

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1259/Mum/2015  
(Assessment Year :2010-11)**

M/s. Frost & Sullivan (India) Private Limited 4 <sup>th</sup> Floor, Tower VI, Solitaire Corporate Park Opp. Sahar Cargo Complex, Chakala Andheri (E) Mumbai - 400 093	Vs.	Dy. Commissioner of Income Tax, Circle - 9(3)(2) Mumbai
<b>PAN/GIR No.AAACF4252A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.1148/Mum/2015  
(Assessment Year :2010-11)**

Dy. Commissioner of Income Tax, Circle - 9(3)(2) Mumbai	Vs.	M/s. Frost & Sullivan (India) Private Limited 4 <sup>th</sup> Floor, Tower VI, Solitaire Corporate Park Opp. Sahar Cargo Complex, Chakala Andheri (E) Mumbai - 400 093
<b>PAN/GIR No.AAACF4252A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Madhur Agrawal
Revenue by	Shri Rajneesh Yadav
<b>Date of Hearing</b>	<b>11/07/2023</b>
<b>Date of Pronouncement</b>	<b>18/07/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid cross appeals have been filed by the assessee as well as by the Revenue against final assessment order dated 30/12/2014 passed u/s.143(3) r.w.s. 144C(13) in pursuance of directions given by the ld. DRP dated 14/11/2014 for the A.Y.2010-11.

2. Apart from various grounds taken on transfer pricing adjustment of Rs.2,18,55,896/-, the assessee has also raised additional ground that time limit for passing the assessment order u/s.153 is barred by limitation on the ground that ld. TPO's order itself is barred by limitation. The said additional ground reads as under:-

*“1 On the facts and circumstances of the Appellant's case and in law the impugned transfer pricing order dated 30 01 2014 passed by the Ld TPO under provisions of section 92CA (3) of the Income Tax Act. 1961(ITA) is barred by law of limitation in light of provisions of section 92CA(3A) rws 153 of the ITA and is, therefore, bad in law and illegal*

3. Before us ld. Counsel has given the following chronology of events, date of orders passed by the lower authorities as well as the statutory dates for passing the order u/s. 92CA(3A) r.w.s. 153.

Sr. No.	Particulars of orders/documents	Date of orders/documents
1	Date of filing of Return of Income by the appellant for the AY 2010-11	14-10-2010
2	Date of reference u/s 92CA(1) of the Income Tax Act, 1961("TTA") made by the Ld. Assessing Officer ('Ld. AO') to the Ld. Transfer pricing officer (Ld. TPO')	08-11-2012
3	Date of order u/s 92CA(3) of the ITA passed by Ld. TPO	30-01-2014
4	Date of draft assessment order passed by Ld. AO u/s 143(3) r.w.s. 144C(1) of the ITA	05-03-2014
5	Date of direction u/s 144C(5) of the ITA, issued by Ld. Dispute Resolution Panel - III, Mumbai	14-11-2014
6	Date of receipt of DRP direction by Ld. AO	28-11-2014
7	Date of final assessment order passed by the Ld. AO u/s 143(3) r.w.s. 144C(13)of the ITA	30-12-2014

The statutory due dates for passing the orders u/s 92 CA(3A) and u/s 153 of the ITA as applicable for AY 2010-11 are tabulated below:

Sr. No.	Particulars	Statutory due date	Remarks
1.	Time limit u/s 153 of the ITA to pass the final	36 months from the	

	assessment order (please refer to section 153 of the ITA as in force in the year in which the final assessment order was passed by the Ld. AO)	end of the AY in which the Income was first assessable.	
2.	Therefore, statutory due date as per section 153 of the ITA to pass final assessment order	31-03-2014	i.e., FY 2011-12: 12 months+ FY 2012-13: 12 months+ FY 2013-14: 12 months
3.	Date of final assessment order	30-12-2014	Therefore, the final assessment order u/s 143(3) r.w.s. 144C(13)of the ITA is passed beyond the statutory due date.
4.	Time limit to pass the Transfer pricing order u/s 92CA (please refer to Section 92CA(3A)) as in force in year in which the Transfer pricing order was passed by Ld. TPO	60 days prior to the date on which the period of limitation u/s 153 expires	
5.	Statutory due date to pass Transfer pricing order u/s 92CA(3A)	29-01-2014	i.e., 30 days of March (the day of limitation is excluded) + 28 days of February + 2 days of January
6.	Date of order of Ld. TPO u/s 92CA(3)	30-01-2014	

4. Thus, it has been stated that impugned transfer pricing order dated 30-01-2014 passed by the ld. TPO under provision of section 92CA(3) of the ITA is barred by law of limitation in light of provision of section 92CA(3A) r.w.s. section 153 of the ITA and is, therefore, bad in law and illegal. Consequently, the entire transfer pricing adjustment arising out of -ach order is bad in law and needs to be quashed.

5. In support the assessee has filed and relied upon following judgments:-

Sr. No.	Name of caselaw	ITA/Citation
1	Pfizer Healthcare India (P) Ltd. vs. Joint ' Commissioner of Income Tax. Chennai	[2021]124 taxmann.com 536 (Madras)
2	M/s. Mondelez India Foods Private Limited vs. Addl. Commissioner of Income Tax	ITA NO.1492 /MUM/ 2015
3	Deputy Commissioner of Income-tax v. Saint Gobain India (P.) Ltd	[2022] 137 taxmann.com 215 (Madras)
4	M/s Tubacex Prakash India Private Limited vs. The Additional /Joint /Deputy /Assistant/Income Tax Officer- National eAssessment Centre, Delhi And Deputy Commissioner of Income Tax	ITA No.979/Mum/2021

5.	Atos India Pvt. Ltd., vs. DCIT-14(1)(1)	ITA No.1795/Mum/2017
6.	M/s. Teleperformance Services Private Limited (Formerly known as "Inellenet Global Services Pvt. Ltd) 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	ITA No.1180/Mum/2021

7. From the perusal of the material placed on record and various dates of orders passing, it is seen that order u/s. 92CA(3) has been passed by the ld. TPO on 30/01/2014 which in view of Section 92CA(3), the time limit to pass the order was 29/01/2014 which is evident from the aforesaid chronology of events. Thus, the ld. TPO's order was passed by limitation by one day and in such scenario once the ld. TPO's order is barred by limitation, then ld. AO was required to pass final order on or before 31/03/2014 which here in this case it was passed on 31/12/2014.

8 In support of the said ground, Ld. Counsel has relied heavily upon the judgment of Hon'ble Madras High Court in the case of **M/s. Pfizer Healthcare India Pvt. Ltd. vs. JCIT (2021) 433 ITR 28** and the decision of the Co-ordinate Bench of Mumbai Tribunal in the case of **Atos India Pvt. Ltd., in ITA No.1795/Mum/2017**. The ld. Counsel submitted that the order

of TPO is time barred in terms of section 92CA(3) of the Act read with Section 153) and consequently, the passing of draft assessment order and the entire proceedings initiated u/s 144C is bad in law, because in absence of valid TPO order, the assessee ceases to be an eligible assessee and therefore the provisions of section 144C are not applicable to the assessee. Therefore, the ld. AO was required to complete the assessment within the due date as prescribed u/s 153 of the Act. Since the Final assessment order has been passed beyond the time limit as prescribed u/s 153, the final assessment order is barred by limitation and deserves to be quashed.

16. We have heard rival submissions on the aforesaid legal issues as raised in additional ground and also gone through the chronology of events and the judgment relied upon by the assessee. The period of limitation for making the assessment order as per Section 153(3) was 31/03/2014, i.e., 24 months from the end of the assessment year. The extension of period of limitation made u/s.92CA (3) and also as per proviso to Section 153(1) was upto 31/03/2015 i.e. after a period of 12 months. The proceedings for the assessment have been completed before 31/03/2015 and prior to the date of which limitation expires as per Section 92CA(3A) was 29/01/2015 as the date prior to the date of which limitation expires is 30/03/2015 and 60 days expires on 31/02/2015. Accordingly, in view of the Section 92CA(3), ld. TPO's order which has been passed u/s.92CA(3) on

29/12/2015 wherein in this case it has been passed on 30/01/2015.

17. Sub-section 3A of section 92CA provides a time limit for passing of the order by the TPO u/s 92CA (3) in the following manner:-

*"(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:**"*

18. Ergo, the TPO can pass an order u/s 92CA of the Act at any time before 60 days prior to the date on which period of limitation referred to u/s 153 expires. Thus 60 days have to be counted prior to the date of last date of limitation u/s 153.

19. Section 153 of the Act as applicable for the AY 2012-13 reads as under:-

**'153. (i) 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 1st 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 also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st 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."**

20. The interpretation of Section 92CA (3) r.w.s. 153 has been dealt by the Hon'ble Madras High Court in the case of **Pfizer Healthcare India Pvt. Ltd.** wherein the Hon'ble High Court had made the following observations:-

*" 22. From Section 153, the regular time for passing the assessment order ends on 31.12.2018 and with extension on the matter being referred to TPO, the time limit to pass assessment order would lapse on 31.12.2019. What is not to be forgotten, while interpreting a taxing statute, is the explicit and clear language used by the parliament while enacting the law. If the language employed in any statute is clear and unambiguous from its plain and natural meaning, external aid for interpretation are unnecessary. In the present case, we are called upon to adjudicate the period of limitation applicable to TPO under Section 92CA(3A) and incidentally under Section 153.*

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

27. The word “to” is used as a preposition or as an adverb. In popular sense, it is used to express the direction in which a person, thing, or time travels. The flow of direction is to be gauged from the preceding word or words used, like “prior to” or “upto”. Keeping the same in mind, if we look at the wording of Section 92CA (3A), we cannot accept the contention of the Revenue that the time to be reckoned is from 31.12.2019 and not 30.12.2019 as has been rightly done by the learned Judge.

28. The word “date” in section 92CA(3A) would indicate 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) 4 SCC 297 : 2002 SCC OnLine SC 413], wherein, it was held as follows:

*“10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or 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 01.11.2019 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.

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 07.09.2020, the order of the TPO or the failure to pass an order before 60 days will have an impact in the order to be passed by the Assessing Officer, for which an outer time limit has been prescribed under Sections 144C and 153 and is hence mandatory. What is also not to be forgotten, considering the scheme of the Act, the inter-relatability and inter-dependency of the provisions to conclude the assessment, is the consequence or the effect that follows, if an order is not passed in time. When an order is passed in time, the procedures under 144C and 92CA(4) are to be followed. When the determination is not in time, it cannot be relied upon by the assessing officer while concluding the assessment proceedings.

39. Upon consideration of the judgments and the scheme of the Act, we are of the opinion that the word “may” used therein has to be construed as “shall” and the time period fixed therein has to be scrupulously followed. The word “may” is used there to imply that an order can be passed any day before 60 days and it is not that the order must be made on the day before the 60th day. The impact of the proviso to the sub-section clarifies the mandatory nature of the time schedule. The word “may” cannot be interpreted to say that the legislature never wanted the authority to pass an order within 60 days and it gave a discretion. Therefore, the learned Judge rightly held the orders impugned in the writ petitions as barred by limitation, as the Board, in the Central Action Plan, has specified 31.10.2019 as the date on which orders are to be passed by the TPO, reiterating the time limit to be mandatory.

22. Thus, following the principle of ratio laid down by the Hon'ble Madras High Court, the time limit for passing the ld. TPO order in the case of the assessee was 29/01/2014 as noted above which is not in dispute. **Since the ld. TPO order has been passed on 30/01/2014 which is clearly barred by limitation by one day by virtue of time limit provided u/s.92CA (3) and consequently, the same has to be treated as bad in law and the same is hereby quashed. Thus, in such a situation, if there is no TPO order, consequently the entire transfer pricing adjustment proposed by the ld. TPO in international transaction becomes non-est and to be quashed and being barred by limitation.**

23. Accordingly, following the aforesaid decisions, we quashed the final assessment order being barred by period of limitation u/s.92CA (3). Once we have quashed the assessment order then, all the grounds raised by the Revenue becomes infructuous.

24. Another ground which has been raised is disallowance of interest of late payment of service tax of Rs.10,844/- u/s.37(1). Though this ground will become infructuous because once the assessment order itself has been quashed on the ground of limitation, then Section does not survive but in any case the interest of late payment of service tax is not penal in nature and same is compensatory. Now this issue is very well settled by the judgment of Hon'ble Supreme Court in the case of Mahalaxmi Sugar Mills vs. CIT 123 ITR 429 and also by certain judgments of

this Tribunal. Thus, on merits also, the disallowance is uncalled for.

25 In the result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced on 18<sup>th</sup> July, 2023.

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 18/ 07/2023  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**

		Date	Initial	
1.	Draft dictated on	17/07/2023		Sr.PS
2.	Draft placed before author	18/07/2023		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/P S
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		