

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2657/MUM/2023
(Assessment Year: 2012-13)**

Capgemini Technology Services India Limited

(Successor to Capgemini India Private Limited),
Airoli Knowledge Park,
Plot No. It-1, It-2, It-1/Pt, TTC Industrial Area,
Yosemite, Block 3, Floor 4, C Wing,
Thane-Belapur Road, Airoli,
Navi Mumbai - 400708
[PAN: AABCM4573E]

.....

Appellant

**Commissioner of Income Tax
(Appeals)-55,**

Hall-B, 5th Floor, Earnest House, Nariman
Point, Mumbai - 400021

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Shri M P Lohia
Shri Nikhil Tiwari

For the Respondent/Department : Shri Vachashpati Tripathi

Date

Conclusion of hearing : 16.04.2024
Pronouncement of order : 11.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 12/11/2017, passed by the Ld. Commissioner of Income Tax (Appeals) – 55, Mumbai [hereinafter referred to as 'the **CIT(A)**'] for the Assessment Year 2012-2013, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 19/05/2016, passed under Section 143(3) read with Section 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**').

2. The appeal against the order impugned by way of present appeal was originally filed before the Pune Bench of the Tribunal within the prescribed period. Vide order, dated 04/07/2023 [*stated to have been uploaded on 17/07/2023*] passed in ITA NO. 294/PUN/2018, the aforesaid appeal was dismissed with the liberty to the Assessee to file the appeal afresh before appropriate bench of the Tribunal in compliance with the judgment of Hon'ble Supreme Court in the case of PCIT Vs. ABC Papers Ltd: [2022] 447 ITR (1) (SC). Thereafter, the present appeal was filed on 27/07/2023. The period of delay if computed from expiry of 60 days from the date of service of order of CIT(A) on 08/12/2017 comes to 2057 days. However, keeping in view the aforesaid facts and circumstances, we hold that the Assessee had sufficient cause for not filing the present appeal in prescribed time and therefore, the delay in filing the present appeal is condoned. Accordingly, we proceed to adjudicate the grounds pressed during the course of hearing by Learned Authorised Representative for the Appellant/Assessee.
3. When the appeal was taken up for hearing, the Learned Authorised Representative for the Appellant invited our attention to the Ground No. 16 and 17 raised as additional ground by way of Letter, dated 26/07/2023, which reads as under:

"Ground No. 16

Erred in passing Transfer Pricing Order for AY 2012-13 which is barred by period of limitation. The order of the TPO imputing the TP adjustment has been passed beyond the period of limitation stipulated under section 92CA(3A) of the Income-tax Act, 1961 ('the Act')

Invalidity of assessment proceedings

Ground No. 17

Erred in issuing the draft assessment order without appreciating the fact that since the transfer pricing order is

bad in law, no transfer pricing adjustments can be said to be made and therefore the condition required to be met for Indian Companies to be an "eligible assessee" under the provisions of Section 144C of the Act is not met and therefore, order passed under section 143(3) r.w.s. 144C(4) is also barred by limitation and ought to be quashed."

4. We have considered the rival submission on admission of Ground No. 16 & 17 raised as additional grounds. On perusal of the aforesaid additional grounds we find that the same can be adjudicated on the basis of facts already on record and would not require inquiring into new facts. Thus, in view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT: 229 ITR 383, the Additional Ground Nos. 16 and 17 are admitted. Since the Ground No.16 & 17 raised by the Appellant go to the root of the matter, we proceed to first adjudicate the same.
5. The facts relevant for adjudication of Grounds No. 16 & 17 are that the Appellant filed return of income for the Assessment Year 2012-13 on 29/11/2012, which was selected for complete scrutiny. During the assessment proceedings, reference was made to the Transfer Pricing Officer (TPO) who passed order under Section 92CA(3) of the Act on 31/01/2016, proposing transfer pricing adjustment. The Assessing Officer passed the Draft Assessment Order on 31/03/2016, proposing additions/disallowances including the aforesaid transfer pricing adjustment. Sequent thereto, Assessing Officer passed the Final Assessment Order on 19/05/2016 under Section 143(3) read with Section 144C(3) of the Act which was challenged in appeal before CIT(A). Vide order dated 12/11/2017, the CIT(A) disposed off the appeal as partly allowed. Not being satisfied with the partial relief granted by the CIT(A) the Appellant has preferred the present appeal before this Tribunal, inter alia, on Ground No. 16 & 17 reproduced in paragraph 3 above.

6. Advancing arguments in relation to Ground No. 16 & 17, the Ld. Authorised Representative for the Appellant appearing before us submitted that Ground No. 16 & 17 raised by the Appellant stands decided in favour of the Appellant, inter alia, by following the judgments/decisions:

- Pfizer Healthcare India Private Ltd Vs. Joint Commissioner of Income Tax: (2021) 433 ITR 28 (Madras)
- DCIT vs. Saint Gobain India Pvt. Ltd.: 444 ITR 636 (Madras)
- Atos India Private Limited Vs. DCIT [ITA No. 1795/Mum/2017, dated 23/02/2023, Assessment Year 2012-13],
- Mondelez India Foods Pvt. Ltd. vs. Addl. CIT [ITA No. 1492/Mum/2015, dated 14/11/2022].
- Bristol-Myers Squibb India Private Limited [Assessment Year 2016-17] ITA No. 967/MUM/2021-TP dated 27 April 2023
- Colgate – Palmolive (India) Limited [Assessment Year 2016-17] ITA No. 940/MUM/2021 dated 27 April 2023

Placing reliance on the above judgments/decisions, the Ld. Authorised Representative for the Appellant submitted that the order, dated 31/01/2016 passed by the TPO as well as the Final Assessment Order, dated 19/05/2016, passed by the Assessing Officer should be quashed as being barred by limitation and therefore, null & void.

6.1. Per Contra Learned Departmental Representative at the outset submitted that the Revenue has not accepted the judgment of the Hon'ble Madras High Court in the case of Pfizer Healthcare India Private Limited (supra) and has preferred Special Leave Petition before the Hon'ble Supreme Court which is pending.

6.2. The Ld. Departmental Representative placed on record filed Letter, dated 05/12/2023, from the Transfer Pricing Officer and/or Assessing Officer, wherein it was stated as under:

"The time limit for passing of the order u/s.92CA(3) is governed by the section 92CA(3A) of the Act and the same is reproduced here under:

"(3A) where a reference was made under the sub-section (1) before the 1 day of the June, 2007 but the order under sub section (3) has not been made by the transfer pricing officer before the said date, or 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 the assessment or re-assessment or re-computation or fresh assessment, as the case may be, expires."

A perusal of section 92CA(3A) makes it clear that the words used in section 92CA(3A) are "may be made" are in contrast to the words shall be made used in section 153(1). Thus, the statutory time limit is fixed for passing of assessment orders and not for TP orders.

However without prejudice to the above even if the limitation is to be counted for passing the order u/s 92CA(3) than also the AO was left with 60 days to complete the assessment even if the TPO order was passed on 31.01.2016 as there will be 29 days left in February, 31 days in March, thus a period of 60 days was available to the AO.

The decision of the Hon'ble ITAT is not acceptable on merit. It is submitted that the Interpretation by the Hon'ble Tribunal regarding the time limit in Sec.92CA (3A) is against the provisions of the General Clauses Act and the settled principles of Interpretation of Laws.

It is submitted that the legislature uses different words such as "from", "to", "before", "after", "prior", "within", "not later than", "not thereafter", "not less than", "at least" for computation of days. The principle of excluding the date of starting day and the inclusion of ending day are provided in Sec. 12 of the limitation Act and in Sec. 9 of the General Clauses Act and a provision cannot be interpreted ignoring the same.

As per Sec. of the General Clauses Act, in computation of the time limit, the day referred to as "from" has to be excluded and the day referred to as "to" has to be included. In the case on hand, the date of the order dated 31.01.2016 was taken as starting point of limitation, and 60 days was computed from 31.01.2016 and rightly the same has to be excluded and the last day 31.03.2016 has to be included and thus the order dated 31.01.2016 is rightly passed as per Sec.92CA(3A).

When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged and Section 9 of the General Clauses Act, 1897 require to exclude the first day and to include the last day.

The Hon'ble ITAT erred in excluding both the date of order and as well as the last day which is against the express provisions of Sec. 92CA(3A) and the settled laws of interpretation with regard to the computation of time limit. Such an interpretation of the Hon'ble Tribunal will cut down the actual period of limitation given by the legislature.

Sec. 92CA(3A) expressly provides for counting the last day i.e. 31.01.2016 and therefore for counting the 60 days the last day has to be taken into account and thus the order passed by the TPO dated 31.01.2016 is well within the time.

When the word "to" is specifically incorporated in Sec.92CA(3A), any other interpretation excluding the last day would be against the plain language of the statute and the intent of the legislature.

The period of limitation has been computed not as per the letter and spirit contained in the Act. The Section 92CA(3A) states that "an order u/s.92CA(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 expires". The Section refers that an order may be made at any time before 60 days and these 60 days have to be prior to the date on which Sec. 153 limitation expires. It needs to be noted that the word used regarding limitation in Section 153 is expires that implies that the date on that particular time ceases to exist, that is not alive and it has expired. The last day expires on 00.00 am. It is only after the expiry of this date that an order may not be passed. Therefore, while computing the 60 days period, the

last day of December has to be counted for computing the time limitation. If the same is counted, then working reverse the period of limitation for passing of a TP Order expires on 31.01.2016 and since the order is passed on this date, therefore the order is not barred by time limitation.

Sec.92CA(3A) uses the word may only and the same cannot be construed as shall and equated to limitation specially when further proceedings are contemplated under the Act such as passing draft assessment order, remedy before Dispute resolution panel and final assessment order.

There is no necessity or occasion to read the word "may" as "shall". Sub- sections 3A and 4 were introduced in Sec. 92CA by the very same Finance Act, 2007 and the Legislature has consciously used the word "may" in Sec. 92CA(3A) while using the word "shall" in Sec. 92CA(4). Hence, in view of the context and background of the provisions, the word "may" should not and cannot be read as "shall". If such an interpretation is accepted it will make the provisions of the statute inoperative, it is well settled law of interpretation that any statute or enabling provision must be so construed as to make it operative and effective.

It is further stated that the Revenue has not accepted the verdict of the writ petition in the case of Pfizer Healthcare India (P) Ltd vs JCIT & ANR (Writ Petition No.32699 of 2019 dated 07.09.2020) and Revenue has filed appeal before Hon'ble Supreme Court against this order (SLP filed on 15/09/2022 before Hon'ble Supreme Court vide SLP (Civil) Dairy No. 29289 of 2022)."

6.3. Further, the Learned Departmental Representative also filed written submissions, dated 29/02/2024. The relevant extract of the aforesaid submission reads as under:

- "1. In addition to the original grounds of appeal made before the Hon'ble Bench, the Appellant vide letter dated 26.07.2023 filed an additional ground of appeal challenging the validity of the transfer pricing order (TPO) having been passed beyond the period of limitation.*
- 2. Further, in addition to the oral arguments made before the Hon'ble Bench during the physical hearing, the following*

written submission in the above referred case may also kindly be considered.

- 2.1 This is submitted that AO has made reference to the TPO u/s 92CA(1) for determination of arm's length price on the international transactions entered by the assessee with its AE's. The TPO proposed adjustment vide his order dated 31.01.2016 and therefore, in accordance with provision of section 144C (1), the AO was required to pass the draft assessment order, which he has done.*
- 2.2 It is the assessee's contention that the Transfer Pricing Order, passed on 31.01.2016, exceeds the period of limitation, rendering it void ab initio. Consequently, they have argued that the entire income tax assessment is liable to be set aside*
- 2.3 However, a crucial contention arises due to the 30th of January 2016 falling on a Saturday and the 31st on a Sunday. This temporal challenge is mitigated by the General Clauses Act. Section 10, which posits that if the last day of a prescribed period falls on a day when the court or office is closed, the act or proceeding is considered timely if done on the next working day.*
- 2.3 Based on this the revenue contends that the timeline as per which the proceedings took place in this matter adheres to section 92CA of the Income Tax Act, as, in accordance with the judicial provision as discussed above the time period available to the TPO to pass an order expires on 01.02.2016 as per the provision of law.*
- 3. The application of Section 10 of the General Clauses Act is fortified by legal precedents and principles cited in the following case laws:*
 - i. Sambasiva Chari v. Ramasami Reddi: Establishes the general principle that a party prevented from performing an act by circumstances beyond their control can do so at the first subsequent opportunity.*
 - ii. Hossein Ally v. Donzelle,: Reinforces the principle "lex non cogit ad impossibilia" (the law does not compel a*

man to do the impossible) and "Actus Curiae Neminem Gravabit" (the act of court shall prejudice no man).

- 3.1 *These legal authorities support the understanding that, in cases where a period is prescribed for the performance of an act, and that period expires on a holiday, the act should be considered timely if performed on the next working day.*
4. *The next question which could arise is whether relief under Section 10 of the General Clauses Act can be afforded to an action undertaken by the department. The department asserts that such relief is available to them, basing their argument on two significant case laws.*
 - 4.1 *Firstly, in the case of Gujarat State Plastic Manufacturers Association Vs. Deputy Director of Income Tax, the Division Bench of the Gujarat High Court upheld the validity of a notice issued under section 143(2) of the Income Tax Act while affording the relief mentioned under Section 10 of General Clauses Act, to the action of the department. The notice, issued on a Sunday, was served on the first available working day, Monday, thereby meeting the requirements of the General Clauses Act. The court concluded that the notice was validly served within the prescribed period, affirming the consequential assessment order.*
 - 4.2 *Secondly, in the case of Priya Kaushal Shah vs ITO, the ITAT, Ahmedabad, ruled that if the last working day falls on a holiday, authorities are empowered to undertake necessary compliance on the next working day. Despite the digital signing of the notice on Sunday, the service on Monday was deemed sufficient compliance under the law. The tribunal emphasized that even though officers worked on the holiday due to workload, it does not alter the legal status of the holiday as a non-working day, thus entitling the department to the benefit under the General Clauses Act.*
5. *Considering these legal principles and the specific circumstances of the case, it is asserted that Saturday/Sunday should not be presumed as working days like any other regular working day. The fact that officers*

worked on a Sunday due to the cut-off date for assessment does not transform the holiday into a standard working day.

6. *In conclusion, the benefit granted under the General Clauses Act should not be deprived of the Revenue. The Transfer Pricing Order passed on 31.01.2016 is in compliance with the legal provisions and principles discussed."*

7. We have given thoughtful consideration to the rival submissions and perused the material on record. We find that the Hon'ble Madras High Court has, in the case of **Pfizer Healthcare India Private Ltd Vs. Joint Commissioner of Income Tax: (2021) 433 ITR 28 (Madras)**, held 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 am of 1-1-2020. However, this would mean that an order of assessment can be passed at 12 am on 1-1-2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31-12-2019. The period of 21 months therefore, expires on 31-12-2019 that must stand excluded since section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to section 153 expires'. Excluding 31-12-2019, the period of 60 days would expire on 1-11-2019 and the transfer pricing orders thus ought to have been passed on 31-10-2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31-10-2019. The impugned orders are thus, held to be barred by limitation".
(Emphasis Supplied)*

8. On perusal of above it can be seen that the Hon'ble Madras High court had held that the date on which period of limitation specified in Section 153 of the Act expires must be excluded for the purpose of determining the last date for passing order by TPO

since Section 92CA(3A) uses the expression 'before 60 days prior to the date on which the period of limitation referred to section 153 expires'.

9. We note that in appeal before the Division Bench of the Hon'ble Madras High Court, in the case of **DCIT vs. Saint Gobain India Pvt. Ltd.: 444 ITR 636 (Madras)**, the Revenue had made submission identical to those made before us and supported by Letter, dated 05/12/2023, filed by the Learned Departmental Representative during the course of appellate proceedings. However, the aforesaid submissions were rejected by the Division of the Hon'ble Madras High Court and it has been held as under:

"29. The language employed is simple. 31-12-2019 is the last date for the assessing officer to pass his order under section 153. The TPO has to pass order before 60 days prior to the last date. The 60 days is to be calculated excluding the last date because of the use of the words "prior to" and the TPO has to pass order before the 60th day. **In the present case, the word "before" used before "60 days" would indicate that an order has to be passed before 1-11-2019 i.e on or before 31-10-2019 as rightly held by the Learned Judge.**

30. Even considering for the purpose of alternate interpretation, the scope of section 9 of the General Clauses Act, it is to be noted that an inverted calculation of the period of limitation takes place here. If the last date is taken to be the first date from which the period of 60 days is to be calculated, reading down the provision with the use of the word "from", which denotes the starting point or period of direction in general parlance, would mean that 60 days "from the last date". **Even going by Section 9 of the General Clauses Act, when the word "from" is used, then, that date is to be excluded, implying here that 31-12-2019 must be excluded. After excluding 31-12-2019, if the period of 60 days is calculated, the 60th day would fall on 1-11-2019 and the TPO must have passed the order on or before 31-10-2019 as orders are to be passed before the 60th day. Therefore, either way the contention of the Revenue is a fallacy and has no legs to stand. Mandatory or Directory**

31. The next contention that has been raised by the learned senior standing counsel for the appellants is that the usage of the word "may" in section 92CA (3A) indicates that the time fixed is only directory, a guideline, not mandatory and is for the sake of internal proceedings.

32. Let us now examine the relevant procedures relating to Transfer Pricing. After an international transaction is noticed subject to satisfaction of section 92B, a reference is made to the TPO under sub-section (1) of section 92CA of the Act. The TPO after considering the documents submitted by the assessee is to pass an order under section 92CA (3) of the Act. As per section 92CA(3A), the order has to be passed before the expiry of 60 days prior to the date on which the period of limitation under section 153 expires. As per 92CA(4), the assessing officer has to pass an order in conformity with the order of the TPO. After receipt of the order from the TPO determining ALP, the assessing officer is to forward a draft assessment order to the assessee, who has an option either to file his acceptance of the variation of the assessment or file his objection to any such variation with the Dispute Resolution Panel and also the Assessing Officer. Sub-section (5) of section 144C of the Act provides that if any objections are raised by the assessee before the Dispute Resolution Panel, the Panel is empowered to issue such direction as it thinks fit for the guidance of the Assessing Officer after considering various details provided in Clauses (A) to (G) thereof. Sub-section (13) of section 144C of the Act provides that upon receipt of directions issued under sub-section (5) of section 144C of the Act, the Assessing Officer shall in conformity with the directions complete the assessment proceedings. It goes without saying that if no objections are filed by the Assessee either before the DRP or the assessing officer to the determination by the TPO, section 92CA(4) would come into operation. Therefore, it is very clear that once a reference is made, it would have an impact on the assessment unless a decision on merits is taken by DRP rejecting or varying the determination by the TPO.

33. It would only be apropos to note that as per proviso to section 92CA (3A), if the time limit for the TPO to pass an order is less than 60 days, then the remaining period shall be extended to 60 days. This implies that not only is the time frame mandatory, but also that the TPO has to pass an order within 60 days.

34. Further, the extension in the proviso referred above, also

automatically extends the period of assessment to 60 days as per the second proviso to section 153.

35. Also, but for the reference to the TPO, the time limit for completing the assessment would only be 21 months from the end of the assessment year. It is only if a reference is pending, the department gets another 12 months. Once reference is made and after availing the benefit of the extended period to pass orders, the department cannot claim that the time limits are not mandatory. Hence, the contention raised in this regard is rejected.

36. xx xx

37. xx xx

38. In case of assessments involving transfer pricing, fixing of time limits at various stages sets forth that the object of the provisions is to facilitate faster assessment involving such determination. In the present case, as rightly held by the learned Judge in paragraphs 22 to 29 of the order dated 7-9-2020, the order of the TPO or the failure to pass an order before 60 days will have an impact in the order to be passed by the Assessing Officer, for which an outer time limit has been prescribed under sections 144C and 153 and is hence mandatory. What is also not to be forgotten, considering the scheme of the Act, the inter-relatability and inter-dependency of the provisions to conclude the assessment, is the consequence or the effect that follows, if an order is not passed in time. When an order is passed in time, the procedures under 144C and 92CA(4) are to be followed. When the determination is not in time, it cannot be relied upon by the assessing officer while concluding the assessment proceedings.

39. Upon consideration of the judgments and the scheme of the Act, we are of the opinion that the word "may" used therein has to be construed as "shall" and the time period fixed therein has to be scrupulously followed. The word "may" is used there to imply that an order can be passed any day before 60 days and it is not that the order must be made on the day before the 60th day. The impact of the proviso to the subsection 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.” (Emphasis Supplied)

10. In the present case, the time limit for passing order under Section computed 92CA(3) of the Act per the above judgments of the Hon’ble Madras High Court can be computed as under:

S.No.	Particulars	Relevant date/period
	Assessment Year involved	2012-13
1.	Period of limitation for making an order of assessment as per section 153 of the Income-tax Act, 1961 [“the Act”] – 3 years from the end of the Assessment Year	31.03.2016
4.	Date prior to the date on which period of limitation expired (stated in Sr. No. 3 above)	30.03.2016
5.	Sixty Day Period	30 days -March 29 days -February 1 day -January
6.	Transfer Pricing Order u/s 92CA(3) of the Act should have been passed on/or before	30.01.2016
7.	Transfer Pricing Order u/s 92CA(3) actually passed on	31.01.2016

11. On perusal of the above it can be seen that the time limit for passing the order under Section 92CA(3) of the Act, computed as per the above judgments of the Hon’ble Madras High Court expired on 30/01/2016. Since the order under section 92CA(3) of the Act has been passed 31/01/2016, i.e., after the expiry of the period of limitation, it has been contended on behalf of the Appellant/Assessee that the aforesaid order passed by the TPO should be set aside as being barred by limitation. In this regard, it has been contended by the Revenue that 30/01/2016 and 31/01/2016 were holidays. Therefore, the period of limitation got extended till next working day [*i.e. Monday - 01/02/2016*] by virtue of Clause 10 of the Clause 10 of the General Clauses Act, 1897 [for short ‘**the General Clauses Act**’]. It was submitted that since the order was passed by the TPO on 31/01/2016, the same was within limitation. In response, the Authorised

Representative for the Appellant vehemently opposed the aforesaid contention of the Revenue. Having given thoughtful consideration to the rival submission, we do not find any merit in the aforesaid contention of the Revenue. A perusal of Clause 10 of the General Clauses Act [*reproduced herein below*], would show that Clause 10 does not extend the period on limitation. It provides that in a case where any act is directed to be done within a prescribed period and the office is closed on the last day of the said period, then such work done on the next day afterwards on which office is open would be taken having been done in due time.

“10. Computation of time

(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open” (Emphasis Supplied)

12. In the facts of the present case, as per the above judgments of the Hon'ble Madras High Court the prescribed period was to expire on Saturday (30/01/2016) and the next day afterwards on which the office of the Transfer Pricing Officer was to open was Monday (01/02/2016). Whereas, the order was passed by the Transfer Pricing Officer on Sunday (31/01/2016). Thus, the requirements of Clause 10 of the General Clauses Act, 1897 are not fulfilled in the present case. Further, in case Sunday is considered as the day on which office of the Transfer Pricing Officer/Assessing Officer are considered to be open, then we do not see any reason why Saturday should also not be considered as the day on which office of the Transfer Pricing Officer/Assessing Officer was open. We note that the Appellant has placed on record order sheet noting dated 30/01/2016 as

well as approval letter dated 31/01/2016, to show that the office of the Transfer Pricing Officer/Assessing Officer was open. Thus, in either case, in our view, Clause 10 of the General Clauses Act does not advance the case of the Revenue.

13. In view of the above, we hold that the time limit for passing the order under Section 92CA(3) of the Act, computed as per the above judgments of the Hon'ble Madras High Court, expired on 30/01/2016. Since the order under section 92CA(3) of the Act has been passed 31/01/2016, i.e., after the expiry of the period of limitation, the same is set aside as being barred by limitation.
14. The next issue that arises for consideration is whether the Final Assessment Order passed on 19/05/2016 is barred by limitation and bad in law. In the case of **Atos India Pvt. Ltd. Vs Deputy Commission of Income Tax: [2023] 103 ITR(T) 296 (Mumbai - Trib.)[23-02-2023]** it has been held by the Tribunal as under:

"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.* (Emphasis Supplied)

15. In the above decision, the Tribunal has held that the time limit

for passing the final assessment order for the Assessment Year 2012-13 specified under Section 153 of the Act expired on 31/03/2016, and the final assessment order passed thereafter was barred by limitation. In the present case the Final Assessment Order has been passed on 19/05/2016 and therefore, the same liable to be quashed as being barred by limitation.

16. In view of the above judicial precedents and keeping in view the facts and circumstances of the present case the Transfer Pricing Order, dated 31/01/2016, and Final Assessment Order, dated 19/05/2016, are quashed as being bad in law. Ground No. 16 & 17 raised by the Appellant is allowed. All the other grounds raised by the Appellant are disposed off as being infructuous.
17. In result, in terms of paragraph 16 above, the present appeal is allowed.

Order pronounced on 11.07.2024.

Sd/-

(Prashant Maharishi)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 11.07.2024
Poonam Mirashi
Stenographer

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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