannot be any variation as a consequent to the order of Transfer Pricing Officer. Therefore, the assessee ceases to be an 'eligible assessee' within the meaning of section 144C (15) (b) of the Act. The moment an assessee ceases to be an 'eligible assessee' in absence of valid transfer pricing order, the Id AO should not have passed the draft assessment order. Thus provision of section 144C does not apply to the assessee. Thus, the time limit for completion of the assessment reverts back to 21 Months from the end of the assessment year. Therefore, as held by the co-ordinate Bench in ATOS India Private Limited (supra), the final assessment order passed by the learned Assessing Officer on 26<sup>th</sup> February, 2016 is also barred by limitation. Therefore, following the decision of the co-ordinate Bench, we quash the assessment order passed for A.Y. 2011-12 by the learned Assessing Officer on 26<sup>th</sup> February, 2016 as it is barred by limitation.
020. Additional ground no.40 and 41 filed by the assessee are allowed.
021. In view of our decision above, all the grounds of appeal filed by the assessee and the learned Assessing Officer in

memorandum of appeal and cross objections are not required to be adjudicated.

022. In the result, appeal of the assessee is allowed.
023. Consequently, the appeal of the learned Assessing Officer and cross objections of the assessee, are dismissed.
024. Now we come to appeal of Assessee for Ay 2016-17. ITA No. 1740/Mum/2021 is filed by the assessee challenging the issues in the assessment order for Ay 2016-17 passed by the National e-assessment centre, Delhi under Section 143(3) read with section 144C(13) read with section 144B of the Act dated 9<sup>th</sup> May, 2021, wherein the return of income filed by the assessee on 30<sup>th</sup> November, 2016, declaring total income of ₹874,84,28,690/- under the normal provisions of book profit under Section 115JB of the Act at ₹926,13,23,136/-, was assessed at ₹1,844,84,71,403/- as per normal contribution of income and book profit was computed at ₹928,68,24,196/-.
025. The assessee has raised the ground of appeal no. 3 and additional ground no 95 on the identical facts and circumstances except the changes in relevant dates challenging the assessment order stating that it is barred by limitation. Ground no.3 is raised in the original memorandum of appeal stating that the order of the learned Transfer Pricing Officer is barred by limitation and therefore, all transfer pricing additions/ adjustments are invalid.



026. Ground no.95 is raised by application of additional grounds of appeal challenging that as the transfer pricing order is barred by limitation, the assessee ceases to be 'eligible assessee' and therefore, the final assessment order passed by the learned Assessing Officer on 9<sup>th</sup> May, 2021 is also barred by limitation.
027. After hearing the parties, as there is no change in facts and circumstances of case compared to AY 2011-12, we admit the additional ground raised by the assessee for the reasons given by us, admitting additional grounds of the assessee for A.Y. 2011-12.
028. The arguments of the assessee and the Revenue against the additional ground admitted as well as on the validity of the order of the learned Transfer Pricing Officer and Assessing Officer are also similar as made for Ay 2011-12.
029. On careful consideration of the arguments of both the parties, we find that in this case the
- i. Return of income was filed on 30 November, 2016 for A.Y. 2016-17.
  - ii. The time limit of 21 months is available from the end of the assessment year on 31 March, 2017 for completing the assessment.
  - iii. Therefore, in normal circumstances, the assessment order should have been passed on 31 December 2018.



- iv. As the reference was made to the learned Transfer Pricing Officer, a further period of 12 months is available for completion of the assessment. Therefore, the time limit for passing final assessment order is available up to 31 December 2019.
- v. The order of the learned Transfer Pricing Officer was passed on 1st November, 2019, the draft assessment order was passed on 26<sup>th</sup> December, 2019 and final assessment order was passed on 9<sup>th</sup> May, 2021.
- vi. As the time limit available for passing an assessment order is till 31-12-2019. But in case of an order to be passed under section 92CA of the Act, the time limit is 60 days prior to the due date for completion of assessment under section 92CA(3A) of the Act and such an order ought to have been passed in this case by the first appellant on or before 31-10-2019. Such order is passed on 1st November 2019. However, such an order was passed only on 1-11-2019 and therefore, the order dated 1-11-2019 passed by the first appellant is beyond the time limit stipulated under section 92CA(3A) read with section 153(1) of the Act.
- vii. Thus, the order of Id TPO is barred by limitation.

030. Case before honourable High court in case of saint Gobain is also for AY 2016-17.



031. As the order of Id TPO is barred by limitation, assessee ceases to be an 'eligible assessee'. Therefore, extended time limit for assessment is also not available to Id AO. Therefore, the impugned assessment order passed on 9/5/2021 is also barred by limitation. Our views are also supported by the decision of coordinate bench in Atos (supra) as discussed in our order for AY 2011-12.

032. Hence, we quash the assessment order allowing ground no 3 and additional ground no 95. Other grounds of appeal are not required to be decided.

033. In the order, Appeal of assessee is allowed.

Order pronounced in the open court 13.06.2023.

Sd/-  
(KAVITHA RAJAGOPAL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated 13.06.2023

*Sudip Sarkar, Sr.PS & Dragon*

Copy of the Order forwarded to:

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

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai