

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 162/Ahd/2021

(निर्धारण वर्ष / Assessment Years : 2016-17)

<b>Zyduş Lifesciences Ltd. (Formerly Known as Cadila Healthcare Ltd.), 4<sup>th</sup> Floor, D wing, Zyduş Corporate Park, Scheme No.63, Survey No. 536, Khoraj (Gandhinagar), Nr. Vaishnodevi Circle, S.G. Highway, Ahmedabad</b>	<b>बनाम/ Vs.</b>	<b>(i) The Additional /Joint/Deputy/ Assistant Commissioner of Income Tax, National e-Assessment Centre, Delhi  (ii) DCIT, Circle – 1(1)(1), Ahmedabad.</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.:AAACC 6253 G</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

<b>□ पीलार्थी ओर से /Appellant by</b>	<b>:</b>	<b>Shri Mukesh Patel &amp; Shri Jigar Patel, A.Rs.</b>
<b>प्रत्यर्थी की ओर से/Respondent by</b>	<b>:</b>	<b>Ms. Saumya Pandey Jain, Sr.D.R.</b>

<b>Date of Hearing</b>	<b>12/03/2024</b>
<b>Date of Pronouncement</b>	<b>30/05/2024</b>

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the assessee is directed against the order dated 30.04.2021 passed by the Additional / Joint / Deputy / Assistant Commissioner of Income Tax, National e-

Assessment Centre, Delhi under Section 143(3) read with Section 144C(13) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2016-17.

2. The maintainability of the very proceeding is under challenge before us to this effect that the Transfer Pricing Officer / Dispute Resolution Panel ('DRP') has erred in exceeding the jurisdiction by passing the transfer pricing order under Section 92CA(3) of the Act beyond the mandatory prescribed time limit as per Section 92CA(3A) r.w.s. 153(4) of the Act, thereby making the transfer pricing order barred by limitation and invalid in law. In short, the order passed by the Ld. TPO under Section 92CA(3) of the Act is barred by limitation and thus bad in law, without jurisdiction and therefore, liable to be quashed. Consequently, the entire transfer pricing adjustment proposed by the Learned TPO in individual transaction becomes non-est and to be quashed. Further that, as TPO's order is non-est in the eyes of law, then the assessee could no longer be treated as eligible assessee and the draft assessment order also could not have been passed and finally the Assessment Officer as not provided with the extended period of limitation for passing assessment order under Section 153 of the Act the assessment order dated 30.09.2021 is beyond prescribed period of limitation under Section 153 of the Act and thus liable to be quashed.

3. The brief facts leading to the case is this that the assessee, one of the leading pharmaceutical companies in India, engaged in

manufacturing pharmaceutical products, such as, cardiovascular, gastrointestinal, pain management, biological, anti-infective, diagnostics, female healthcare, respiratory and other therapeutic drugs filed its return of income on 30.11.2016 declaring income at Rs.9,41,44,39,440/-. The return was duly processed under Section 143(1) of the Act. Upon selection for scrutiny under CASS, as there was international transaction as well as specified domestic transactions covered under Section 92B and 92BA of the Act respectively, the case was referred to the TPO, Ahmedabad by and under letter dated 13.02.2018 for determination of Arm's Length Price in terms of the CBDT Instruction No. 03/2016 dated 10.03.2016 upon getting due approval from the Competent Authority by the then AO. Notice thereafter on 22<sup>nd</sup> July, 2017 under Section 143(2) of the Act, was issued and served upon the assessee.

4. Specific questionnaires were also issued from time-to-time and duly served upon the assessee alongwith notice under Section 142(1) of the Act, the details whereupon were duly filed by the assessee through electronic media on e-proceeding. The assessee had shown total turnover of Rs.65,54,16,69,939/-, on which, net profit before tax has been declared at Rs.24,33,45,21,094/-. The assessee has shown income from house property, capital gain and other sources. During the course of assessment proceeding, it was noticed that the assessee had entered into international transaction as well specified domestic transaction. Further that, it was noticed that transfer pricing adjustment of Rs.39,94,66,330/- in assessee's

own case was made in A.Y.2013-14 and the said adjustment was made above Rs.10 Crores, the appeal whereof was pending. In that view of the matter, a reference under Section 92CA of the Act was made to the TPO upon prior approval of Pr.CIT-1, Ahmedabad for determination of Arm's Length Price of international transaction and of specified transactions in the light of Clause (b) of para 3.3 of the CBDT Instruction No. 3/2016.

5. Thereafter, the Addl.CIT, TPO, Ahmedabad by and under the order dated 01.11.2019 issued under Section 92CA(3) of the Act passed the order; worked out upward adjustment of Rs.89,20,39,641/- including the following adjustment which was duly served upon the assessee.

<i>Corporate Guarantee adjustment</i>	<i>Rs.17,29,73,532/-,</i>
<i>Interest on Convertible loans</i>	<i>Rs.8,78,43,328/-</i>
<i>Reimbursement of expenses</i>	<i>Rs.10,63,95,565/-</i>
<i>International transactions of sale with Zydus USA</i>	<i>Rs.49,62,01,570/-</i>
<i>Benchmarking of margins</i>	<i>Rs. 60,08,488/-</i>
<i>purchase of fixed assets</i>	<i>Rs.7,64,781/-</i>
<i>Segmental profitability of AE</i>	<i>Rs.1,67,22,377/-</i>
<i>Sale of shares of Z AHL</i>	<i>Rs.51, 30,000/-</i>

6. The same was added to the total income of the assessee.

7. The draft order under Section 144C of the Act was passed in this case by the ACIT, Circle-1(1)(2) on 12.12.2019. The Ld. AO proposed the following addition:

A. Income from House Property

[as per Return of Income] Rs. 10,34,525/-

B. Business Income

[as per Return of income] Rs. 14,81,24,50,439/-

Add: Additions / disallowances as discussed above

1. Transfer pricing Rs. 89,20,39,641  
(as per Para No. 3.1)
2. Product Registration Expenses (-) Rs. 20,08,34,851  
depreciation on the above  
(as per Para No. 4.7)
3. Trade Mark Registration fee & Patent Fee Rs. 14,14,36,698  
(as per Para No. 5.6)
4. Research & Development Rs. 109,74,61,000  
(as per Para No. 6.7)
5. Disallowance u/s. 14A Rs. 8,05,91,640 Rs. 2,41,23,63,830/-  
of the Act  
(as per Para No. 8.5)

Assessed Business Income Rs.17,22,48,14,269/-

C. Capital Gain –

[as per Return of income] Rs. 11,37,32,825/-

D. Income from other sources

[as per Return of income] Rs. 80,07,21,966/-

**Assessed Income Rs.18,14,03,03,585/-**

Brought forward losses of Rs. 2,41,44,65,028, Rs. NIL  
for A.Y. 2013-14 Adjusted fully by the Dept.  
while passing order for A.Y. 2015-16

Gross Total Income **Rs.18,14,03,03,585/-**

Chapter VI-A	<b>Rs. 2,39,90,500/-</b>
Total Income	<b>Rs.18,11,63,13,085 /-</b>
Rounded off	<b>Rs. 18,11,63,13,090/-</b>
U/s. 288A	

**MAT Calculation u/s. 115JB:**

	Book profit as per Return of Income	Rs.	2003,62,62,535
Add:	Disallowance u/s 14A –as discussed above	Rs.	8,07,84,146
	<b>Book Profit u/s. 115JB</b>	<b>Rs.</b>	<b>2011,70,46,681</b>
	<b>Tax @ 18.5%</b>	<b>Rs.</b>	<b>372,16,53,636</b>

8. The assessee filed its objection before the Hon'ble DRP-2, Mumbai against the said draft order issued under Section 144C of the Act dated 12.12.2019. The Hon'ble Dispute Resolution Panel-2, Mumbai passed order under Section 144C(5) of the Act dated 19.03.2021 issuing certain directions to the Ld. AO on very many issues. Subject to the same, the total income of the assessee has been computed as follows:

19. Subject to the above discussion, the total income of the assessee is computed as under:-

A. Income from House Property

[as per Return of Income] Rs. 10,34,525/-

**B. Business Income**

[as per Return of income] Rs.14,81,24,50,439/-

**Add: Additions / disallowances as discussed above**

- |   |                    |
|---|--------------------|
| 1. Transfer pricing adjustment on account of corporate guarantee<br><b>(as per Para No. 11)</b>                   | Rs. 10,29,60,436/- |
| 2. TP adjustments on account of interest convertible loans<br><b>(as per Para No. 12)</b>                         | Rs. 8,78,43,328/-  |
| 3. TP adjustments on account of reimbursement of expenses<br><b>( as per Para No. 13)</b>                         | Rs 10,63,95,565/-  |
| 4. TP adjustments on account of international transactions of sale with Zydus USA<br><b>( as per para no. 14)</b> | Rs. 49,62,01,570/- |
| 5. TP adjustments on account of benchmarking of margins <b>( as per Para No. 15)</b>                              | Rs. 60,08,488/-    |
| 6. TP adjustments on account of purchase of fixed assets<br><b>( as per Para no. 16)</b>                          | Rs. 7,64,781/      |
| 7. TP adjustments on account of segmental profitability of AE<br><b>( as per para no. 17)</b>                     | Rs. 1,67,22,377/   |
| 8. TP adjustments on account of sale of shares of ZAHL <b>(as per para no. 18)</b>                                | Rs. 51,30,000/-    |

9. Product Registration Expenses (-) depreciation on the above <b>(as per Para No.7)</b>	Rs. 20,08,34,851
10. Trade Mark Registration fee & Patent Fee <b>(as per Para No. 8)</b>	Rs. 14,14,36,698
11. Research & Development <b>(as per Para No. 9)</b>	Rs. 109,74,61,000
12. Disallowance u/s. 14A of the Act <b>(as per Para No. 10)</b>	Rs. 8,05,91,640/- Rs. 234,23,50,734/-

**Assessed Business Income Rs. 17,15,48,01,173/-**

C. Capital Gain –  
[as per Return of income] Rs. 11,37,32,825/-

D. Income from other sources  
[as per Return of income] Rs. 80,07,21,966/-

**Assessed Income Rs. 18,07,02,90,489/-**

Brought forward losses of Rs. 2,41,44,65,028/-  
for A.Y. 2013-14 Adjusted fully by the Dept.  
while passing order for A.Y. 2015-16 **Rs. Nil**

Gross Total Income **Rs. 18,07,02,90,489/-**

Chapter VI-A **Rs. 2,39,90,500/-**

Total Income **Rs. 18,04,62,99,989 /-**  
Rounded off **Rs. 18,04,62,99,990 /-**  
U/s. 288A

**MAT Calculation u/s. 115JB:**

	Book profit as per Return of Income	Rs.	2003,62,62,535
<b>Add:</b>	Disallowance u/s 14A – as discussed	Rs.	8,07,84,146
	<b>Book Profit u/s. 115JB</b>	<b>Rs.</b>	<b>2011,70,46,681</b>
	<b>Tax @ 18.5%</b>	<b>Rs.</b>	<b>372,16,53,636</b>

9. Ultimately, the assessment order was passed determining the total income of the assessee at Rs.18,04,62,99,990/- under Section 143C(B) r.w.s. 144C(5) of the Act under the normal provision of the IT Act and book profit at Rs.20,11,70,46,681/- under Section 115JB of the Act. Interest is charged under Section 234B, 234C & 234D of the Act as applicable after giving credit for taxes paid by the assessee. Relevant to mention that before the DPO, Panel-2, Mumbai, the assessee on 12.02.2021 by way of additional ground challenged the validity of the TPO's order being barred by limitation. The case of the assessee before the Hon'ble DRP is this that the TPO's order dated 1<sup>st</sup> November, 2019 is beyond the time limit prescribed under Section 92CA(3A) r.w.s. 153(4) of the Act. In this particular case, the time limit for completion of assessment, as reference is made to the TPO is 12 months in addition to the time limit prescribed under Section 153(4) of the

Act i.e. on 31.12.2019 and the time limit for passing the TP order is before 60 days prior to the date for completion of assessment order i.e. on 31<sup>st</sup> October, 2019. The transfer pricing order has been claimed to be invalid as the same was passed on 1<sup>st</sup> November 2019 after the prescribed date on 31<sup>st</sup> October, 2019.

10. At the time of hearing of the instant appeal, the Ld. Counsel appearing for the assessee submitted before us that the issue is squarely covered in the case of the assessee in the matter of Zydus Wellness Products Limited vs. DCIT, Mumbai, in ITA No.1488/Mum/2021 for A.Y. 2016-17 by the Mumbai Bench. We further relied upon many other judgments passed by the Coordinate Bench and the jurisdictional High Court too. On the other hand the Learned DR though vehemently argued in support of the order passed by the authorities below, has not been able to rely upon any judgment in support of the case of the Revenue claiming the TPO's order is valid.

11. We have heard the rival submissions made by the respected parties and also perused the relevant materials available on record including the order passed by the authorities below.

12. The transfer pricing order dated 1<sup>st</sup> November, 2019 passed by the TPO is beyond the time limit prescribed under Section 92CA(3A) r.w.s. 153(4) of the Act i.e. 31<sup>st</sup> October, 2019 in view of the following facts as tabulated hereunder :

<b>Event</b>	<b>Particulars</b>	<b>Date</b>
<i>End of the Assessment Year for AY 2016-17</i>		<i>31 March 2017</i>
<i>Time limit for completion of assessment where no reference is made to a TPO</i>	<i>21 months from end of the AY - Section 153(1) of the Act</i>	<i>31 December 2018</i>
<i>Time limit for completion of assessment in case reference is made to TPO</i>	<i>12 months in addition to the time limit prescribed under Section 153(1) - Section 153(4) of the Act</i>	<i>31 December 2019</i>
<i>Time limit for issuance of TP order under Sect/o 92CA(3A) of the Act</i>	<i>Any time before 60 days prior to the due date for completion of assessment under Section 153 of the Act – Section 92CA(3A) of the Act</i>	<i>31 October 2019</i>
<i>Impugned order barred by limitation</i>	<i>Learned TPO cannot issue any order after 31.10.2019</i>	<i>1 November 2019</i>

13. The case of the assessee submitted before DRP as narrated by the Learned AR, crux whereof is as follows:

10.1.9 *“The Assessee wishes to submit that there are several provisions in the Act wherein the words ‘on or before’ have been employed (For example Section 211, Section 92E, Section 92D, Section 43CA). Had the intent of the legislature been to include the sixtieth day while computing the period of limitation, it would have expressly mentioned ‘on or before’. In the absence of any such specific words it may riot be apposite to read the term ‘before’ in Section 92CA(3A) of the Act as ‘on or before’. Therefore, the 60th day, counting backwards from 30 December 2019, i.e., 30 days in the month of December and 30 days in the month of November falls on 01 November 2019. Therefore, the order can be passed only before 01 November 2019 (60 days), and therefore, in the present case it could have only been made on or before 31 October 2019.*

10.1.10 *It is submitted that the limitation period prescribed under Section 92CA(A) of the Act is mandatory and therefore, the learned TPO cannot breach the statutory period prescribed*

*under the provisions of the Act and pass an order beyond the time limit prescribed under the Act. Although the word "may" has been used by the Legislature under Section 92CA(3A) of the Act, it should be construed as "shall", as the learned TPO would otherwise be allowed more time to pass the TP order, by implication and this would violate the provisions of Section 153 read with Section 92CA(3) of the Act, which prescribes the time limit for completing assessment by the learned AO.*

- 10.1.11. *The provisions of Section 92CA(3A) and 153 of the Act are absolute. They impose a fetter upon the income-tax authorities to make an assessment after the expiry of the statutory time period provided under the Act. This is a statutory embargo. In other words, the power to make TP assessment lapses upon expiry of the period mentioned in the sub-section (3A) of Section 92CA of the Act. Therefore, the TP order issued after the expiry of the aforesaid period is invalid and unforeseeable in the eye of law. This principle has been upheld by the Supreme Court in the case of Ahmedabad Manufacturing and Calico Printing Co Lid v SG Mehta [1963] 48 ITR 154 (SC).*
- 10.1.12. *Further, the Assessee would like to place its reliance on the recent Hon'ble Madras High Court's judgment in case of writ petition filed by M/S. Pfizer Healthcare India Pvt Ltd (WP/32699/2019).*
- 10.1.13. *In the given Writ Petition, the Petitioner had challenged the order of the Transfer Pricing Order dated 1 November 2019 as the same was passed beyond the period of limitation stipulated under Section 92CA(3A) of the Act.*
- 10.1.14. *In the interim order dated 21 November 2019, Madras HC had ordered that Assessing Officer can carry out assessment proceedings without giving effect to such orders (TP orders) and until further orders from court.*
- 10.1.15. *Recently, the High Court has decided the matter and passed the final order. The High Court has observed that the Transfer Pricing Order passed on 1 November is barred by the limitation under Section 92CA(3A) of the Act, since it was not passed before 60 days prior to the date on which the period of limitation referred to in Section 153 of the Act expires.*

*Accordingly, the High Court has quashed the TP Order based on the above ground. The copy of final order is awaited.*

- 10.1.16. *We have attached the following for your reference:*  
*a. Case status as is reflected on the official e-courts website. (CNR No. TCMAUT2030002019) as Exhibit 1.*  
*b. Copy of interim order passed by the Hon'ble Madras High court dated 21 November 2019 as Exhibit 2.*
- 10.1.17. *Given the relief provided by the High Court, the Assessee request your Honors to grant appropriate relief and oblige for the objection raised by the Assessee.*
- 10.1.18. *In view of the above, since in the case of the Assessee, the learned TPO has passed the order on 01 November 2019, therefore, the TP order was not passed before the period of 60 days prior to the date on which, the period of limitation for passing the assessment under Section 153 of the Act expires.*

***Prayer***

*Based on the above, the Assessee humbly submits that the order passed by the TPO under Section 92CA(3) of the Act dated 1st November 2019 is bad in law, without jurisdiction, barred by limitation and void ab initio. Hence the same is liable to be quashed.”*

14. After careful reading of the submissions, it appears that the case made out by the assessee is this that in order to adhere to the provision of Section 92CA(3A) of the Act, the TPO's order should have been issued in time, before 60 days prior to the due date for completion of assessment under Section 153 of the Act read with Section 92CA(3A) of the Act i.e. 31<sup>st</sup> October, 2019, whereas the Ld. TPO issued the order after the said date, only on 1<sup>st</sup> November, 2019.

15. In order to adjudicate the issue involved in the case in hand, we need to understand the provisions of Section 92CA(3A) of the Act which reads as follows:

*“Section 92CA(3A) of the Act provides the period of limitation for making a TP order and the same is extracted below for reference:*

*“(3A) Where a reference was made under sub-section (1) before the 1 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 1 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) of the Act provides the period of limitation for completion of the assessment proceedings under the Act. The relevant provisions of Section 153(1) of the Act are extracted hereunder:*

*“(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty one months from the end of the assessment year in which the income was first assessable.*

*(2) .....*

*(3) .....*

*(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case maybe, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.*

*Section 153 of the Act does not permit passing any order after the expiry of 33 months from the end of the assessment year i.e. AY 2016-17 in the present case. Therefore, the time limit for completing assessment in the present case under Section 153(1) r.w.s 153(4) of the Act expires on 31 December 2019,*

*The time limit for issuing TP order under sub-section (3A) of Section 92CA of the Act falls any time before 60 days prior to the date on which the time limit under Section 153 of the Act expires, i.e. before 60 days prior to 31 December 2019.*

*Based on the above, 60th day, working backwards from 30 December 2019, i.e. 30 days in the month of December and 30 days in the month of November falls on 01 November 2019*

*In the light of the above, the time limit for issuing the TP order falls at any time before 01 November 2019 i.e., on or before 31 October 2019.”*

16. It appears from the above that the limitation period prescribed under the provision of Section 92CA(3A) of the Act is mandatory; the TPO has no authority to breach such statutory provision and to pass order beyond the prescribed time as mentioned hereinabove. Further that the word ‘may’ though have been used by legislature under Section 92CA(3A) of the Act, it should be construed as ‘shall’ as the TPO would otherwise to allow more time to pass the transfer pricing order by implication and this would violate the provision of Section 153 r.w.s. Section 92CA(3) of the Act prescribing the time limit for completion of assessment by the Learned AO. Therefore, the TP order issued admittedly after the expiry of aforesaid period, is unforeseeable in the eye of law.

17. The assessee on this particular issue relied upon the judgment passed by the Hon’ble Madras High Court in the case of M/s. Pfizer Healthcare India Pvt. Ltd. Vs JCIT & Ors., wherein the transfer pricing order dated 01<sup>st</sup> November, 2019 was challenged as the same was passed beyond the period of limitation stipulated

under Section 92CA(3A) of the Act. Finally, the matter was decided with an observation that the transfer pricing order passed on 1<sup>st</sup> November 2019 is barred by limitation under Section 92CA(3A) of the Act since the same was not passed before 60 days prior to the date of completion of assessment order under Section 153 of the Act read with Section 92CA(3A) of the Act. On 07.09.2020, the Hon'ble Court was pleased to quash the Transfer Pricing Order with the following observation:

*“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 Dec 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 assemble. The submission of the Revenue is to the effect that limitation expires only on 12 am of 01.01.2020. However, this would mean that an order of assessment can be passed at 12 am on 01.01.2020, 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 01.11.2019 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.”*

18. Being aggrieved by and/or dissatisfied with the said order dated 07.09.2020 passed by the Single Bench in WP No.32699 of 2019 etc. along with assessee's matters, appeals were preferred before the Division Bench by the Revenue Department, which

were ultimately dismissed on 31<sup>st</sup> March, 2020 with the following observation upholding the order passed by the Learned Single Bench:

“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 his 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.*

#### *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 WA No. 1120 of 2021 etc., batch 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.*

*V. Conclusion.*

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

19. The assessee further relied upon the judgment passed in the matter of M/s. Sensiple Software Solutions Private Limited vs. ACIT & Anr. in Writ Petition No. 6875 of 2021 and WMP No.7424 of 2021 dated 27.02.2023 passed by the Hon’ble Madras High Court where the very same issue of Transfer Pricing Order was challenged by the assessee. The impugned order of TPO was quashed being barred by the limitation since the same has been passed beyond the time period prescribed under Section 92CA(3) of the Act. The relevant portion whereof is as follows:

- “2. *The Department contends that since the Transfer Pricing Officer namely, the second respondent herein has passed the order on 01.11.2019, the said order is within the period of limitation prescribed under Section 92 CA(3A) of the Income Tax Act. However, the same is disputed by the petitioner, who would contend that sixty days period expired on 31.10.2019 and therefore, the impugned order of the*

*Transfer Pricing Officer, the second respondent herein is barred by limitation.*

3. *The very same issue was raised in a batch of writ petitions, filed by various other assesseees and the said writ petitions were allowed holding that the order of the Transfer Pricing Officer is barred by limitation. Aggrieved by the same, the Department preferred Writ Appeals in W.A. Nos.1120 of 2021 etc. batch before the Division Bench of this Court. By common judgment dated 31.03.2022 in the said Writ Appeals, after giving due consideration to the very same contentions that have been raised by the Department in this writ petition, the Division Bench, accepting the findings of the learned Single Judge, confirmed the same by holding that the last date for the Transfer Pricing Officer to pass the order was on 31.10.2019 and since the order was passed on 01.11.2019, the said order is barred by limitation.*
4. *Learned Standing Counsels appearing for the respondents would not dispute the judgment dated 31.03.2022, passed in the aforementioned Writ Appeals by the Division Bench of this Court, involving a similar issue. They would however submit that as against the Division Bench judgment dated 31.03.2022, Special Leave Petitions have been filed with condone delay petitions. He would submit that in respect of some of the condone delay petitions, the Hon'ble Supreme Court has ordered notice and in one of them, namely, S.L.P. (Civil) Diary No.32770 of 2022, condone delay petition was allowed and the delay was condoned and notice has been issued to the respondents in the said S.L.P.*
5. *Admittedly, no stay has been granted by the Hon'ble Supreme Court and in one of the S.L.Ps, namely, S.L.P. (Civil) Diary No.32770 of 2022, delay has been condoned and in other S.L.Ps, notice has been issued to the respondents in the condone delay petitions. Since the Division Bench of this Court has already considered the very same issue, that has been raised in this writ petition, the benefit granted to those petitioners must also enure to the benefit of this writ petitioner also. Accordingly, the impugned order dated 01.11.2019 is hereby quashed on the ground that the same is barred by limitation and it has been passed beyond the time limit fixed under Section 92CA(3A) of the Income Tax Act. Consequently, connected W.M.P. stands closed. No costs.”*

20. We have further considered the judgment passed by the ITAT, Mumbai Benches in the case of M/s. Shell India Markets Pvt. Ltd. vs. ACIT, wherein the similar issue cropped up, were settled in favour of the assessee following the judgment passed by the Hon'ble Madras High Court in the case of Pfizer Healthcare India Pvt. Ltd. (supra). The relevant observation whereof is as follows:

*“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 29/01/2015 as noted above which is not in dispute. Since the ld. TPO order has been passed on 30/10/2015 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.”*

21. Once the TPO's order is held to be nullity being barred by limitation the draft assessment order was also found to be invalid, having no legs to stand upon, in the absence of valid TPO's order. Ultimately, the final assessment order was also quashed since barred by limitation as further held by the ITAT – Mumbai Benches in the above matter with the following observations :

*“23. The other issue is that once the ld. TPO's order is held to be nullity of cost on the ground of being barred by limitation, then the draft assessment order could not have been passed in the case of assessee because assessee would no longer be treated as eligible assessee. This issue has been dealt in detail by the Co- ordinate Bench in the case of Atos India Pvt. Ltd., Relevant portion of which reads as under:-*

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

144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation which is prejudicial to the interest of such assessee.

.  
. .

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means...

(b) "eligible assessee" means,—

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

(3) of section 92CA; and

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

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

32. Thus, under the aforesaid provision, the expression "eligible assessee" is followed by an expression "means" and there are two

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

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

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

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

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

(i). *Honda Cars India Ltd. v. Dy. CIT [2016] 67 taxmann.com 29/240 Taxman 707/382 ITR 88 (Delhi);*

(ii) *Pankaj Extrusion Ltd. v. Asstt. CIT [2011] 10 taxmann.com17/198 Taxman 6 (Guj.)*

(iii) *FedEx Express Transportation and Supply Chain Services (India) (P.) Ltd. v. DCIT [2019] 108 taxmann.com 542 (Mumbai - Trib.)*

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

37. Similarly, in a reverse case scenario, i.e., where a draft assessment order was required to be passed on an 'eligible assessee'

*as per section 144C(1) of the Act but the same was not so passed, in the following decisions as well, the entire assessment proceedings have been held to be invalid and liable to be quashed:*

*(i) Vijay Television (P.) Ltd. v. DRP [2014] 46 taxmann.com 100/225 Taxman 35/369 ITR 113 (Madras) affirmed by the Division Bench of the Hon'ble Madras HC in [2018] 95 taxmann.com 101 (Madras);*

*(ii) International Air Transport Association v. Dy. CIT [2016] 68 taxmann.com 246 (Bombay);*

*(iii) Zuari Cements Ltd. v. ACIT [Writ Petition No. 5557 of 2012, dated 21-2-2013] (Andhra Pradesh)- Revenue's SLP dismissed by the Hon'ble Apex Court in CC No. 16694/2013 on 27th September 2013*

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

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

39. *Further, in case of Zuari Cements Ltd. v. ACIT [Writ Petition No. 5557 of 2012, dated 21-2-2013] (Andhra Pradesh), the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of*

*the Act would result in rendering the final assessment order "without jurisdiction, null and void and unenforceable." In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013.*

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

41. *The issue being fairly settled and the intent of legislature in strictly interpreting the provision of section 144C of the Act being repeatedly held so, the act of the Ld. AO in proceeding to pass a draft assessment order on the basis of an order by the Ld. TPO which is barred by limitation and thus bad in law/ non-est, results in an incurable illegality which is liable to be held as null and void, and thus, consequentially holding the final assessment order to be bad in law as well.*

42. *Thus, despite the fact that the reference made to the Ld. TPO is valid, in absence of a legally valid transfer pricing order and a valid draft assessment order, the Ld. AO cannot assume jurisdiction to proceed with the assessment under Section 144C of the Act and pass the consequential final assessment order. The decisions of the Hon'ble jurisdictional High Court in case of International Air Transport Association (supra) and Dimension Data Asia Pacific PTE*

*Ltd. (supra) forties appellant's contentions and the irresistible conclusion that the draft assessment order imbibes a jurisdictional power in terms of Sec. 144C(1) of the Act and creates/ envisages special rights upon the „eligible assessee“. If such an order is passed on an assessee who is not an 'eligible assessee' as defined in section 144C(15)(b)(i) of the Act, then it would render the entire proceedings pursuant to such order null and void.*

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

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

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

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

46. Thus taking into the provisions of law and the judgment referred to above, we hold that the final assessment order passed on 31 January 2017 is beyond the prescribed period of limitation under section 153 of the Act expiring on 31 March 2016, thus, barred by limitation and is hereby quashed.

24. We also find that this Tribunal in assessee's own case for a.Y.2009-10 in ITA No.1576/Mum/2015 and ITA No.2340/Mum/2015 had also quashed the assessment after observing and holding as under:-

23. A perusal of the above additional grounds of appeal reveal that the assessee has challenged validity of the assessment order passed u/s 143(3) r.w.s. 144(13) of the Act and the validity of the order passed by TPO u/s.92CA(3) of the Act. The issue raised by the assessee in the aforesaid additional grounds goes to the root of validity of assessment. It is no more resintegra that the assessee can raise legal ground at any stage, even during the appellate proceedings, if the facts are already on record. No fresh documentary evidence is required to be adduced for adjudicating aforementioned additional grounds. Hence, the additional ground No.40 & 41 are admitted for adjudication on merits.

24. The assessee has furnished a table giving relevant dates for calculating limitation for passing order u/s. 92CA(3) of the Act. The same is reproduced herein below:

<i>Particulars</i>		
<i>Ground No.41 Validity of Order passed under section 92CA(3) of the Act Calculation of due date for passing transfer pricing order under section 92CA(3)</i>		
<i>Asst. Order due date as per section 153 of the Act for AY 2009-10</i>	<i>31 March 2013</i>	
<i>Transfer Pricing Order due date: (At least sixty days before the period of limitation referred to in section 153 of the Act)</i>	<i>Number of Days in March 2013</i>	<i>30</i>
	<i>Number of Days in February 2013</i>	<i>28</i>
	<i>Number of days in January 2013</i>	<i>2</i>
	<i>Total Number of days</i>	<i>60</i>

<i>Deadline for passing TP Order for AY 2009 10</i>	<i>29 January 2013</i>
<i>Date of TP order passed for A.Y 2009-10</i>	<i>30 January 2013</i>
<i>Delay</i>	<i>1 Day Delay in passing TP Order</i>

25. *The assessee has determined the period of limitation for passing the order by TPO in accordance with method elucidated by the Hon'ble Madras High Court in the case of Pfizer Healthcare India (P) Ltd. vs. JCIT (supra). Since, the issue raised in the present appeal is similar to the one adjudicated by us in the case of M/s. Mondelez India Foods Private Limited in ITA No.1492/Mum/2015, A.Y.2010-11, the findings given therein would mutatis mutandis apply to the present appeal by the assessee. Consequently, ground No.40 and 41 raised in the appeal are allowed for parity of reasons.*

26. *The grounds/other additional grounds raised in the appeal have become academic, hence, they are left upon for adjudication if the need arises.*

27. *In the result, appeal by assessee is allowed.*

28. *The appeal by the Revenue has become infructuous as the order passed under section 92CA(3) of the Act is held bad in law. Once bedrock for passing the assessment order is eroded the entire proceedings, arising therefrom are vitiated.*

*Consequently, appeal of the Revenue is dismissed.*

29. *In the result, appeal of the assessee is allowed and that of Revenue is dismissed.*

25. *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 as well as the assessee become infructuous.”*

22. The assessee before us relied upon another judgement passed by Mumbai benches in the case of Atos India Private Limited on the same issue which was decided in favour of the assessee.

However since the ratio of the said judgement has already been relied upon by the Mumbai benches in the case of M/s Shell India markets Private Limited (supra), observation where of has already been narrated hereinabove, the same is not reiterated.

23. The judgment relied upon by the Learned AR in the case of Siemens Ltd vs. DCIT, NFAC, Delhi, reported in (2023) 154 taxman.com 195 passed by the ITAT Mumbai Benches has further been carefully considered by us, wherein TPO's order passed under Section 92CA(3) dated 01.11.2019 was found to be bad in law, *void ab initio* since the same was passed beyond time limit prescribed under Section 92CA(3) of the Act. Further that, the final assessment order passed on 06.04.2021 as beyond time limit for completing the assessment for the year under consideration in terms of the provision of Section 153 of the Act, the same was also found to be barred by limitation and thus quashed. While deciding the same, the Learned Bench was pleased to observe as follows:

*“7. The brief facts of the case pertaining to this issue are: The assessee company is an infrastructure and engineering company belonging to Siemens group based in Germany. For the year under consideration, the assessee filed its original return of income on 30/11/2015, declaring a total income of Rs. 1425.44 crore. The return of income was revised on 31/03/2017, amending the total income to Rs. 1392.55 crore. The return filed by the assessee was selected for scrutiny through CASS, accordingly, statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. The Assessing Officer (“AO”) made reference under section 92CA(1) of the Act to the Transfer Pricing Officer (“TPO”) for the determination of ALP of the international transactions reported by the assessee in Form 3CEB. The TPO vide order dated 01/11/2019, passed under section 92CA(3) of the Act proposed a total transfer pricing adjustment of Rs. 153.24 crore. In conformity, the AO passed the draft assessment order under*

section 143(3) read with section 144C(1) of the Act on 30/12/2019, wherein the total income of the assessee was proposed to be assessed at Rs 1561.69 crore, after including the transfer pricing adjustment proposed by the TPO vide order passed under section 92CA(3) of the Act. The assessee filed detailed objections before the learned DRP against the adjustments proposed by the TPO/AO. The learned DRP issued the directions under section 144C(5) of the Act on 03/12/2020. In conformity, the AO passed the impugned final assessment order dated 06/04/2021, under section 143(3) read with sections 143(3A) and 143(3B) of the Act. Being aggrieved, the assessee is in appeal before us.

8. During the hearing, the learned AR submitted that the issue raised vide additional ground is squarely covered in favour of the assessee by the decision of the Hon'ble Madras High Court in Pfizer Healthcare India Private Limited v/s JCIT, [2021] 433 ITR 28 (Mad.). The learned AR submitted that in the present case, the due date for passing the order under section 92CA(3) of the Act expired on 31/10/2019, however, the TPO passed the order on 01/11/2019. Therefore, the same is beyond the time limit prescribed under the Act. The learned AR further submitted that since the TPO's order is barred by limitation and thus is void ab initio, therefore the assessee is not an "eligible assessee" for the purpose of the Act. Accordingly, the impugned final assessment order is also beyond the time period provided under the Act and thus is bad in law and liable to be quashed.

9. On the other hand, the learned Departmental Representative submitted that the orders passed by the lower authorities are within the time limit prescribed under the Act and therefore are validly passed.

10. We have considered the submissions of both sides and perused the material available on record. The assessment year under consideration before us is the assessment year 2015-16. As per the provisions of section 153(1) of the Act, the time limit for completion of the assessment is 21 months from the end of the assessment year. Therefore, in the present case, the due date for completion of the assessment was 31/12/2017. Section 153(4) of the Act further provides that in case of a reference to the TPO under section 92CA(1) of the Act, the period available for completion of the assessment shall be extended by 12 months. In the present case, it cannot be disputed that the reference under section 92CA(1) of the Act was made by the AO on 19/09/2017, for the determination of ALP of all the international transactions reported by the assessee. Thus, the aforesaid time period for completion of the assessment was extended to 31/12/2018. We further find that in the present case, the assessee had entered into an Advance Pricing Agreement ("APA") with CBDT on 08/06/2017, in respect of its healthcare sector for a

*period of 4 years commencing from the previous year 2013-14 to the previous year 2016- 17. Thus, the year under consideration, i.e. 2015-16 forms part of the period for which the aforesaid APA was signed. We further find that as per section 92CD(5)(b) of the Act in the case of APA, the period of limitation as provided under section 153 of the Act for completion of the assessment is further extended by a period of 12 months. Accordingly, in view of the above, the period of limitation for completion of the assessment, in the present case, was extended to 31/12/2019. Further, the provisions of section 92CA(3A) of the Act reads as under:-*

*“(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:”*

11. We find that while interpreting the provisions of section 92CA(3A) of the Act, the Hon'ble Madras High Court in Pfizer Healthcare India Private Ltd (supra), observed as under:-

*“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 a m of 1-1-2020. However, this would mean that an order of assessment can be passed at 12 a m 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.”*

12. Therefore, in *Pfizer Healthcare India Private Ltd (supra)*, the Hon'ble Madras High Court held that the TPO should pass the order on or before 31st October in case the limitation period for completing the assessment is expiring on 31st December of the year. We further find that the Hon'ble Madras High Court in *DCIT v/s Saint Gobain India (P.) Ltd, [2022] 444 ITR 636 (Mad.)* affirmed the decision rendered in *Pfizer Healthcare India Private Ltd (supra)*. Since, in the present case, the due date for completing the assessment proceedings was 31/12/2019, therefore, in view of the aforesaid decisions, the due date for passing the order under section 92CA(3) of the Act was 31/10/2019. However, as noted above, the TPO passed the order under section 92CA(3) of the Act on 01/11/2019. Thus, respectfully following the aforesaid judicial pronouncements, we are of the view that the TPO has passed the order beyond the time limit prescribed under section 92CA(3A) of the Act, and accordingly, the same is barred by limitation and is quashed being void ab initio.

13. We find that the coordinate bench of the Tribunal in *Mondelez India Foods (P.) Ltd. v. Addl. CIT [IT Appeal No. 1492 (Mum.) of 2015, dated 14/11/2023, held that once the order of the TPO is beyond the period of limitation and thus is not a valid order, there is no "eligible assessee" in terms of the definition provided in sub-section (15) to section 144C of the Act. Further, it was held that if there is no eligible assessee, no reference to DRP could have been made. Therefore, in view of the above, in the present case, the assessee does not qualify to be an "eligible assessee" as per section 144C(15)(b) of the Act. Thus, the AO erred in assuming the jurisdiction under section 144C(1) of the Act for passing the draft assessment order on 30/12/2019. Accordingly, the time limit for completing the assessment in the present case, as per section 153 of the Act, expired on 31/12/2019, after including the extended time period provided under section 153(4) as well as section 92CD(5)(b) of the Act as noted above. However, in the present case, the impugned final assessment order was passed by the AO on 06/04/2021, and therefore the same is also barred by limitation and is void ab initio.*

14. Accordingly, the impugned final assessment order passed on 06/04/2021, is quashed and the additional grounds raised by the assessee are allowed. As we have quashed the impugned order for this short reason, we see no need to deal with other issues raised by the assessee in the present appeal. Those aspects of the matter, as of now, are rendered academic and infructuous."

24. Apart from that the appellant relied upon the judgement passed by the Mumbai benches in assessee's own case, in Zydus Wellness Products Ltd versus DCIT, Mumbai in ITA No. 1488/Mum/2021 for Assessment Year 2016-17 a copy whereof has also been submitted before us by the Learned AR.

25 It appears that while dealing with the issue the judgement passed by the Hon'ble Madras High Court in the case of Pfizer healthcare India Private Limited. (supra) was duly considered by the Mumbai Benches. The relevant observation whereof is as follows:

*“.....In the present case, undisputedly the order was signed by the Transfer pricing Officer on 01/11/2019, hence, the date of the order is the date on which the competent authority signed the order and not the date mentioned in the cause title of the order. Therefore, to ascertain as to whether the order has been passed within the period of limitation as mandated by the Act, the same has to be examined with reference to date of order i.e. 01/11/2019.*

5. *The time limit for completion of the assessment has been specified in section 153 of the Act. As per the provisions of sub-section (1) to section 153 of the Act, no assessment order shall be made u/s.143(3) or 144 of the Act at any time after the expiry of 21 months from the end of the assessment order in which the income was first assessable. Sub-section (4) to section 153 of the Act extends the period of limitation for passing the assessment order by 12 months, where reference u/s.92CA(1) of the Act is made to the TPO.*

*Section 92CA(3A) of the Act specifies time limit for passing an order by the TPO, where a reference is made u/s.92CA(1) of the Act. Sub-section (3A) to section 92CA mandates that order under sub-section (3) may be made at any time before 60 days prior to the date on which the period of limitation referred to in section 153 for making the order of assessment or reassessment as the case may be, expires. The Hon'ble Madras High Court in the case of Pfizer Healthcare India (P) Ltd. (supra) has explained the manner of*

computation of limitation for passing of the order u/s. 92CA(3) of the Act. The relevant extract of the observations by the Hon'ble High Court reads as under:

**“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 a m of 1-1-2020. However, this would mean that an order of assessment can be passed at 12 a m 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.”**

6. When provisions of section 92CA(3A) of the Act as explained by the Hon'ble Madras High Court are applied to the facts of instant case, the following result emerges:

The due date for completion of assessment u/s.153(1) of the Act was 31/12/2019. The period of 60 days as referred to in section 92CA(3A) of the Act (excluding 31/12/2019 being the last date) for the purpose of limitation as referred to in section 153 of the Act would be, from 01/11/2019 to 30/12/2019. Since the order u/s.92CA(3) has been passed on 01/11/2019, the complete period of 60 days as mandated under sub-section (3A) of section 92CA of the Act are not available with the Assessing Officer for making the assessment order. Hence, the order u/s. 92CA(3) of the Act is time barred by 1 (one) day.

7. In *Transporter Industry International GmbH*(supra), the Co-ordinate Bench under similar set of facts after considering the decision in the case of *Pfizer Healthcare India (P) Ltd.*(supra) and the decision of Division Bench in the case of *DCIT(TP) vs. Saint Gobain India Pvt. Ltd.*, 444 ITR 636 (Mad)

*held that the order passed by the TPO on 01/11/2019 is beyond the limitation period prescribed under the Act, hence, bad in law.*

8. *Thus, in light of the provisions of section 92CA(3A) r.w.s. 153 of the Act as explained by the Hon'ble Madras High Court and consistently followed by various Benches of the Tribunal, we have no hesitation in holding that the order passed by the TPO in the present case is barred by limitation.*

9. *Since, there is no valid order u/s. 92CA(3) of the Act, the extended period of limitation for passing of the assessment order as provided u/s. 153(4) of the Act would not be available to the Assessing Officer. Consequently, the final assessment order dated 30/06/2021 is also time barred. In the result, the assessee succeeds on the legal issue raised in ground No.1 of the appeal.*

10. *As we have decided the jurisdictional issue in favour of the assessee, the other grounds raised by the assessee challenging additions on merit have become academic, hence, not deliberated upon.”*

26. After careful reading of the above judgement it appears that the issue in regard to the maintainability of the Transfer Pricing Officer's order dated 01.11.2019 has been decided in favour of the assessee holding the same barred by limitation since the said order was passed beyond the time-limit prescribed under Section 92CA(3A) of the Act read with Section 153 of the Act. The impugned order therein was found to have been passed violating the mandates prescribed under 92CA(3A) of the Act after expiry of 60 days to the date on which the period of limitation is referred in Section 153 of the Act for making the order of assessment and, thus, held invalid. In that view of the matter the Assessing Officer was also not made available with the extended period of limitation for passing of the assessment order in terms of provisions of Section 153(4) of the Act. The final assessment order passed in the

said matter dated 30.06.2021 was, therefore, also found to be time barred and thus quashed.

27. We do not hesitate to observe that the issue dealt with by the Mumbai bench in the case of Zydus Wellness Products Ltd. vs. DCIT, Mumbai in ITA No.1488/Mum/2021 for Assessment Year 2016-17 is identical to that of the issue involved in the case in hand before us.

28. Series of judgments as relied upon and discussed hereinabove also justify the claim of the assessee to this effect that in the event the TPO's order is passed beyond the time-limit prescribed under Section 92CA(3A) of the Act the same is liable to be quashed being barred by limitation. In the instant case in hand before us it is an established fact that the TPO has passed the order on 1<sup>st</sup> November 2019 instead of 31 October 2019, admittedly barred by limitation by one day by virtue of the legal provision as discussed hereinabove. The same is, therefore, treated to be invalid, non-est in the eye of law and thus quashed. In that view of the matter, the Assessing Officer could not have been provided with the extended period of limitation for passing the assessment order as per Section 153(4) of the Act. The assessment order passed on 30.04.2021 is also, thus, beyond time limit prescribed for completing the assessment for the year under consideration in term of the provision of Section 154 of the Act. Having regard to this particular aspect of the matter, the final assessment order dated

30.04.2021 is, therefore, also found to be barred by limitation and thus quashed.

29. In the result, appeal preferred by the assessee is allowed.

**This Order pronounced on 30<sup>th</sup> /05/2024**

Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**

Sd/-  
(MADHUMITA ROY)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 30/05/2024

S. K. SINHA\*

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
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**आदेशानुसार/ BY ORDER,**

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