

**IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
MS PADMAVATHY S, AM**

**I.T.A. No.2698/Mum/2022
(Assessment Year: 2017-18)**

TransUnion International Inc., C/o TransUnion International Inc. 19 th Floor, Tower 2B, One Indiabulls Centre, 841 Senapati Bapat Marg, Elphinstone Road, Mumbai-400013. PAN: AADCT0669C	Vs.	DCIT (IT)-4(1)(2), Air India Building, Nariman Point, Mumbai-400021.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri J.D. Mistry, Sr. Adv. a/w
Rajan Vora, Nikhil Tiwari, AR

Revenue / Respondent by : Shri Vivek Perampurna- CIT- DR

Date of Hearing : 03.04.2025
Date of Pronouncement : 11.04.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the final order of assessment passed by the DCIT (IT), Circle-4(1)(2), Mumbai under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (the Act) dated 24.08.2022 for Assessment Year (AY) 2017-18. The assessee is contending the addition made by the Assessing Officer (AO) through various grounds of appeal and also through the additional grounds vide letter dated 24.08.2023 and 29.07.2023.

2. The Id. Authorized Representative (AR) during the course of hearing submitted that for the purpose of adjudication, the additional ground no. 13 & 14 raised vide letter dated 29.07.2024 may be considered. The Id AR further submitted that if these grounds are held in favour of the assessee then the main grounds and rest of the additional grounds would become academic. The Id AR also submitted that to adjudicate the additional grounds no new facts need to be examined and the issue involved is purely legal. The effective additional grounds raised by the assessee reads as under:

“13. erred in not passing the final assessment order within one month from the end of the month in which the DRP Directions were received as per the Section 144C (13) of the Act and thereby the order passed by the Ld. AO is time barred and liable to be quashed.

*14. **without prejudice to the ground no.21**, erred in not appreciating the fact that the DRP directions are issued beyond time limit provided under Section 144C of the Act and thus, the DRP proceedings are time barred and bad in law thereby resulting subsequent assessment proceedings should also be bad in law.”*

3. The brief facts in this case is that the assessee is a company incorporated in India and tax resident of USA and is engaged in the business of Credit Information Services in multiple jurisdictions across the Globe. The assessee acts as the Investment Holding Company for the group and holding investments all across the Globe. During the year under consideration, the assessee had transferred the shares held by its in Indian Group Companies namely TransUnion CIBIL Ltd. and TransUnion Software Services Pvt. Ltd. by way of gift to its group company in Mauritius i.e. TransUnion Mauritius Ltd. The assessee treated the transfer as not taxable in India as per the provisions of section 47(iii) of the Act and accordingly did not offer the income while filing the return of income on 29.11.2017. The assessee also filed the application dated 17.05.2017 with the Authority for Advance

Ruling (AAR) for determining of taxability of the transaction under the Act but has withdrawn the said application since considerable time has elapsed from the date of filing of application. The AAR acceded to the request and the application was withdrawn vide order dated 23.12.2019. The return filed by the assessee was selected for scrutiny and the statutory notices were duly served on the assessee. The case was referred to the Transfer Pricing Officer (TPO) who determined the Arm's Length Price of the impugned transaction at Rs. 3,09,16,61,479/-. The AO subsequently issued notice under section 142(1) calling on the assessee to furnish details pertaining to the transfer of shares. After examining the various details filed by the assessee the AO held that the transaction undertaken by the assessee was not a gift without consideration as claimed by the assessee. The AO further held that the Mauritian Company is a paper company which is a see-through entity and has no say in the actual conduct of the business which is controlled and managed from USA. Accordingly the AO held that the gain arising from the transfer of shares should be taxed under the head Capital Gains. The AO for the purpose computing the capital gain considered the ALP as the gain arising from the transaction since according to the AO the assessee did not furnish the relevant details for the purpose of computing the capital gains. Aggrieved, the assessee filed further objections before the DRP who confirmed the addition. The assessee is in appeal before the Tribunal against the final order of assessment passed by the AO as per the directions of the DRP.

4. With regard to the admission of the additional grounds No.13 & 14 raised vide letter dated 29.07.2024, we heard the parties and perused the records. We notice that the additional grounds raised are pure legal issue, which does not require investigation of new facts. Hence, placing reliance on the judgment of the Hon'ble

Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC), we admit these additional grounds for adjudication first.

5. The ld. AR at the outset submitted that the final assessment order dated 24.08.2022 is barred by limitation in this regard, the ld. AR drew our attention to the order of DRP which is dated 30.06.2022 and is digitally signed at 9.43 p.m on 30.06.2022. The ld. AR submitted that as per the provisions of section 144C(13) of the Act. The AO is required to pass the final assessment order within one month from the end of the month in which the DRP order is received. The ld. AR further submitted that since the order of the DRP is digitally signed on 30.06.2022 and that the DIN is generated on the same date, it is received by the AO on 30.06.2022 and accordingly the final order of assessment should have been passed by 31.07.2022. The ld. AR therefore argued that the final assessment order dated 24.08.2022 is passed beyond the time limit specified under section 144C(13) of the Act and accordingly is invalid. The ld. AR in this regard drew our attention to the RTI (page no. 222 of Paper Book) filed by the assessee raising the following two questions:

- (i) *The date on which the directions of the DRP were uploaded on ITBA Portal.*
- (ii) *Date on which it was communicated to Jurisdictional AO by email/ITBA Portal/any other means.*

6. The ld. AR further drew our attention to the reply received from the DCIT(IT)-4(1)(2) stating that

“2. The aforesaid application was received in the office of the undersigned on 11-03-2024 as per provisions of section 6(3) of the Right to Information Act 2005. The reply to the queries is as follows:-

*3. **Point (1)** No such details are available in this office.*

Point (2) *The order of Hon'ble DRP was communicated to the AO/TPO vide email dated 01-07-2022 and by Tapal on 04-07-2022."*

7. The Id. AR also submitted that the assessee has written to the DRP to provide details of the date of uploading of directions issued by the DRP and the date of dispatch of DRP directions to the Jurisdictional AO (JAO). The Id. AR submitted that no reply till date has been received by the assessee. The Id. AR also submitted the screenshots from the ITBA Portal to submit that the directions of the DRP is not visible to the assessee in the ITBA Portal and therefore the assessee is unable to accept the contention of the AO that the DRP directions have been received on 04.07.2022. The Id. AR submitted that the DRP directions once digitally signed and the DIN is created would be immediately available for the AO who is having the jurisdiction of the PAN of the assessee. Therefore, the Id. AR submitted that the DRP directions are received by the AO on 30.06.2022 and not on 04.07.2022 as claimed by the AO. On the contention of the AO's order being time barred the Id. AR relied on the following decisions –

- (1) Vodafone India Ltd. [2023] 156 Taxmann.com 258 (Bom. HC).
- (2) Louis Dreyfus Company India Pvt. Ltd. [2024] 464 ITR 595 (Del. HC)
- (3) Taeyang Metal India Pvt. Ltd. [2024] 160 Taxmann.com 536 (Madras HC).
- (4) Rapiscan Systems Pvt. Ltd. (W.P. Nos. 44891 and 44915 of 2022 dated 09.01.2025 (Telangana HC)
- (5) Ramco Cements Ltd (TCA No.192 of 2024) (Madras HC) dated 19.12.2024

8. The Id. AR without prejudice to the above submissions alternatively argued that if the Department's contention that the DRP directions were actually issued i.e.

received by the AO only through email on 01.07.2022 then the directions of the DRP is beyond the time limit of 9 months from the end of the month in which the draft assessment order was issued as per the provisions of section 144C(12). The ld. AR further argued that the draft assessment order in assessee's case was passed on 29.09.2021 and therefore, the DRP order should have been issued by 30.06.2022 and that if the same is issued as claimed by the Revenue on 01.07.2022 then the same would be barred by limitation. The ld. AR also relied on the various judicial pronouncements in this regard.

9. The ld. Departmental Representative (DR) on the other hand submitted that the judicial pronouncements relied on by the ld. AR are factually distinguishable for the reason that the time gap between the date of the DRP directions and the date of final order was wider in those cases whereas in assessee's case, the DRP directions were dated 30.06.2022 which was sent by email to the AO on 01.07.2022. Accordingly, the ld. DR argued that the final assessment order dated 24.08.2022 is well within the time limit as prescribed under section 144C(13) of the Act. The ld. DR also submitted that in the case laws relied on by the assessee, the final assessment was done by the National Faceless Assessment Centre (NFAC) and not by JAO. The ld. DR therefore, argued that the contention of the assessee that immediately on the digital signature, the JAO would have received the order is not correct. The ld DR submitted that the JAO received the DRP directions only on 01.07.2022 through email. Accordingly the ld. DR submitted that the final order passed by the AO is not barred by limitation.

10. We have heard the parties and perused the material on record. In assessee's case, the draft assessment order is dated 29.09.2021 but DRP direction is dated 30.06.2022 and as per the digital signature, the same is digitally signed on

30.06.2022 at 9.53 p.m. We further notice that the final order of the assessment is dated 24.08.2022. The contention of the assessee is that once the DRP directions are signed and DIN is generated the same is received by the AO immediately and hence the time limit starts from 30.06.2022 in assessee's case. Accordingly the assessee argues that the final order of assessment should have been passed by 31.07.2022 and the order passed on 24.08.2022 is therefore barred by limitation. The revenue is contending that the order of the DRP is received by the AO only on 01.07.2022 by email and through Tapal on 04.07.2022 and therefore the time limit for passing final order is till 31.08.2022. Accordingly it is argued by the revenue that the order passed on 24.08.2022 is well within the time limit. In view of this limited issue for our consideration is whether the final order of assessment dated 24.08.2022 is barred by limitation as per the provisions of section 144C(13) of the Act when the DRP order which is digitally signed on 30.06.2022 is received by the AO by email on 01.07.2022.

11. In order to decide the issue, the critical fact to be examined is whether the DRP order once signed is automatically available i.e. received by the AO in the ITBA portal. We in this regard notice that the Hon'ble Madras High Court in the case of Ramco Cements Ltd (supra) has examined the functionalities of the ITBA Portal with regard to DRP directions and has given the finding that the DRP directions are immediately available to the Faceless AO (FAO) as well as JAO. It was contended by the revenue in the said case that when the DRP user has initiated the DRP proceedings by using an option of manually entering the details of the Section 144C order in the screen, the DRP order does not reflect automatically in the case history notings (CHN) of the assessment proceedings. However, the Hon'ble High Court rejected the said contentions by holding that –

“26. According to the Report, the second option has been availed by the DRP user and hence though the order was uploaded by the DRP user in the ITBA on 31.01.2022 itself, such uploading was not noticed by the Assessing Officer. However, as far the Assessing Officer is concerned, an Advisory issued by the ITBA team on 'Visibility of orders passed by DRPs to other ITBA users, is relevant. The Advisory reads thus:

Visibility of orders passed by DRPs to other ITBA users

Kind Attn. All ITBA Users

*Sub: Visibility of orders passed by DRPs to other ITBA users –
Reg.*

This is to inform that on passing order by the DRP in ITBA(DRP Module) [either through online system mode or through Manual to system mode], the DRP Directions/Order would be reflected automatically in the pending assessment work-item either with FAO or JAO – provided that at the time of initiating DRP proceedings, in ITBA DRP Module, DRP users had selected the Draft order u/s 144C in the system itself, rather than entering the details on the ITBA screen on its own. If, at the time of initiating DRP proceedings, the DRP user had not selected the Draft Order u/s 144C in the system, and had rather entered the details manually on the ITBA screen on its own, then the DRP Order will not reflect inside the pending / Assessment Proceedings work-item.

*In either of the above scenarios, however, the DRP order would be visible in the '360 Degree' screen to the FAO if any assessment work item is pending with the FAO related to that PAN. **The JAOs can view the DRP order in '360 Degree' screen for all the PANs existing in their jurisdiction. Besides,** JAO can also get the details from DRP by offline letter/communication. FAOs can also call for any details from JAOs by using the 'Issue Letter' functionality inside the workitem, and in response the JAOs can upload the details by using “Uploading of Documents based on the DIN/PAN-AY” screen*

in ITBA.

*Regards,
ITBA Team*

(Emphasis supplied)

27. Paragraphs 1 and 2 of the above Advisory stipulate the two methods/options for uploading of the order. However, whatever be the method chosen, the directions of the DRP would be visible in the 360 degree screen to the FAO, if any assessment work item were pending with the FAO, in relation to a PAN number.

28. In other words, in the event of pending assessment proceedings, an FAO would have to key in the concerned PAN number of the assessee, such that, panoramic, 360 degree visibility is available to the officer to view the DRP directions as and when uploaded, which, in this case, is on 31.01.2022. In the present case, order of assessment dated 22.03.2022 has been passed (per serial no.12 of assessment order dated 22.3.2022) under Section 143(3) read with Section 144C (13) read with Section 144B of the Act. This provision requires an assessment to be framed only in faceless mode by an FAO and in fact, it is the FAO who has framed the assessment.

29. The Advisory makes it clear that the FAO would be able to view the DRP order in the 360 degree screen, since the assessment was pending with that officer. This feature has evidently been provided to ensure that an officer can access/receive the directions of the DRP as soon as it is uploaded by the Secretariat of the DRP and the pending proceedings would be completed within the statutory limitation provided.

30. Hence, there is no protection available to the Department by the DRP user having selected the second manual option, as, an assessing officer, in order to ensure that the assessment proceedings are strictly in accordance with statutory limitation, has been given full and complete access to all inputs required for completion of the assessment including the directions of the DRP immediately on their uploading into the ITBA portal by the DRP.

31. Clearly, limitation cannot be dependent on varying user functionalities which are nothing but internal processes. If this argument were to be accepted, the commencement of limitation would vary depending on the option exercised by the user which would defeat the purpose of statutory limitation apart from being an acceptable proposition.

32. The starting point of limitation has thus to be reckoned from the earliest instance when the directions of the DRP would be visible to the officer and cannot be taken to fluctuate from one methodology to another depending on the option exercised by the user.

37. The fact that the FAO has merely chosen to await intimation when the order had admittedly been uploaded on the ITBA by the DRP user, and his consequent belated response, cannot thus lead to a situation of disadvantage to the assessee, particularly when the Advisory provides a methodology by which the FAO can access the document uploaded by the DRP simultaneously, and realtime.

38. Lastly, Section 144C is a Code by itself that provides for very strict timelines for completion of an assessment. Hence the stipulation in regard to limitation cannot be reckoned in a manner so as to give rise to more than one interpretation, where either party can take benefit of a later date.

39. This issue has also attracted the attention of the Bombay and Delhi High Courts in *Vodafone Idea Limited V. Central Processing Centre and others* (459 ITR 413) and *Louis Dreyfus Company India Private Limited V. Deputy Commissioner of Income Tax, Circle 13(1) and Others* (Manu/DE/4671/2024). In both the cases, the very

submissions as made before us, were advanced and have been rejected by those Courts.”

12. From the perusal of the Advisory issued by the ITBA Team on "Visibility of Orders passed DRP to other ITBA users" it is clear that the JAO can view the DRP order in "360 Degree" screen for the PANs existing in their jurisdiction. Therefore we are unable to agree with the argument that the decisions relied on by the Id AR is with respect to FAO and cannot be applied to JAO. Accordingly in our considered view, the DRP directions either through online system mode or through manual to system mode, once digitally signed is available to JAO immediately in the ITBA system and hence the clock starts ticking for the JAO from that date for the purpose of passing the final assessment order under section 144C(13) i.e. from 30.06.2022 in assessee's case.

13. In this regard it is relevant to take note of the following observations of the Hon'ble Jurisdictional High Court in the case of Vodafone Idea Limited (Supra) –

“5. In the meantime, the TPO passed an order proposing an adjustment to the value of the international transaction of Petitioner. The Assessing Officer ("AO") passed a draft order dated 29th December 2019 under section 144C(1) of the Act for the relevant AY and proposed various additions/disallowances. Petitioner filed objections under section 144C(2)(b) of the Act before the Dispute Resolution Panel ("DRP") on 27th January 2020. A notice was issued by the DRP and Petitioner responded by filing relevant documents/evidence in support of objections raised by it. Finally the DRP issued directions dated 25th March 2021 under section 144C(5) of the Act. The directions of DRP were uploaded on the Income-tax Business Application ("ITBA") portal on the same date and the said directions were served on Petitioner vide e-mail dated 6th April 2021. The grievance of Petitioner essentially is that the AO failed to pass the final order in terms of the directions of DRP within 30 days, the period of limitation prescribed by Section 144C(13) of the Act and consequently prays that the ROI as filed originally has to be accepted and excess tax paid be refunded with interest.

6. After the petition was filed on 8th June 2023, the AO passed the assessment order dated 31st August 2023. The same has been placed on record as an additional document.

7. Mr. Mistri for Petitioner raised various grounds to justify seeking a refund from the department. He emphasized the admitted fact that despite the DRP issuing directions on 25th March 2021, no order was passed by the AO within the period prescribed by law. When no order is passed pursuant to the directions of DRP within the statutory period as prescribed under section 144C(13) of the Act, the income declared by Petitioner is deemed to be accepted by the department and Petitioner is entitled to a refund of the amount paid by Petitioner in excess of the legitimate tax due from Petitioner. Mr. Mistri took us through the documents on record including the affidavits filed by the Chief Commissioner of Income-tax (International Taxation and Transfer Pricing) West Zone, Mumbai and also that filed by the Joint Commissioner of Income Tax, Ratlam, who was the JAO at the relevant point of time. Mr. Mistry also took us through the affidavits in sur-rejoinder filed by the Deputy Commissioner of Income Tax-5(2)(1), Mumbai ("DCIT") and also the order sheet details filed by Respondents in support of the affidavit of DCIT. Mr. Mistri finally relied on a decision of this Court in the matter of *Shell India Markets (P.) Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer, National Faceless Assessment Centre* [[2022](#)] [139 taxmann.com 335/443 ITR 366 \(Bombay\)](#) to buttress his contention that the AO is duty bound to complete the assessment within the prescribed time set out under section 144C(13) of the Act.

8. Mr. Devvrat Singh for the Revenue defended the acts of the department and that of the Faceless Assessing Officer ("FAO") in passing the final order on 31st August 2023 upon receipt of the directions from the DRP. Mr. Singh's contention is that the directions of DRP dated 25th March 2021 were received in the Case History Noting ("CHN") of FAO only on 23rd August, 2023 and as the assessment in conformity with the directions of DRP was completed on 31st August 2023, it was within the one month prescribed under section 144C(13) of the Act as the limitation period ran from the date of receipt by him of the order and not the date when the same were uploaded on the ITBA portal. Mr. Singh thus says that it was only on the receipt of the directions of DRP that the FAO was duty bound to complete the assessment, i.e., pass the final order. Mr. Singh thus prayed for dismissal of the petition.

9. Therefore, admittedly, the DRP issued the directions on 25th March 2021 whereas the assessment was completed and an order came to be passed on 31st August 2023.

10. At the outset it is important to note that the entire assessment proceedings are governed by the Faceless Assessment Mechanism under the scheme known as the e-Assessment Scheme ("eAS"), 2019 as notified by the Ministry of Finance (Department of Revenue) on 12th September 2019. The salient features of the scheme include defining the scope of scheme, jurisdiction of e-Assessment Centre, procedure for assessment, penalty proceedings for non-compliance amongst other features. The Central Government amended the FAS of 2019 and the first amendment came into effect on 17th February 2021. Paragraph 5(1) of the original scheme was substituted by the amendment. The amended paragraph 5(1) reads thus :

"In the said Scheme, for sub-paragraph (1) of paragraph 5, the following sub-paragraph shall be substituted, namely,—

(1) The assessment under this Scheme shall be made as per the following procedure, namely:—

(i) the National e-Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143 of the Act;

(ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (i), file his response to the National e-Assessment Centre.

*(iii) ******

(xxviii) the National e-Assessment Centre shall, -

(a) upon receipt of acceptance as per clause (xxvii); or

(b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C of the Act,

finalise the assessment within the time allowed under sub-section (4) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel, the National e-Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C of the Act, forward such directions to the concerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution panel under sub-section (5) of section 144C of the Act prepare a draft assessment order in accordance with sub-section (13) of section 144C of the Act and send a copy of such order to the National e-Assessment Centre;

(xxxi) the National e-Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, upon the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxxii) The National e-Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act."

11. *An analysis of eAS and the amendment indicate that various notices, summons and orders are received and issued by the National e-Assessment Centre ("NeAC") set up to conduct e-assessment proceedings in a centralized manner. Paragraph 4(2) of the eAS provides as under :*

"4(2). All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or with any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making an assessment under the scheme shall be through the National e-Assessment Centre."

Thus, any notice, summons, order is deemed to have been received by the FAO once it is available to the NeAC.

12. *On 1st August 2023, when the matter was listed before this Court, a statement was made by Mr. Singh that because of the commencement of the Faceless Assessment Regime, the directions given by DRP were not received by the FAO and therefore, the FAO did not pass order under section 144C(13) of the Act and DRP had forwarded the order to the Jurisdictional Assessing Officer ("JAO"). Per contra, Mr. Mistri showed us an e-mail dated 6th April 2021 addressed to Petitioner by "ITO HQ TO DRP2 WZ" forwarding a copy of the directions issued by the DRP. The said directions of DRP also form part of the attachment to the e-mail. This email being brought to our notice, we passed the following order/directions dated 1st August 2023 :*

"1. Mr. Singh states that because of the Faceless Assessment Regime being started, the directions given by DRP was not received by the Faceless Assessing Officer and, therefore, the Faceless Assessing Officer did not pass order under section 144C(13) of the Income-tax Act, 1961. Mr. Singh states that DRP had forwarded the order to the Jurisdictional Assessing Officer.

2. If that is the case, we wonder why the Jurisdictional Assessing Officer did not forward the order to the Faceless Assessing Officer. Moreover, if the Faceless Assessment Regime had already begun, we are certain that DRP would have been aware of that and should have, if what Mr. Singh stated is correct, forwarded a copy of their directions to the Faceless Assessing Officer as well.

3. We also have to note that there is an email, printout of which is at Exhibit "C" to the petition, which reads as under :

From : MUMBAI mumbai.ito.hq.drp2

[mailto:mumbai.ito.hq.drp2@incometax.gov.in]

Sent: Tuesday, April 6, 2021 3:21 PM

To: Jain, Surbhi (COR), Vodafone Idea

<Surbhi.Jain@vodafo neidea.com>

Subject : DRP Directions in case of Vodafone Idea Limited (formerly 'Vodafone Mobile Services Limited) (VMSL) which merged with Idea Cellular Ltd and consequently known as "Vodafone Idea Limited")

Please find the attached directions in case of Vodafone Idea Limited (formerly 'Vodafone Mobile Services Limited) (VMSL) which merged with Idea Cellular Ltd and consequently known as 'Vodafone Idea Limited'). The same was issued through ITBA on 25-3-2021

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(ANITA VIJAYNATH KUNDER)

ITO HQ TO DRP 2 WZ

MUMBAI - 400005

022-22180539

4. Therefore, it will be more appropriate if the Chief Commissioner or Principal Chief Commissioner or whoever is the person heading the Dispute Resolution Panel files an affidavit explaining, inter alia, as to why when the Faceless Assessment Regime had already kicked in, DRP's directions were

sent to the Jurisdictional Assessing Officer instead of to the Faceless Assessing Officer. So also the Jurisdictional Assessing Officer, who had received the directions of DRP, and it will be the same officer who was in that post when the directions were received and not any successor, shall file an affidavit explaining why he/she did not forward the directions of DRP to the concerned Faceless Assessing Officer particularly when, as Mr. Singh states, the Faceless Assessment Regime had begun. These affidavits shall be filed and copy served by 10th August 2023.

5. Stand over to 22nd August 2023."

13. *Pursuant to our directions of 1st August 2023, two affidavits were filed, one by Mr. Satish Sharma, the Chief Commissioner of Income-tax (International Taxation and Transfer Pricing) West Zone, Mumbai and another by Ms. Anne Varghese, JCIT, Ratlam on 10th August 2023. The relevant portion of the affidavit of Mr. Satish Sharma reads thus :*

"4. I respectfully say that I have called the factual position and the relevant records from the DRP and perused them in connection with the directions of the Hon'ble Bombay High Court in the aforesaid order dated 1-8-2023 and accordingly, based on the record, I am conversant with the facts of the issue and I am able to depose the same. I respectfully say that I am filing this affidavit on the direction of the Hon'ble Bombay High Court in the aforesaid order for the limited purpose of explaining as to why, when the Faceless Assessment Regime had already kicked in, DRP's directions were sent to the Jurisdictional Assessing Officer (hereafter JAO) instead of the Faceless Assessing Officer (hereafter FAO).

5. That the DRP passed directions (with DIN) on 25-3-2021 in the name of Vodafone Mobile Services Pvt. Ltd. (VMSL) (predecessor of Vodafone Idea Ltd.-VIL) by uploading the same on the Income-tax Business Application System. A copy of the ITBA system generated noting/case history is hereto annexed and marked as EXHIBIT- 1. The DRP directions are automatically visible to FAO in the ITBA system, if any assessment work item is pending related to that particular PAN.

6. There is an additional feature on the ITBA system in the DRP segment from which communication through e-mail can be made through ITBA system. As precaution, the copy of direction was sent to the assessee and the JAO on their available e-mail IDs. The e-mails were sent on sameer.baig@vodafoneidea.com and mumbai.dcit5.2.2@income tax.gov.in. These e-mails bounced and a copy of ITBA system generated delivery status is hereto annexed and marked as EXHIBIT-2.

7. Therefore, as a matter of abundant precaution, the DRP ascertained the details of JAO [DCIT(5)(2)(1)] under whose domain the VMSL PAN was placed and delivered to him/her a downloaded physical copy of the uploaded/passed direction on 30-3-2021 for consequential actions on his/her part. Here it is stated that since the entire process was automated on the ITBA system, therefore, the DRP was not mandated to send a physical copy of the direction to the FAO, whose identity is not known to any authority. As mentioned above, the physical copy of the direction was sent to the JAO also only as an abundant precaution because the Faceless Assessment regime was new.

8. Further, the DRP also e-mailed a copy of the direction to the Petitioner on a different e-mail ID on 6-4-2021. The same e-mail is mentioned in the referred order of the Hon'ble Bombay HC."

[Emphasis Supplied]

14. The relevant portion of the affidavit of Ms. Anne Varghese reads thus :

"3. I say that at the relevant time I was working as Jurisdictional Assessing Officer in my capacity as Deputy Commissioner of Income-tax 5(2)(1), Mumbai.

4. I respectfully say that Physical copy/offline order of the Dispute Resolution Panel (D.R.P.) dated 25-3-2021 was received in tapal/inward register by the Jurisdictional Assessing Officer in its office on 30-3-2021 in the case of "Vodafone Mobile Services Limited".

5. I respectfully say that the physical copy of the D.R.P. order was not forwarded to the Faceless Assessing Officer since it was ascertained that the said direction dated 25-3-2021 of the D.R.P. was available under the "View Download - Order/Letter/Notices Tab" Functionality of the Income-tax Business Application (I.T.B.A.). I say that the documents which are visible under the "View Download - Order/Letter/Notices Tab" Functionality of the Income-tax Business Application (I.T.B.A.) are also available to other officers (AO of Faceless Assessment Unit (F.A.U.) in this case) having jurisdiction over the PAN.

6. I respectfully say that Document Identification Number (D.I.N.) had been duly generated for the directions of the D.R.P. which is visible on the first page of the hard copy of the D.R.P. directions received by the undersigned which clearly indicated that the directions by D.R.P. were passed digitally on the Income-tax Business Application (I.T.B.A.).

7. *I respectfully state that it was under these circumstances that the undersigned was not required to forward the directions of D.R.P. to the concerned Faceless Assessing Officer."*

(Emphasis Supplied)

15. *Annexed to the affidavit of Mr. Satish Sharma is a screenshot of the CHN-Case History Notings of DRP proceedings uploaded on the ITBA portal. The screenshot is of the page as it appears on the ITBA portal. A perusal of the screenshot of CHN of DRP read with the affidavit filed by Mr. Satish Sharma, the CCIT and Ms. Anne Varghese, the JCIT, clearly indicate that once the DRP directions are uploaded and the Document Identification Number ("DIN") is generated, which is also visible on the first page of the hard copy of DRP directions, the said document is visible to the AO of the Faceless Assessment Unit ("FAU") having jurisdiction over the PAN of the assessee concerned. Thus, both the affiants agree that the DRP directions once uploaded on the ITBA portal are automatically visible to the FAO, if any assessment work item is pending related to a particular PAN. Admittedly assessment proceedings of Petitioner were pending. Thus, undoubtedly the DRP directions uploaded on the ITBA portal were readily and clearly visible and accessible to the FAO of assessee.*

16. *A reply affidavit in sur-rejoinder dated 14th September 2023 filed by Shri. L. A. Janbandhu, the Deputy Commissioner of Income Tax-5(2)(1), Mumbai also affirms that the DRP directions were uploaded on the ITBA portal on 25th March 2021. In fact Mr. Singh, in fairness admitted the directions of DRP were available on the ITBA portal. The defense of Respondents, however, was that the direction of DRP under section 144C(5) of the Act were noted in the CHN of FAO only on 23rd August 2023 and hence, that is the day he should be deemed to have received it. On the Court putting a question to Mr. Singh as to how and under what mechanism are the directions of DRP noted in the CHN of FAO, Mr. Singh candidly stated that was entered by the FAO. The fact remains that the DRP directions were always visible and accessible to the FAO on the ITBA portal.*

17. *Mr. Singh made all attempts to persuade us that despite the ITBA portal displaying the DRP directions and the same being accessible to the FAO, it was only on 23rd August 2023 that the same were received by the FAO. We cannot accept this because, the E-assessment Scheme itself provides that all communication is deemed to have been received by the assessment units concerned once received through the NeAC. Thus, once the E-assessment Centre is in receipt of the DRP directions, the period of limitation runs from that day. There is no requirement of a deep dive in an analysis of the phrase 'upon receipt of directions' as it appears in Section 144C(13) of the Act. The fundamental principle of interpretation is to assign words their natural, original and precise meaning, provided that the words are clear and take into account the purpose of the Statute. It is settled law that a provision should be interpreted in its literal*

sense and given its natural effect. This is the elementary golden rule of interpretation of Statutes. Since there is no ambiguity pertaining to the phrase 'upon receipt of the directions issued under Sub-section 5 of 144C of the Act, the AO shall' there is no requirement of delving in a further in-depth analysis of the clear provision.

18. Another important aspect is that the FAO himself has not filed any affidavit to affirm the date on which he purportedly 'received' the directions of DRP. But in the affidavit of Mr. Janbandhu, it is explained that the contents of his affidavit are the inputs from the PCIT (AU) and CCIT (IT & TP) along with all the relevant records available in the office in connection with the issue as also the comments of FAO invited by him through the National Faceless Assessment Centre. He says that the procedure of handling writ litigation regarding proceedings by FAO are contained in the SOP dated 1st August 2022 issued by CBDT which have been followed in dealing with the present proceedings. Since said Mr. Janbandhu has affirmed that the affidavit contains the comments of FAO, we safely presume that the FAO has said what he will through this affidavit.

19. Surprising to note is not what is stated, but that which remains unstated in this affidavit. The deafening silence in the affidavit of Mr. Janbandhu, to the affirmed statements of Mr. Satish Sharma and Ms. Anne Varghese as quoted above itself speak volumes. Though Mr. Janbandhu admits being aware of the affidavits of Mr. Satish Sharma and Ms. Anne Varghese, there is neither any rebuttal nor an explanation to the statements of Mr. Satish Sharma and Ms. Anne Varghese regarding availability of DRP directions on the ITBA portal. That the DRP directions were automatically visible to the FAO in ITBA system, JAO was not mandated to forward the directions to FAO whose identity was not known to any authority etc. Mr. Janbandhu states that only on 23rd August 2023 the JAO has uploaded the DRP order dated 25th March 2021 in response to his letter dated 23rd August 2023 and therefore, he received the order only on 23rd August 2023 and hence, the assessment was within time. This according to us is an unacceptable statement in view of what Ms. Anne Varghese in her affidavit has stated that the physical copy was not forwarded to the FAO since it was ascertained that the directions dated 25th March 2021 of the DRP were available under "the view Download-order/letter/notices Tab" functionality of ITBA and those were visible to the FAO also who had jurisdiction over the PAN. Moreover, Mr. Satish Sharma states the DRP directions cannot be sent to the FAO directly because no authority will be aware of his identity. Though we had highlighted all these defects in Revenue's case in our order dated 5th September 2023, no attempt has been made to clarify. It is thus very difficult to agree with the proposition advanced by Mr. Singh that as per the CHN the DRP direction was received by the FAO only on 23rd August 2023. There is no whisper of any explanation as to why the FAO, who was seized with the pending assessment of Petitioner, remained

inactive and silent for two long years and swung into action only when information about filing of this writ petition was uploaded on the CHN. Strangely enough a noting pertaining to this writ petition filed on 8th June 2023 appears on the CHN of 11th July 2023, but still the DRP directions of 25th March 2021 appear only on 23rd August 2023. No explanation on behalf of the department is forthcoming. We have to draw adverse inference.

20. Section 144C of the Act is a self contained provision which carves out a separate class of assessees, i.e., 'eligible assessee'. Section 144C of the Act was inserted in the Finance Act of 2009 and came into effect from 1st October 2009. In the notes on clauses to the Finance Bill, 2009 (Budget 2009-2010), the reason for insertion of Section 144C is given as under :

"The subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The correction of such view take very long time with the existing appellate structure.

With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative dispute resolution mechanism within the income-tax department and accordingly, section 144C has been proposed to be inserted so as to provide inter alia the Dispute Resolution Panel as an alternative dispute resolution mechanism."

21. Thus, if the provisions of Section 144C as mandated by the Statute are not strictly adhered the entire object of providing for an alternate redressal mechanism in the form of DRP stand defeated. That is not the intention of the legislature when the provision was introduced in the Act. Section 144C(10) of the Act provide that the directions of DRP are binding on the AO. By failing to pass any order in terms of the provision, the AO cannot be permitted to defeat the entire exercise and render the same futile. When a Statute prescribes the power to do a certain thing in a certain way, then the thing must be done in that way and other methods of performance are forbidden. Once the statute has prescribed a limitation period for passing the final order, it is expected that the internal procedure of the department should mould itself to give meaning to and act in aid of the provision. Any procedural defect (there is none in this case) in the internal mechanism of the working of E-assessment Scheme, cannot operate against the interest of assessee. Hence, the FAO cannot be believed that the DRP direction was received by him only on 23rd August 2023 despite being uploaded on the ITBA portal on 25th March 2021. The failure on the part of department to follow the procedure under section 144C of the Act is not merely a procedural irregularity, but is an illegality and vitiates the entire proceeding.

22. *In a decision in the matter of Turner International India (P.) Ltd. v. Dy. CIT [2017] 82 taxmann.com 125/398 ITR 177/2017 SCC OnLine DEL 8441, the Delhi High Court has held that the question "whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of Section 144C of the Act?", is no longer res integra and any order passed contrary to Section 144C of the Act cannot be sustained.*

23. *In a decision cited by Mr. Mistri in the matter of Shell India Markets (P.) Ltd. (supra), this Court has also held as follows :*

"10. Sub-section (13) of Section 144C, therefore, is very clear inasmuch as the Assessing Officer shall, upon receipt of the directions issued under Sub-section (5), in conformity with the directions, complete the assessment within one month from the end of the month in which such direction is received. Sub-section (13) also provides that the Assessing Officer can complete the assessment without providing any further opportunity of being heard to the assessee. This means that the moment the Assessing Officer receives the directions under Sub-section (5), he has to straightaway complete the assessment and he does not even have to hear the assessee. The Assessing Officer shall simply comply with the directions received from the DRP within one month from the end of the month in which such directions is received."

24. *In view of the aforesaid discussion, we have no hesitation in holding that the assessment order dated 31st August 2023 passed by FAO two years after the DRP directions, is time barred and cannot be sustained. Consequently, the ROI as filed has to be accepted. Petitioner is entitled to receive the refund together with interest, in accordance with law. The procedure to be completed within 30 days of this order being unloaded. This would, however, not preclude revenue, should the need arise, from reopening the assessment by following due process and in accordance with law."*

14. From the above findings of the Hon'ble High Court, the fact that the once the DRP directions are digitally signed it is automatically available to the JAO and this fact has been admitted by the revenue in the affidavits filed by the revenue before the Hon'ble High Court.

15. Now coming to the contention of the Id DR that in the decision of the Hon'ble Bombay High Court and the other decisions listed herein above, the time gap between date of DRP passing the order and the final order of assessment was wider

and therefore the decisions cannot be directly applied in assessee's case. In this regard we notice that the Hon'ble Telangana High Court in the case of Rapiscon Systems Pvt. Ltd. (supra), while considering the similar issue has placed reliance on the decision of Bombay High Court in the case of Vodafone Idea Ltd (supra) where the DRP order is dated 30.06.2022 (date identical to assessee's case). The relevant findings of the Hon'ble High Court are extracted below.

“6. *In turn, respondent No.1 completed the assessment in petitioner's case and passed the draft assessment order dated 27.09.2021 for Assessment Year 2018-19 proposing additions in this regard. The petitioner filed its objections before Dispute Resolution Panel (DRP). The DRP passed its direction/order dated 30.06.2022 and declined relief to the petitioner.*

7. *The respondents issued final assessment order on 30.08.2022 along with computation sheet, demand draft and penalty notice dated 30.08.2022. Pertinently, the aforesaid documents do not bear any DIN.*

13. *Before dealing with rival contentions, it is apposite to consider [Sections 144C\(13\)](#) and [282\(1\)\(c\)](#) of the Income Tax Act and [Section 13](#) of the I.T. Act which reads thus:*

"Section 144C: Reference to dispute resolution panel:-
(1) to (12)...

(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 153B](#), 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."

"Section 282: Service of notice generally:-

(1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named,--

(a) and (b)...

(c) in the form of any electronic record as provided in [Chapter IV of the Information Technology Act, 2000](#) (21 of 2000); or"

"Section 13: Time and place of despatch and receipt of electronic record.:-

(1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:-

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records, -(i) receipt occurs at the time when the electronic record enters the designated computer resource; or (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee."

(Emphasis Supplied)

14. The E-Assessment Scheme, 2019 placed reliance on [Section 13](#) of the I.T. Act for the purpose of delivery of electronic record. The relevant portion reads thus:

"Delivery of electronic record:

10. (1) Every notice or order or any other electronic communication under this Scheme shall be delivered to the addressee, being the assessee, by way of:-

(a) placing an authenticated copy thereof in the assessee's registered account; or

(b) sending an authenticated copy thereof to the registered email address of the assessee or his authorized representative; or

(c) uploading an authenticated copy on the assessee's Mobile App; and

followed by a real time alert.

(2) and (3) xxx

(4) *The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of Section 13 of the Information Technology Act, 2000 (21 of 2000).*"

(Emphasis Supplied)

15. *The Delhi High Court in Louis Dreyfus Company India Private Limited (supra) held as under:*

"15. In terms of sub-section (13) of Section 144C of the Act, the AO is mandated to complete the assessment—in conformity with the directions as framed by the DRP. That very provision commands the AO to complete the assessment within one month from the end of the month in which such a direction is received.

17. As is manifest from a reading of sub-section (13) of Section 144C of the Act, the AO is not accorded any discretion in the framing of an order of assessment once directions have come to be framed by the DRP. In fact, the provision requires the AO to frame an order of assessment in conformity with those directions and without providing any further opportunity of hearing to the assessee. This principle of law has been affirmed by the Bombay High Court in the aforementioned paragraphs of Vodafone Idea and in Shell India Markets Private Limited v. Additional Commissioner of Income Tax Officer, National Faceless Assessment Centre & Ors¹⁰. The relevant paragraph of the decision in Shell India are extracted hereinbelow:

'10. Sub-section (13) of Section 144C, therefore, is very clear inasmuch as the Assessing Officer shall, upon receipt of the directions issued under sub-section (5), in conformity with the directions, complete the assessment within one month from the end of the month in which such direction is received. Sub-section (13) also provides that the Assessing Officer can complete the assessment without providing any further opportunity of being heard to the assessee. This means that the moment the Assessing Officer receives the directions under sub-section (5), he has to straightaway complete the assessment and he does not even have to hear the assessee. The Assessing Officer shall simply comply with the directions received from the DRP within one month from the end of the month in which such direction is received.'

20. *Undisputedly, the directive of the DRP came to be uploaded on the ITBA portal on 24 June 2022. It is additionally stated to have been dispatched through*

Speed Post to the third respondent (TPO) and the fourth respondent (Additional/Joint/Deputy/Assistant Commissioner of Income Tax, National Faceless Assessment Centre, New Delhi) on 27 June 2022. It is thereafter that the TPO appears to have passed the order dated 25 July 2022.

21. *We, however note that paragraph 4(2) of the E-as, 2019 makes the following salient provisions:-*

'4(2). All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making an assessment under this Scheme shall be through the National e-assessment Centre.'

22. It is thus manifest that as per the provisions of E-as, 2019, all orders, notices and decisions have to be necessarily uploaded on the ITBA portal and as part of the larger faceless assessment regime which now holds the field. The uploading of the directive of the DRP on the ITBA portal would thus constitute valid and sufficient service and the period of limitation as prescribed in [Section 144C\(13\)](#) of the Act would be liable to be computed bearing that crucial date in mind.

Once the aforesaid position becomes clear, it is evident that the order of assessment, if at all could have been framed lastly by 31 July 2022. There has thus been an abject failure on the part of the first respondent to comply with the mandatory timelines as incorporated in the aforementioned provisions. Accordingly, the writ petition is liable to be allowed and the impugned order of assessment and the consequential penalty proceedings are thus liable to be set aside on this short score alone."

(Emphasis Supplied)

16. *The Bombay High Court in [Vodafone Idea Ltd.](#) (supra) opened as under:*

"15. Annexed to the affidavit of Mr. Satish Sharma is a screenshot of the CHN-Case History Notings of the Dispute Resolution Panel proceedings uploaded on the Income-tax Business Application portal. The screenshot is of the page as it appears on the Income-tax Business Application portal. A perusal of the screenshot of Case History Notings of the Dispute Resolution Panel read with the affidavit filed by Mr. Satish Sharma, the Chief Commissioner of Income-tax and Ms. Anne Varghese, the Joint Commissioner of Income-tax, clearly indicate that once the DRP directions are uploaded and the Document Identification Number ("DIN") is generated,

which is also visible on the first page of the hard copy of the DRP directions, the said document is visible to the AO of the Faceless Assessment Unit ("FAU") having jurisdiction over the permanent account number of the assessee concerned. Thus, both the affiants agree that the Dispute Resolution Panel directions once uploaded on the Income-tax Business Application portal are automatically visible to the Faceless Assessing Officer, if any assessment work item is pending related to a particular permanent account number. Admittedly assessment proceedings of the petitioner were pending. Thus, undoubtedly the Dispute Resolution Panel directions uploaded on the Income-tax Business Application portal were readily and clearly visible and accessible to the Faceless Assessing Officer of the assessee.

16...

17. Mr. Singh made all attempts to persuade us that despite the Income-tax Business Application portal displaying the Dispute Resolution Panel directions and the same being accessible to the Faceless Assessing Officer, it was only on August 23, 2023, that the same were received by the Faceless Assessing Officer. We cannot accept this because, the E-assessment Scheme itself provides that all communication is deemed to have been received by the assessment units concerned once received through the National e-Assessment Centre. Thus, once the e- assessment Centre is in receipt of the Dispute Resolution Panel directions, the period of limitation runs from that day. There is no requirement of a deep dive in an analysis of the phrase "upon receipt of directions" as it appears in [section 144C\(13\)](#) of the Act. The fundamental principle of interpretation is to assign words their natural, original and precise meaning, provided that the words are clear and take into account the purpose of the statute. It is settled law that a provision should be interpreted in its literal sense and given its natural effect. This is the elementary golden rule of interpretation of statutes. Since there is no ambiguity pertaining to the phrase "upon receipt of the directions issued under sub- section (5) of [section 144C](#) of the Act, the Assessing Officer shall. . ." there is no requirement of delving in a further in-depth analysis of the clear provision.

18 to 20...

21. Thus, if the provisions of [section 144C](#) as mandated by the statute are not strictly adhered to the entire object of providing for an alternate redressal mechanism in the form of Dispute Resolution Panel stand defeated. That is not the intention of the Legislature when the provision was introduced in the Act. [Section 144C\(10\)](#) of the Act provide that the directions of Dispute Resolution Panel are binding on the Assessing Officer. By failing to pass any

order in terms of the provision, the Assessing Officer cannot be permitted to defeat the entire exercise and render the same futile. When a statute prescribes the power to do a certain thing in a certain way, then the thing must be done in that way and other methods of performance are forbidden. Once the statute has prescribed a limitation period for passing the final order, it is expected that the internal procedure of the Department should mould itself to give meaning to and act in aid of the provision. Any procedural defect (there is none in this case) in the internal mechanism of the working of E- assessment Scheme, cannot operate against the interest of the assessee. Hence, the Faceless Assessing Officer cannot be believed that the Dispute Resolution Panel direction was received by him only on August 23, 2023 despite being uploaded on the Income-tax Business Application portal on March 25, 2021. The failure on the part of Department to follow the procedure under [section 144C](#) of the Act is not merely a procedural irregularity, but is an illegality and vitiates the entire proceeding."

17. The Madras High Court in [Taeyang Metal India \(P\) Ltd.](#) (supra) followed the principle [laid down by the Delhi High Court in the aforesaid judgment.](#)

18. The common string traveling through the judgments of the aforesaid three High Courts leaves no room for any doubt that the Courts have taken a uniform view that [Section 144C\(13\)](#) mandates the assessing officer to complete the assessment within one month from the end of the month in which such a direction is issued. Interestingly, the Bombay High Court considered paragraph No.4(2) of Scheme of 2019 which makes it clear that all communications among the assessment unit, review unit, verification unit or technical unit or with the assessee or with any other person shall be through the national e-assessment centre. The use of words 'any other person' makes it very wide and shows the intention of the scheme makers that they intended to bring within its fold all nature of communications which shall be made through national e-assessment centre.

19. The Delhi High Court in [Louis Dreyfus Company India Private Limited](#) (supra) further held that it is obligatory under the scheme to necessarily upload the communication on the ITBA portal. Upon uploading the information on the portal, the period of limitation as prescribed under [Section 144C\(13\)](#) of the Income Tax Act would be liable to be computed bearing that crucial date in mind.

20. Importantly, the Bombay High Court in [Vodafone Idea Ltd.](#) (supra) poignantly held that as per the said scheme once e- assessment centre is in receipt of DRP directions, the period of limitation runs from that date. No further deep dive is required in view of language of [Section 144C\(13\)](#) of the Income Tax Act.

21. Sri Vihay K Punna, learned Standing Counsel for revenue, placed reliance on the judgment of Supreme Court in the case of *National Faceless Assessment Centre* (supra). The said case is arising out of faceless assessment procedure envisaged in *Section 144B* of the Income Tax Act. The Apex Court while upholding the view of the High Court observed that faceless assessment scheme came into being recently and therefore, the revenue ought to have been given some leverage to correct themselves and take corrective measures. The said observation of the Supreme Court is related to the faceless regime and cannot be stretched and made applicable in this case. This is trite that the precedential value of a judgment relates to the point which has been actually decided and not what is logically flowing from it (see *Dr. (Mrs.) Chanchal Goyal v. State of Rajasthan* 8). It is equally settled that a singular different fact or point may change the precedential value of a judgment (see *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd.* 9).

22. So far, the judgment in the case of *Commissioner of Income Tax, Chennai* (supra) is concerned on which reliance is placed by Sri Vihay K Punna, it is profitable to note that in the said case, the Supreme Court considered *Section 263(2)* of the Income Tax Act, in the said Section the word used is 'made' and not 'receipt of the order'. The Supreme Court emphasized the cardinal principle of the law that provision of statute is to be read as it is and nothing is to be added or taken away from the provision of the statute. In other words, this is well settled that when language of statute is clear and unambiguous, it has to be given effect to irrespective of its consequences (see *Nelson Motis vs. Union of India* 10).

23. The pivotal question is whether in view of the language employed in *Section 144C(13)* whether directions of DRP can be said to be received by the assessing officer on 30.06.2022. A conjoint reading of *Section 144C (5)* and (13) makes it clear that upon receipt of directions issued under *Section 144C(5)*, it is imperative for assessing officer to complete the proceedings within one month from end of the month in which such a direction is received. Thus, key words used in *Section 144C(13)* are 'upon receipt of directions issued under Sub-Section (5)'

24. Although, Delhi, Bombay and Madras High Courts have already taken a view and we respectfully agree with that once such directions of DRP are uploaded on the portal, the DRP lost control over it and date on which it entered the portal, the recipient i.e, the assessing officer comes to know about it.

25. To elaborate, it is profitable to refer to *Section 13(1)* of the I.T.Act. This Sub-Section deals with 'despatch of electronic record' and envisages that 'despatch' of an electronic record is when it enters the computer resource outside the control of originator. Indisputedly, in this case, the 'originator' is the DRP. Sub-Section (za) of *Section 2* of the I.T.Act defines the word 'originator' and reads thus:

"Section 2: Definitions (za) —originator means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;"

(Emphasis Supplied)

26. Once 'originator' enters a computer resource outside his control, 'despatch' takes place. Sub-Section 2 (a) of Section 13 of the I.T.Act deals with 'receipt' which makes it clear that 'receipt' occurs at the time when the electronic record enters the designated computer resource. Thus, the meaning of 'despatch' or 'receipt' is elaborately defined in aforesaid Sub-sections of Section 13 of the I.T.Act. The word 'computer resource' is also defined under Section 2(k) of the I.T.Act, which reads thus:

"Section 2: Definitions

(k) — computer resource means computer, computer system, computer network, data, computer data base or software;"

27. In the instant case, parties have taken a diametrically opposite view on the aspect whether the directions uploaded on the portal on 30.06.2022 can be treated to be 'receipt' on the part of the assessing officer. Sri Vijhay K Punna, learned Standing Counsel for revenue contends that 'receipt' will be the date when the e-mail was received by the revenue containing the DRP directions i.e., on 05.07.2020.

28. As per the view taken by the aforesaid three High Courts there is no doubt that when the originator/DRP sends its directions in computer resource outside its control, it amounts to 'despatch' and similarly, 'receipt' takes place when said electronic record enters the computer resource.

29. Section 282 of the Income Tax Act on which reliance was placed by Sri Vijhay K Punna, learned Standing Counsel for revenue makes it clear that in Sub-Section 1(c) of Section 282, the communication through electronic record as per Chapter IV of the I.T.Act was recognized and treated to be service of notice generally. Chapter IV of the I.T.Act contains Section 13, which envisages time, place of 'despatch' and 'receipt' of electronic record.

30. In order to meticulously examine the aspect of 'despatch' and 'receipt', in the present case, it is apt to quote the relevant SP,J & Dr.GRR,J Wps_44891 & 44915 of 2022 portion of letter dated 05.03.2024 filed along with I.A.No.1 of 2024 in the present matter, which reads as under:

"2. In this regard, it is hereby stated that the direction dated 30.06.2022 were uploaded on ITBA portal on 30.06.2022. Further, physical copy of the Directions was also sent to the Assessing Officer on 30.06.2022 through Speed Post."

(Emphasis Supplied)

31. The Income Tax Department through communication dated 30.06.2022 (Annexure P-19) informed that the order under [Section 144C\(5\)](#) dated 30.06.2022 is having Document No.(DIN) ITBA/DRP/M/144C(5)/2022-23/1043689612(1). This is a system generated document and it does not require any signature. A conjoint reading of communications dated 30.01.2024 and 05.03.2024 (Annexure P-18) and communication dated 30.06.2022 (Annexure P-19) leaves no room for any doubt that DRP's directions were despatched on 30.06.2022 and also uploaded on the portal on the same date. Thus, the DRP/originator had lost control over it on the date and time the said directions were uploaded on the portal. Hence, same must be treated to be a 'receipt' by the recipient i.e., the assessing officer on the same day i.e., 30.06.2022. (See paragraph [No.26.7 of Suman Jeet Agarwal v. Income-tax Officer](#), where the Delhi High Court poignantly held that the portal of the department is the 'computer resource in the control of the department').

32. In view of forgoing discussion, there is no cavil of doubt that assessing officer received the DRP's directions on 30.06.2022 and therefore, the limitation must be counted from that date and not from 05.07.2022. The impugned assessment orders dated 30.08.2022 and 01.09.2022 that were issued counting the limitation from 05.07.2022 in both the Writ Petitions are liable to be set aside as the same are issued beyond permissible period of limitation."

16. Further, the Hon'ble Madras High Court in the case of Ramco Cements Ltd (supra), has clearly held that the limitation cannot depend on varying user functionalities which is an internal process that cannot be entertained since the same would defeat the purpose of statutory limitation. It is further held by the Hon'ble High Court that the limitation cannot be reckoned in a manner so as to give rise to more than one interpretation where either party can take benefit of a later date. Therefore by placing reliance respectfully on the above judicial pronouncements we hold that the AO of the assessee has received the DRP direction on 30.06.2022 at 9.53 p.m. and therefore the final order of assessment which is passed on 24.08.2022

instead of 31.07.2022 is barred by limitation as per the provisions of section 144C(13) of the Act. Accordingly the addition made therein is not sustainable and liable to be deleted, being *void ab-initio*.

17. Since we have deleted the impugned additions on the ground of final assessment order being time barred contended through additional ground no.13 additional ground no.14 with regard to the alternate contention that the DRP order is barred by limitation if the same is issued on 01.07.2022 and the main grounds have become academic not warranting any separate adjudication. In view of the same the rest of the additional grounds are not admitted for adjudication.

18. In result, appeal of the assessee is allowed.

Order pronounced in the open court on 11-04-2025.

Sd/-
(PAWAN SINGH)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai