

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA No.: 698/Chny/2024
निर्धारण वर्ष / Assessment Year: 2018-19

Ganesan Kannan,
1/8A, Keelakuttudankadu,
Pudukottai,
Thoothukudi District – 628 103.

[PAN: APKPK-5162-J]

(अपीलार्थी/Appellant)

Income Tax Officer,
v. International Taxation Ward,
Tuticorin.

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. N. Arjun Raj, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Shri. Sanjay Gandhi, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 26.06.2024

घोषणा की तारीख/Date of Pronouncement : 23.08.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Dispute Resolution Panel-2, Bengaluru, for the assessment year 2018-19 dated 27.12.2023.

2. The assessee has filed the following grounds of appeal:

"1. The re-assessment passed by ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel dated 19.01.2024 in DIN & Order No. ITBA/AST/S/147/2023-24/1059947475(1) in determining taxable total income at Rs.1,06,69,982/- is contrary to law, facts and in the circumstances of the case.

2. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 erred in confirming the assumption of jurisdiction under section 147 of the Act and consequently erred in passing the draft assessment order u/s 144C(1) and the final re-assessment order read with section 147 of the Act without assigning proper reasons and justification.

3. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 failed to appreciate that the draft assessment order u/s 144C(1) and the final re-assessment order under section 147 of the Act was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 failed to appreciate that the procedure prescribed under the new regime of re-assessment in terms of Section 148A of the Act having not admittedly followed, the consequential issuance of notice u/s 148 of the Act and issuance of draft assessment order u/s 144C(1) of the Act and the final re-assessment order should be reckoned as bad in law.

5. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel- 2 erred in adding back a sum of **Rs.3,30,749/-** being the credits in the Account No.11017854454 as income of the appellant while computing the taxable total income without assigning proper reasons and justification.

6. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 failed to appreciate that the disputed bank account did not pertain to the appellant and further ought to have appreciated that the CIF mentioned in the disputed bank account did not relate to the appellant thereby vitiating the addition made in the impugned order.

7. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel- 2 erred in adding back a sum of **Rs.2,08,713/-** by re-computing the income from business in the computation of taxable total income without assigning proper reasons and justification.

8. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 failed to appreciate that the re-working / estimate of the business income in the impugned order was without any basis and further ought to have appreciated that the re-computation of business income on various facets was wrong, incorrect, invalid, not sustainable both on facts and in law.

9. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 erred in determining the long term capital gains on sale of the 3rd property at **Rs.3,10,472/-** vide Sale Document No.3240/2017

in the computation of taxable total income without assigning proper reasons and justification.

10. The Dispute Resolution Panel- 2 erred in assuming jurisdiction under Section 144C(8) and consequently erred in enhancing / re-computing the computation of Short Term Capital Gains for the 1st and the 2nd property, computed by the Assessing Officer at Rs.90,86,561/- reported by the appellant as Long Term Capital Gains at Rs.1,34,63,935/- in the proceedings initiated and completed without assigning proper reasons and justification.

*11. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 erred in adding back a sum of **Rs.1,34,63,935/-** presumed to be the Long Term Capital Gains from sale of land(s) during the assessment year under consideration comprised in the Mahal asset / Kalyanamandapam without assigning proper reasons and justification.*

12. The Dispute Resolution Panel - 2 failed to appreciate that having not put on notice the appellant on the proposal to enhance the taxable income of Short Term Capital Gains as computed by the Assessing Officer in the draft assessment order, the consequential directions issued by them should accordingly be reckoned as bad in law.

13. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel- 2 failed to appreciate that the rejection of the computation adopted by the Appellant in his return of income as well as the computation of Assessing Officer in the draft assessment order was wholly unjustified and unwarranted and further ought to have appreciated that the recomputation of long term capital gains on various facets was wrong, incorrect, invalid, not sustainable both on facts and in law.

14. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel- 2 failed to appreciate that the entire re-computation of taxable total income in the impugned order on various facets was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

15. The ITO, International Taxation Ward, Tuticorin / Dispute Resolution Panel - 2 failed to appreciate that there was no proper / effective opportunity granted before passing the impugned draft order as well passing of the final re-assessment order and ought to have appreciated that any order passed in violation to the principles of natural justice should be reckoned as bad in law.

16. The Assessee craves leave to file additional arguments at the time of hearing."

3. Brief facts of the case are that the assessee Sri.Ganesan Kannan is a non – resident, did not file his return of income for the A Y 2018-19. The assessee is residing in Singapore for the financial year 2017-18 relevant to A.Y.2018-19 under reference and earned income from outside India. The assessment has been reopened U/s.147 of the Act for the reasons stated as per which, the income chargeable to tax had been escaped assessment on account of non-disclosure of consideration received for sale of immovable property. As per the High Risk CRIU / VRU information, Id No.111808791597 dated 26/02/2022 of insight portal that the assessee had sold an immovable property for Rs.3,01,67,670/- during the F.Y. 2017-18. The show cause notice U/s.148A(b) was issued to the assessee and he failed to furnish any reply and hence the assessment was reopened by issuing notice U/s.148 on 31/03/2022. In response the assessee filed a return of income on 29/04/2022 with status as "Non-Resident" by claiming Long term capital loss of Rs.1,30,57,044/- and admitted a total income of Rs.52,740/-.

Subsequently a notice U/s.143(2) dated 05/05/2022 was issued to the assessee and followed by a notice U/s.142(1) issued on 25/01/2023. After considering the replies filed by the assessee

the AO, International taxation ward, Tuticorin, passed a draft assessment order U/s.143(3) r.w.s. 144C(1) of the Act, on 30/03/2023 by computing the total income by making the following additions :

	<i>Total Income returned</i>		52,740
<i>Add:</i>			
1.	<i>Income from other sources</i>	3,30,749	
2.	<i>Addition under the head Business</i>	2,08,713	
3.	<i>Long-Term capital Gain as discussed in Sl.No.3 above</i>	9,91,219	
4.	<i>Short Term Capital Gain on sale of depreciable asset</i>	90,86,561	1,06,17,242
	<i>Total Assessed Income</i>		1,06,69,982

The assessee filed objection before the DRP against the draft assessment order passed by the AO on 26/04/2023. The DRP- 1, Bengaluru vide their direction issued u/s 144C(5) of the Act dated 27.12.2023 has rejected the arguments of the assessee and upheld the additions made by the Assessing Officer. Thereafter, the Assessing Officer has passed final assessment order u/s.147 r.w.s. 144C(13) of the Act on 19.01.2024 and determined the total income at Rs.1,43,66,879/- as detailed below:

	<i>Total Income returned</i>		52,740
<i>Add:</i>			
1.	<i>Income from other sources</i>	3,30,749	
2.	<i>Addition under the head Business</i>	2,08,713	
3.	<i>Long-Term capital Gain on sale of third property</i>	3,10,742	
4.	<i>Short Term Capital Gain on sale of property I & II</i>	1,34,63,935	1,43,14,139
	<i>Total Assessed Income</i>		1,43,66,879

Aggrieved by the final assessment order, the assessee is in appeal before us.

5. The learned AR for the assessee submitted that legal grounds are purely issues concerning the limitation prescribed u/s.153(2) of the Act. The learned AR for the assessee referring to the legal ground of appeal filed by the assessee submitted that in the present case, notice u/s.148 of the Act was issued on 31.03.2022. As per the provisions of section 153(2) of the Act, the assessment order should be passed on or before one year from the end of the relevant A.Y. i.e. on or before 31.3.2023. However, the Assessing Officer has passed the final assessment order u/s.147 r.w.s. 144C(13) of the Act on 19.01.2024 which is beyond the time limit prescribed under the Act and thus, barred by limitation. The Ld.AR submitted the dates and events to show that the final assessment order passed was barred by limitation.

<i>Sl. No.</i>	<i>Date</i>	<i>Particulars</i>	<i>Relevant provision of the Income Tax Act, 1961</i>
1.	31.03.2022	Order passed under Section 148A(d) of the Act	148A
2.	31.03.2022	Notice under Section 148 of the Act	148
3.	30.03.2023	Draft Assessment order passed	144C(1)
4.	26.04.2023	Filing of objections in Form No.35A before the Dispute Resolution Panel, Bengaluru	144C(2)
5.	27.12.2023	Directions issued by the Dispute Resolution Panel, Bengaluru	144C(5)
6.	19.01.2024	Final re-assessment order passed	147 r.w.s. 144C(13)

Further, the Ld. AR relied upon the decision of the ITAT in the case of Shri Syed Gulam Mohiuddin vs. Income Tax Officer in ITA No.136/Hyd/2023 dated 03/06/2024 for the A.Y.2017-18 and prayed for quashing the impugned order.

6. The learned DR, on the other hand, supporting the order of the DRP submitted that the assessee being a non-resident is subject to proceedings u/s.144C of the Income Tax Act, 1961. As per section 144C of the Act, the time limit for completion of the assessment in a case of non-resident shall extend for a period of 12 months irrespective of the time limit provided u/s.153 of the I.T. Act, 1961. Since the assessee being a non-resident, he subjected to the proceedings u/s.144C of the Act, the limitation provided u/s.144C is applicable and if we go by the said provision, the assessment order passed by the Assessing Officer dated 19/01/2024 is within the time allowed under the Act and thus, there is no merit in the legal grounds taken by the assessee and the same needs to be dismissed. In this regard he has filed a written submission which has been reproduced as under:

4. The assessee in the grounds of appeal filed before the Hon'ble ITAT has contended that draft assessment order u/s.144C(1) and the final reassessment order u/s.147 of the Act were passed out of time, invalid, passed without jurisdiction. In this context, it is humbly prayed that following submissions may kindly be considered:

4.1) *The Department submits that provisions of section 153 determines the time limit for passing the draft order only.*

4.2) *The Department submits that in the below mentioned cases, it has been held that draft order must be passed within the time limit of section 153.*

a) *Tally India Pvt. Ltd. 435 ITR 137 (Kar.)*

b) *Lionbridge Technologies 260 Taxman 273 (Bom.)*

4.3) *The Department respectfully submits that it is a fact that the assessee preferred an appeal before the Ld.DRP against the additions made by the Assessing Officer.*

4.4) *The Department prays to draw attention of the Hon'ble Bench to the provisions contained in section 144C(13) of the Income Tax Act. The usage of the phrase '**notwithstanding anything contrary contained in section 153 or section 153B**' conveys that the general time limits provided u/s.153 are not applicable for those assesseees who have opted to proceed with the DRP route.*

4.5) *The Department submits that provisions of the income tax act 1961 sets out a special scheme for the assessment of non-resident in terms of section 144C (1) to section 144C (14) of the income tax act. According to the provisions of section 144C(1) and order of the draft assessment proposing a variation to the income or loss as returned by the assessee is to be forwarded to the assessee by the assessing officer. On receipt of that order assessee is given 2 options to be exercised within 30 days of the receipt of the draft order either to accept the draft order and intimate the assessing officer accordingly or to file objections to the proposed variations with the dispute resolution panel and the assessing officer. If the assessee exercised an option to accept the draft order nothing else is required to be done except to complete the assessment on the basis of the draft order. Such order i.e. the draft order becomes the final order when acceptances received or the period for filing of the objection expires. If the objections are filed by the assessee the dispute resolution panel issue directions as it thinks fit and enabling the assessing officer to complete and issue the order of final assessment.*

4.6) *The Department submits that provisions of subsection 6, 7, 8 and 9 of section 144C sets out the procedure to be followed by the dispute resolution panel in issue of the direction. The section further provides that every direction issued by the dispute resolution panel shall be binding on the assessing officer. Thus it seen that AO cannot tinker or apply anything further, than what was mentioned in the draft*

*assessment order except what is directed by the learned dispute resolution panel. The provisions of principles of natural justice are ingrained in the provisions of section 144C of the act. It further says a time limit of 9 months from the end of the month when the draft order is forwarded to the assessee for passing of issue of any directions. Upon receipt of the direction the AO shall pass an order of final assessment which is in conformity with the direction of the dispute resolution panel within one month from the end of the month in which the directions are received. There is no further provision of granting any opportunity to the assessee of further hearing. Thus the above provisions are a **self-contained code**. In this code, the role of the assessing officer ends the movement, the objections are filed by the assessee or draft order is accepted by the assessee. Therefore, the assessing officer cannot make any upward adjustment to the income of the assessee after passing of the draft assessment order.*

4.7) The Department humbly submits that Assessing Officer also cannot initiate any further penalties which are attached to the assessment order if same are not initiated in the draft order. The rights of the variation to the income of the assessee are solely rest with the dispute resolution panel. Therefore the dispute resolution panel has a correcting power to the draft assessment order. AO does not have any power to do so. Therefore it is apparent that on the plain reading of the above provisions for all practical purposes the role of the assessing officer comes to an end the moment he passes the draft order. He is only authorized to pass the final assessment order which is according to the directions of the learned dispute resolution panel. The above provisions also contained the separate time limits and it has its own timelines which binds the revenue as well as the assessee. The honourable Madras High Court in 398 ITR 645 (2017) CIT vs. Sanmina SCI India private limited in para number 7 has held that provisions of section 144C is a self-contained code in itself. Thus, the provisions contained therein only determine the timelines of the passing of such order and not as provided u/s 153 of the Act.

4.8) The Department submits that as the provisions of section 144C is a complete code in itself as held by the honourable Madras High Court, which also provides for specific limitations, if a particular procedure adopted by the as assessee, then timelines provided therein will only apply, Assessment orders passed within timelines provided u/s.144C, irrespective of the timelines prescribed u/s.153 are passed within timelines provided under law and are not time barred. In this context, Department places reliance on the following appellate decisions:

Hon'ble ITAT, Delhi in the case of Religare Capital Markets Ltd. Vs DCIT 111 taxmann.com 387 (Delhi-Trib)

Hon 'ble Delhi Bench of the Tribunal in the case of Honda Trading Corporation, Japan vs. DCIT in ITA No. 1132/Kol/2015, order dated 15/09/2015

Hon'ble coordinate bench of Bangalore Tribunal in case of Volvo India private limited Vs. ACIT IT(TP)A No.1537/Bang/2012 dated 8/5/2019 and Acer India Pvt. Ltd. Vs. DCIT 502/Bang/2017 dated 10/5/2019

4.9) *The Department respectfully submits that in the instant case, assessee has contested the legality of the draft assessment order and also on the variations proposed in the draft assessment order and filed objections before the Ld.DRP, Bengaluru. The time limit for passing final order by the Assessing Officer was to be governed by the provisions u/s.144C(12) &144C(13):*

Section 144C(12)

"No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee

Section 144C(13)

"Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 (or section 153(B) the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received".

4.10) *The Department submits that it is clear from the provisions u/s.144C(13) that the Assessing Officer has to pass final order after incorporating direction of the Ld.DRP within one month from the end of the month in which such direction is received and this time limit is not subject to the time limit u/s.153 and 153B as mentioned in the provisions above.*

4.11) *The Department submits that in this case, the Ld.DRP had passed order u/s.144C(5) on 27/12/2023, and hence the Assessing Officer had time to pass the final order by 31/01/2024. Accordingly, the Assessing Officer had passed final order on 19/01/2024, which is well within the time limit u/s.144C(13). Hence, the contention of the assessee is without any basis and is against the clear provisions of the*

Income tax Act, 1961. The Hon 'ble Bench is requested to dismiss the same.

*4.12) Without prejudice to the above, the Department would like to submit that if the time limit u/s.153 is considered, the very purpose of including non-resident Indian u/s.144C(15)(b)(ii) as “eligible assessee” would get defeated because the time limit for the Assessing Officer to draft the order gets restricted and it will be less than the time limit available in other cases. If time limit u/s.153 is considered in the instant case then time available to assessee for making submissions and also for Assessing Officer for passing draft assessment order will be **only one month** as under:*

Notice u/s.148 is issued on 31/03/2022, therefore final assessment order requires to be passed as per section 153 of the Income Tax Act, 1961 on or before 31/03/2023 i.e, within 12 months:

*Total time available to the Assessing Officer
for passing final assessment order u/s.153 : 12 months
Less:*

- i. Time available to eligible assessee
for filing objections before DRP u/s.144C : 1 month*
- ii. Time available to DRP for
issuing directions u/s.144C(12) : 9 months*
- iii. Time available to Assessing Officer
for passing final order u/s.144C(13) : 1 month*

***Balance time available to the Assessing Officer
for passing draft order u/s.144C(1) is : 1 month***

Therefore, if time limit u/s.153 is considered in the instant case then draft assessment order u/s.144C(1) ought to have been passed by the Assessing Officer within one month from the date of issue of notice u/s.148 i.e., 30/04/2022. Accordingly, the time available to the assessee for making submissions before passing draft order will also be reduced to one month which will be against the interest of the non-resident assessee. In this context, the relevant portion of the Finance Bill, 2020 is reproduced hereunder:

Amendment in Dispute Resolution Panel [DRP]

Section 144C of the Act provides that in case of certain eligible assessee, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act, the Assessing Officer {AO} is required to forward a draft assessment order to the eligible assessee, if he proposed to make any variation in the

income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income-Tax. DRP has nine months to pass directions which are binding on the AO.

It is proposed that the provisions of section 144C of the Act may be suitable amended to:-

(A) include cases, where the AO proposed to make any variation which is prejudicial to the interest of the assessee within the ambit of section 144C;

(B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.

This amendment will take effect from 1st April, 2020. Thus, if the AO proposed to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.

It can be inferred from the above amendment that the legislative intent is to provide expeditious resolution of the dispute between the non-resident taxpayer and the Department. If time limit u/s.153 is considered, it will be against the interest of non-resident assesseees in general, as it will severely restrict the opportunities that could be available to make submissions before the Assessing Officer, as the total time limit for passing draft order will be substantially reduced unlike the assessee who gets further time for assessment order. Thus any such interpretation will go against the legislative intent of providing expeditious resolution of the dispute between the non-resident taxpayer and the Department.

Without prejudice to the above, it is humbly submitted that section 144C(1) deals with passing of draft assessment order in respect of eligible assessee as per 144C(15)(b)(ii). The Final order has to be passed as per the provisions of section 144C(3). In the case of non-resident passing of draft assessment order u/s.144C is mandatory with effect from 01.04.2020. Section 144C is a self contained section which supersedes section 153 of Income Tax Act, 1961.

In view of the above, the Department submits that assessee's contention that draft assessment order u/s.144C(1) and the final re-assessment order u/s.147 of the Act were passed out of time, invalid, passed without jurisdiction is without any basis and is against the clear provisions of the Income tax Act, 1961. It is humbly submitted that assessee being a nonresident is subject to proceedings u/s.144C of the Income Tax Act, 1961. As per section 144C of the Act, the time

limit for completion of the assessment in the case of non-resident shall extend irrespective of the time limit provided u/s.153 of the Income Tax Act, 1961. Since, the assessee being a nonresident, assessee subjected to the proceedings u/s.144C of the Act &the limitation provided u/s.144C is applicable and if we go by the said provision, the final assessment order passed by the Assessing Officer on 19/01/2024 is within the time limit allowed under the Act. Thus it is humbly prayed that appeal of the assessee may kindly be dismissed.

7. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. The assessee is a non-resident individual for the A.Y.2018-19 and is an 'eligible assessee' as per section 144C(15) of the I.T.Act, 1961. As per section 144C of the Act, the assessment of an eligible assessee shall be dealt with in accordance with the said provision. As per the provision of section 144C, in case of an eligible assessee, the Assessing Officer shall pass a draft assessment order and served on the assessee, if he propose to make any variation in his total income. The assessee, after receipt of draft assessment order shall have two options. As per sub-section (2) of section 144C, on receipt of draft assessment order, the eligible assessee shall within 30 days file its acceptance of the variations to the Assessing Officer or file his objection, if any, to such variation with the DRP. If the 'eligible assessee' file his acceptance to the Assessing Officer, then the Assessing Officer shall complete the assessment within one month from the end of the month in which the acceptance is received. In case an 'eligible

assessee' files objection before the DRP, then the DRP shall issue its direction within 9 months from the end of the month in which the draft order is forwarded to the assessee. Thereafter, the Assessing Officer shall pass his final assessment order within one month from the end of the month in which such direction is received.

8. In the present case, there is no dispute with regard to the fact that the appellant has filed his objection against the draft assessment order passed by the Assessing Officer before the DRP. Therefore, in ordinary course, the extended time limit for completion of the assessment should be available to the Assessing Officer as per section 144C r.w.s.153C of the I.T. Act, 1961. But, the argument of the learned Counsel for the assessee is that as per section 153(4) of the Act, the extended period of 12 months for completion of assessment is available only where a reference under sub section (1) of section 92CA is made during the course of the assessment or re-assessment, but not in a case where there is no reference to the TPO. We find force in the argument of the learned Counsel for the assessee for the simple reason that, as per section 153(2), the time limit for completion of assessment or re-assessment shall be 12 months from the end of the financial year in which notice u/s 148 was served.

9. However, sub-section (4) of section 153 extends the said time limit by another 12 months notwithstanding anything contained in sub-section (1),(1A),(2),(3) and (3A) where a reference u/s.92CA(1) is made during the assessment proceedings to the TPO. In other words, except the cases of the reference to the TPO, extended time limit of 12 months for completion of assessment is not available even in a case of Non-Resident assessment, even though the said assessment proceedings is covered u/s 144C of the Act. Since the extended time limit of 12 months is not available in the case of Non-Resident as per section 153(4) of the Act, in our considered view, the Assessing Officer ought to have completed the assessment as per the provisions of section 153(2) of the Act which is one year from the end of the financial year in which notice u/s 148 was served. In the present case, if we go by date of notice issued u/s 148 of the Act i.e. 31.03.2022, the time limit for completing the assessment u/s 147 was available up to 31/03/2023 and thus, the final assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C dated 19.01.2024 is clearly barred by limitation.

10. This issue is covered by the decision of the Hyderabad Bench of the Tribunal in the case of Shri Syed Gulam Mohiuddin vs.

Income Tax Officer in ITA No.136/Hyd/2023 dated 03/06/2024.

The relevant findings of the Tribunal are as under:

“8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee is a non-resident individual for the A.Y 2017-18 and is an eligible assessee as per section 144C(15) of the I.T. Act, 1961. As per section 144C of the Act, the assessment of an eligible assessee shall be dealt with in accordance with the said provision. As per the provision of section 144C, in case of an eligible assessee, the Assessing Officer shall pass a draft assessment order and served on the assessee, if he propose to make any variation in his total income. The assessee, after receipt of draft assessment order shall have two options. As per sub section (2) of section 144C, on receipt of draft assessment order, the eligible assessee shall within 30 days file its acceptance of the variations to the Assessing Officer or file his objection, if any, to such variation with the DRP. If the eligible assessee file his acceptance to the Assessing Officer, then the Assessing Officer shall complete the assessment within one month from the end of the month in which the acceptance is received. In case an eligible assessee files objection before the DRP, then the DRP shall issue its direction within 9 months from the end of the month in which the draft order is forwarded to the assessee. Thereafter, the Assessing Officer shall pass his final assessment order within one month from the end of the month in which such direction is received.

9. In the present case, there is no dispute with regard to the fact that the appellant has filed his objection against the draft assessment order passed by the Assessing Officer before the DRP. Therefore, in ordinary course, the extended time limit for completion of the assessment should be available to the Assessing Officer as per section 144C r.w.s. 153C of the I.T. Act, 1961. But, the argument of the learned Counsel for the assessee is that as per section 153(4) of the Act, the extended period of 12 months for completion of assessment is available only where a reference under sub section (1) of section 92CA is made during the course of the assessment or re-assessment, but not in a case where there is no reference to the TPO. We find force in the argument of the learned Counsel for the assessee for the simple reason that, as per section 153(2), the time limit for completion of assessment or re-assessment shall be 12 months from the end of the financial year in which notice u/s 148 was served. However, sub-section (4) of section 153 extends the said time limit by another 12 months notwithstanding anything contained in sub-section (1), (1A), (2),

(3) and (3A) where a reference u/s 92CA(1) is made during the assessment proceedings to the TPO. In other words, except the cases of the reference to the TPO, extended time limit of 12 months for completion of assessment is not available even in a case of Non-Resident assessment, even though the said assessment proceedings is covered u/s 144C of the Act. Since the extended time limit of 12 months is not available in the case of Non-Resident as per section 153(4) of the Act, in our considered view, the Assessing Officer ought to have completed the assessment as per the provisions of section 153(2) of the Act which is one year from the end of the financial year in which notice u/s 148 was served. In the present case, if we go by date of notice issued u/s 148 of the Act i.e. 30.03.2021, the time limit for completing the assessment u/s 147 was available up to 31/03/2022 and thus, the final assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C dated 12.01.2023 is clearly barred by limitation.

10. This proposition is covered by the decision of the Hyderabad Bench of the Tribunal in the case of Shri Farooq Ali vs. Income Tax Officer in ITA No.104/Hyd/2023 order dated 10/04/2024. The relevant findings of the Tribunal are as under:

“23. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.2,55,75,000/- u/s 69 of the I.T. Act on the ground that as per the sale deed, the assessee had paid total sale consideration of Rs.2,55,75,000/- on 5.10.2016 to the vendors by way of cash, that the vendors have admitted and acknowledged the same and the assessee could not explain the source of such payment made for purchase of the immovable property. While doing so, he further held that the sale deed in itself is conclusive evidence and the contents of the same could not be proved further and a civil suit filed by the 3rd party claiming the title to the said property after the registration of sale deed between the assessee and the vendors will not negate the contents of the sale deed.

23.1 It is the submission of the learned Counsel for the assessee that the assessment order passed by the Assessing Officer is barred by limitation. It is also his submission that the assessee being an NRI and settled in UAE does not have any economic activities in India, therefore, there cannot be any addition of unexplained

investment in the hands of the assessee as these falls under article 22 of Indo-UAE DTAA which makes such income taxable in the country of residence i.e. UAE unless these investments are proved to be made out of income generated in India.

24. We find some merit in the above argument of the learned Counsel for the assessee. A perusal of the record shows that the notice u/s 148 was issued on 24.2.2021, a fact not disputed by the Revenue. There is no reference made to the TPO for making any adjustment of arm's length price of the international taxation. We find the provisions of section 153(2) read as under:

“ 153. Time limit for completion of assessment, reassessment and re-computation.

(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:

Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

[Provided further that in respect of an order of assessment relating to the assessment year commencing on the—

(i) 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(ii) 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.]

(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of nine months from the end of the financial year in which such return was furnished.]

(2) No order of assessment, reassessment or re-computation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served: Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted."

25. Thus, a perusal of the above provision clearly shows that the time limit for completion of the assessment in the present case lapses on 31.3.2022. However, the final assessment order u/s 144 r.w.s. 144C has been passed on 30.01.2023 which is beyond the time limit prescribed u/s 153(2). Since the assessment order has been passed on 30.01.2023 as against 31.03.2022, therefore, the same, in our opinion, is barred by limitation and accordingly, the assessment order is liable to be quashed. We therefore, quash the re-assessment proceedings being barred by limitation. Since the assessee succeeds on this preliminary legal issue, the other grounds become academic in nature and therefore, are not being adjudicated."

11. In this view of the matter and considering the facts and circumstances and also by following the decision of the Hyderabad Bench of the Tribunal in the case of Farooq Ali vs. Income Tax Officer (Supra), we are of the considered view that the assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C(13) dated 12.01.2023 is barred by limitation and thus we quash the re-assessment order passed by the Assessing Officer."

11. In this view of the matter and considering the facts and circumstances and by following the decision of the Hyderabad Bench of the Tribunal in the case of Shri Syed Gulam Mohiuddin vs. Income Tax Officer (Supra), we are of the considered view that the assessment order passed by the Assessing Officer u/s.144 r.w.s. 144C(13) dated 19.01.2024 is barred by limitation and thus we quash the re-assessment order passed by the Assessing Officer. Since, the assessee succeeds in legal issue, the

other grounds raised on merit become academic in nature and therefore, are not being adjudicated.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open court on 23rd August, 2024 at Chennai.

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/Vice President

Sd/-

(एस. आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd August, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF