

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'D' NEW DELHI)**

**BEFORE S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 4055/Del/2015 (A.Y. 2010-11)

ITA No. 4056/Del/2015 (A.Y. 2011-12)

DCIT Central Circle-19, Room No. 362, ARA Centre, E-2, Jhandewalan Extension, New Delhi	Vs	Bennett Williamson Engineers Ltd. C/o Sandeep Chilana, Adv. Chilana & Chilana Law Offices, Advocate for the respondent, C-56, LGF, Jangpura Extension, New Delhi-110014 PAN: AAFCB9088F
Appellant		Respondent

C.O No. 391/Del/2015 (in ITA No. 4056/Del/2015)

C.O No. 32/Del/2016 (in ITA No. 4055/Del/2015)

Bennett Williamson Engineers Ltd. C/o Sandeep Chilana, Adv. Chilana & Chilana Law Offices, Advocate for the respondent, C-56, LGF, Jangpura Extension, New Delhi-110014 PAN: AAFCB9088F	Vs	DCIT, Central Circle- 19, Room No. 362, ARA Centre, E-2, Jhandewalan Extension, New Delhi
Appellant		Respondent
Assessee by	Sh. Amit Goel, CA, Sh. Pranav Yadav, Adv, , Sh. Mohit Jain, CA, Sh. Sandeep Chilana, Adv & Ms. Anjali Jain, Adv.	
Revenue by	Sh. M. S. Nethrapal, CIT, DR	
Date of Hearing	20/08/2025	
Date of Pronouncement	19/09/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The above two appeals and two Cross Objections are filed by the Revenue and the Assessee respectively, pertaining to Assessment Years 2010-11 & 2011-12, wherein both the parties have assailed the orders of Commissioner of Income Tax (Appeals)-XXVII, ('Ld. CIT(A)' for short) New Delhi dated 25.03.2015.

2. The Revenue have raised identical grounds of Appeal in both the appeals, for the sake convenience the grounds of appeal of A.Y. 2010-11 are reproduced as under:

“1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that there is merit in the contention of the appellant regarding the unlawful initiation of proceedings u/s 153C of Income Tax Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that assessee company is not resident in terms of provisions under section 6(3)(ii) of the I.T. Act for the purpose of tax liability whereas on the basis of seized documents/e-mails and various statements of Sh. Ajay Kalsi/Sh. Anil Aggarwal, it has been established that control and management of the assessee company is situated wholly in India.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring that underlying assets and sources of revenue of all the overseas companies are the Indian Companies.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the substantial evidence in form of seized material, E-mails, Share Holding

pattern showing the ultimate control and management of Indian companies and overseas companies lies with Sh. Ajay Kalsi and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the provisions of section 9(1) of the I.T. Act as the revenue has been earned because of underlying assets of the assessee wholly and totally situated in India.

6. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting) the addition of Rs.4,93,04,936/-made by Assessing Officer.

7. (a) The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. The grounds of the Cross Objection in CO for A.Y. 2010-11 is as under:-

“1. That on the facts and circumstances of the case, the DCIT has erred, both on facts and in law, in assuming jurisdiction to assess the income of the appellant. The assumption of jurisdiction over the appellant by DCIT and/or any other Income Tax Authority is totally illegal.

2. That on the facts and circumstances of the case, the notice issued by learned DCIT under section 153 and consequent assessment order passed are illegal, without jurisdiction, bad in law, barred by limitation and against the principles of natural justice.”

4. Brief facts of the case are that, a search and seizure operation was conducted u/s 132 of Income Tax Act, 1961 ('Act' for short) by the Investigation Wing of the Income Tax Department on 22/03/2012

in M/s Focus Energy Group of cases. During the course of search operation, certain incriminating documents pertaining to the Assessee were found and seized. The assessing officer issued notices u/s 153C of the Act and completed the assessment u/s 153C/144 of the Act for A.Ys. 2010-11 & 2011-12 on 28/03/2014 by making certain additions, wherein the A.O. held that the Assessee being a foreign company is a resident in India u/s 6(3) of the Act and even if the foreign company is non-resident in India, they will still be liable for tax in India u/s 9(1) of the Act. Accordingly, Ld. A.O. passed an assessment orders on 28/03/2014 u/s 153C/144 of the Act by holding that income of the Assessee for the years under consideration are liable to be taxed in India.

5. Aggrieved by the above assessment orders dated 28/03/2014, the assessee preferred two appeals before the Commissioner of Income Tax (Appeals) by challenging assessment orders on the merits as well as on certain legal issues including the jurisdiction of the A.O. u/s 153C of the Act. The Ld. CIT(A) allowed the Appeals of the Assessee on 25/03/2015 on the grounds that the impugned assessment orders have been passed without passing the Draft Assessment Order as per Section 144C of the Act, the initiation of proceeding u/s 153C of the Act is unlawful and also on the ground of non-compliance of provisions of section 124 to 127 of the Act.

6. As against the orders of the Ld. CIT(A) dated 25/03/2015 pertaining to A.Ys. 2010-11 & 2011-12, the Revenue preferred the above Appeals and the Assessee has also filed Cross Objections in support of the order of the Ld. CIT(A) on the Grounds mentioned above.

7. The Ld. Department's Representative addressing on the ground No. 1 of Appeal of the Revenue, submitted that the Ld. CIT(A) erred in holding that the initiation of proceedings u/s 153C of the Act is unlawful. Further, the Ld. Department's Representative relying on the assessment orders sought for reversing the orders of Ld. CIT(A) by allowing the Ground No.1.

8. Per contra, the Ld. Assessee's Representative submitted that single consolidated satisfaction note has been treated as satisfaction and no separate satisfaction note has been prepared in the case of the Assessee, which is contrary to the settled principals of law that, no adverse assessment can be made for a particular Assessment Year unless it is proved that the incriminated materials so found pertains to the year under consideration. The Ld. Assessee's Representative also relied on Judgment of Hon'ble Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society reported in AIR ONLINE 2017 SC 662 and also relied on the order of the Co-ordinate Bench of the Tribunal in the group case of the Assessee in DCIT, Central Circle-19

Vs. Newbury Oil Company, 2021(7) TMI 945 and sought for dismissal of Ground No. 1 of the Revenue's Appeals.

9. We have heard both the parties and perused the material available on record. For the purpose of initiating the assessment proceedings u/s 153C of the Act, the Assessing Officer is required to record the satisfaction that the documents do not belong to the person from whose possession they were seized during the course of the search. Thereafter the A.O. has to record a satisfaction that, those documents are belongs to another assessee. In the present cases, the A.O. has not carried out the first exercise of rebutting that the documents do not belongs to the person from whose possession they were seized during the course of the search. Therefore, recording the satisfaction and initiation of assessment proceedings u/s 153C of the Act by the Assessing Officer is not at all in accordance with the provisions of the Act. Further, the A.O. at no point of time recorded a separate satisfaction u/s 153C of the Act in so far as the Assessee is concerned. The satisfaction has been recorded jointly/consolidated manner for 15 Companies. It is well settled law that the assessment of each Assessment Years are different and distinct assessment therefore, it is incumbent on the A.O to record the satisfaction for each year separately. By recording consolidated satisfaction for 15 Assesseees, the A.O. breached the settle principal of law. The said fact

can be corroborated from para 7.5 of the satisfaction note, which reads as under:-

"Therefore, in view of the aforesaid discussion action u/s 153C is to be taken in respect to overseas companies listed in Para 1 above, wherever documents pertaining to overseas companies have been seized."

10. From the above, it is crystal clear that, single consolidated satisfaction note has been treated as satisfaction for some of the foreign companies listed in para 1 including the Assessee. The Hon'ble Supreme Court in the case of CIT(A) Vs. Singhad Education Society (supra) held as that no adverse assessment can be made for a particular assessment year unless it is proved that the incriminated material so found pertains to that year. The relevant portion of the Hon'ble Supreme Court is reproduced as under:-

"18) The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any correlation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also

given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.”

11. In view of the above discussion, we are of the opinion that the A.O. cannot invoke provision of Section 153C of the Act without recording a separate satisfaction on each assessee which is pre-requisite specified u/s 153C of the Act. Further it is also found that there is no mention of assessment year/s for which the satisfaction has been recorded and the satisfaction has been recorded in consolidated manner for 15 Companies, without analyzing the seized material qua the Assessment Year and in the absence of analysis of seized material bearing on the determination of the income. By applying the ratio laid down by the Hon'ble Supreme Court in the case of Singhad Education Society (supra), we find no error or infirmity in the order of the Ld. CIT(A) in deciding the issues in favour of the Assessee. Thus, finding no merits in Ground No. 1 of the Revenue, we dismiss the Revenue's Ground No. 1 in all the appeals.

12. In Ground No. 2 to 6, the Revenue challenged the action of the Ld. CIT(A) in holding that assessee is not a resident in terms of provisions of Section 6(3) (ii) of the Act for the purpose of tax liability and further challenged the action of the Ld. CIT(A) in setting aside the assessment orders on the ground that the assessment orders have been passed without passing the draft assessment orders.

13. The Ld. Departmental Representative submitted that the Ld. CIT(A) committed error in holding that Assessee is not a resident and erroneously held that passing of the assessment order in the absence of the draft assessment orders illegal. Thus, sought for allowing the Ground No. 2 to 6 of Revenue's appeals.

14. Per contra, the Ld. AR submitted that the Assessee is a foreign company and is an "eligible assessee" within the meaning of section 144C(15)(b) of the Act, therefore, as per section 144C(1) of the Act, it is mandatory for the AO to pass draft assessment orders. As the Assessing Officer has not passed draft assessment orders, the final assessment orders passed by the AO deserves to be set aside. The ld. AR by relying on the plethora of judicial precedents sought for dismissal of the ground Nos. 2 to 6 of the Revenue.

15. We have heard both the parties and perused the material available on the record. The assessee is a foreign company and the Assessee herein is an 'eligible assessee' in terms of section 144C(15)(b) of the Act. As per the provisions of section 144C(1) of the Act, the Assessing Officer is mandatorily required to pass the Draft Assessment order. For the purpose of ready reference, the provisions of section 144C(1) of the Act and section 144C(15)(b) are reproduced as under:

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

(15) *For the purposes of this section, -*

(a) -----

(b) *"eligible assessee" means,-*

i)any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92-CA; and(ii)any foreign company.]”

16. In the present cases, the AO has not passed the draft assessment order by in compliance with provisions of section 144C(1) of the Act. The Hon'ble High Courts and Co-ordinate Bench of the Tribunal have laid down the ratio that having failed to pass assessment orders, the final assessment orders passed by the AO stands vitiated for failure to adhere to mandatory requirement of passing of the draft assessment order in terms of section 144C(1) of the Act.

17. The Hon'ble jurisdictional High Court in the case of Turner International India Pvt. Ltd. Vs. DCIT 2017 (5) TMI 991 held as under:

“10. The short ground on which the aforementioned final assessment orders and the consequent demand notices have been challenged is that there was non-compliance with the mandatory

provision contained in Section 144C(1) of the Act requiring the AO to first frame draft assessment orders.

11. The question whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of first passing draft assessment order in terms of Section 144C(1) of the Act is no longer res integra. There is a long series of decisions to which reference would be made presently.

12. In Zuari Cement Ltd. v. ACIT (decision dated 21st February, 2013 in WP(C) No.5557/2012), the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of the Act would result in rendering the final assessment order "without jurisdiction, null and void and unenforceable." In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013.

13. In Vijay Television (P) Ltd. v. Dispute Resolution Panel [2014] 369 ITR 113 (Mad.), a similar question arose. There, the Revenue sought to rectify a mistake by issuing a corrigendum after the final assessment order was passed. Consequently, not only the final assessment order but also the corrigendum issued thereafter was challenged. Following the decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra) and a number of other decisions, the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel (supra) quashed the final order of the AO and the demand notice. Interestingly, even as regards the corrigendum issued, the Madras High Court held that it was beyond the time permissible for issuance of such corrigendum and, therefore, it could not be sustained in law.

14. Recently, this Court in ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of Indi [2016] 388 ITR 383 (Del.), following the decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra), the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel, Chennai (supra) as well as the Bombay High Court in International Air Transport Association v. DCIT (2016) 290 CTR (Bom) 46, came to the same conclusion.

15. Mr. Dileep Shivpuri, learned counsel for the Revenue sought to contend that the failure to adhere to the mandatory requirement of issuing a draft assessment order under Section 144C (1) of the Act would, at best, be a curable defect. According to him the matter must be restored to the AO to pass a draft assessment order and for the Petitioner, thereafter, to pursue the matter before the DRP.

16. *The Court is unable to accept the above submission. The legal position as explained in the above decisions is unambiguous. The failure by the AO to adhere to the mandatory requirement of Section 144C (1) of the Act and first pass a draft assessment order would result in invalidation of the final assessment order and the consequent demand notices and penalty proceedings.*

17. *For the aforementioned reasons, the final assessment orders dated 31st March, 2015 passed by the AO for AYs 2007-08 and 2008-09, the consequential demand notices issued by the AO and the initiation of penalty proceedings are hereby set aside.*

18. *The petitions are allowed in the above terms. No order as to costs.”*

18. In an identical circumstances, the Hon'ble jurisdictional High Court while dealing with the substantial question of law as to whether not passing of draft assessment order as per the provisions of section 144C(1) of the Act which is applicable to non-resident and whether the Assessee thereon is a resident of India?, in the case of CIT-International Taxation-2 Vs. Rolland Enterprises Ltd. in ITA 556/2024 & CM No. 66848/2024, held as under:

1. *The Revenue has filed the present appeals under Section 260A of the Income Tax Act, 1961 (hereafter the Act) against the common order dated 10.01.2024 (hereafter the impugned order) which was passed in ITA bearing Nos.3349/Del/2015, 3350/Del/2015, 3351/Del/2015 & 3352/Del/2015 and in cross objections bearing Co. Nos.353/Del/2015, 354/Del/2015, 355/Del/2015 & 356/Del/2015.*

2. *The Revenue has projected the following questions of law in the present appeals:*

“2.1 Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in law in holding that assessment orders passed are unsustainable for not passing the draft assessment order as per the provisions of Section 144C(1) of the Act which is applicable to non-residents and the assessee in this case is a resident of India?”

2.2 *Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred by relying on facts in ignoring statements of Sh. Ajay Kalsil Sh. Anil Aggarwal and the documents seized wherein it was established that the control and management of the assessee company is situated wholly in India with Sh. Ajay Kalsi and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India?”*

3. *The context in which the aforesaid questions of law arise are briefly narrated as under:*

3.1 *Search and seizure operations were conducted by the Investigation Wing on 22.03.2012 in respect of group of entities (M/s Focus Energy Group). It is stated that during the search proceedings certain documents containing information pertaining to the Assessee, were found and seized. Notices under Section 153C of the Act were issued to the Assessee, and assessments for the assessment years (AYs) 2008-09, 2009-10, 2010-11 and 2011-12 were completed under Section 153C/144 of the Act.*

3.2 *The Assessee is an entity incorporated under the laws of the British Virgin Islands. It is the Assessee’s case that it owns certain equipment related to exploration and development of oil fields, which were leased to M/s Focus Energy Limited. The said company paid lease rentals after deducting tax at source (TDS).*

3.3 *Pursuant to the notice issued under Section 153C of the Act, the assessments were completed. It is the Assessee’s case that it is an “eligible assessee” and the procedure as prescribed under the Act was not followed. In as much as, the draft assessment order was not issued as required under Section 144C(1) of the Act.*

3.4 *The Assessing Officer (AO) held that the Assessee’s income was chargeable to tax under the Act, as its control and management is situated in India. The AO held that the Assessee was a resident of India under Section 6(3) of the Act. And, passed assessment orders on 28.03.2014.*

3.5 *Aggrieved by the assessment orders, the Assessee preferred appeals before the Commissioner of Income Tax (Appeals) [hereafter CIT(A)], which were allowed by the orders dated 27.02.2015. The learned CIT(A) found that the control and management of the affairs of the Assessee was in the hands of its Board of Directors who were not the residents of India. The learned CIT(A) faulted the findings of the AO to treat the Assessee as a resident in terms of provision of Section 6(3)(ii) of the Act.*

3.6 *The Revenue being aggrieved by the orders passed by the learned CIT(A) preferred appeals in respect of the assessment orders in question before the Income Tax Appellate Tribunal*

(hereafter ITAT). The Assessee also filed cross objections on the ground that the procedure prescribed under Section 144C of the Act was not complied.

3.7 The cross objections preferred by the Assessee were allowed and accordingly, the appeals preferred by the Revenue were dismissed. 4. Concededly, the provisions of Section 144C(1) of the Act had not been complied with as no draft assessment order was framed. 5. According to the Assessee, it is an eligible assessee and therefore it was necessary for the AO to pass a draft assessment order and not to proceed straightaway to pass a final assessment order. The said issue is covered in favour of the Assessee by the decision of this Court in Pr. Commissioner of Income Tax-7 v. Sumitomo Corporation India (P) Ltd.: 2024 SCC OnLine Del 6125. 6. The term “eligible assessee” is defined under Section 144C(15)(b) of the Act. which reads as under:

“144C. ***** Reference to dispute resolution panel.

(15) For the purposes of this section, (a)

*** *** ***

(b) “eligible assessee” means,

(i) any person in whose case the variation referred to in subsection (1) arises as a consequence of the order of the Transfer Pricing Officer passed under subsection (3) of section 92CA; and

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

7. The first question projected by the Revenue proceeds on the basis that the Assessee is taxable as a resident of India. However, it is not disputed that the Assessee is an eligible* assessee under Section 144C of the Act. There is no dispute that the Assessee is incorporated under the laws of British Virgin islands. It is thus a foreign company. Since, the Assessee is an eligible assessee within a meaning of Clause (b) of Section 144C(15) of the Act, the AO was required to follow the procedure as prescribed under Section 144C of the Act. 8. We find no infirmity in the decision of the learned ITAT. Plainly, no substantial questions of law arise in the present appeals. The appeals are, accordingly, dismissed.”

19. The Co-ordinate Bench of the Tribunal by following the ratio laid down by the Hon'ble jurisdictional High Court (supra), in the case of DCIT Vs. Newbury Oil Company Ltd. 2021(7) TMI 945 held as under:

14. Now we come to the next contention of the assessee that for non-adherence of the provisions of section 144C of the Act, the assessment is bad in law, the first contention of the assessee is that they are foreign company and therefore, falls within the expression "eligible assessee" u/s. 144C of the Act. On this aspect it could be seen from the record that the assessee company incorporated in Cyprus as per laws of Cyprus and have been resident of Cyprus. The assessee has been filing the Income- tax Return with Cyprus Revenue Authorities. Copies of ITRs are also provided by FT & TR Division to the Assessing Officer. On examining these documents, Ld. CIT(A) recorded finding of fact that the information with the Ld. Assessing Officer amply and evidently substantiate as a pointer to the assessee's contention that it is a resident of Cyprus. Learned CIT(A) further referred to the observations of the Assessing Officer of the assessee in Cyprus that the assessee was registered outside India in accordance with the laws of Cyprus and such location was not challenged. CIT(A) found that the submissions made by the assessee tallied with the information and documents provided by FT & TR, more particularly at paragraph No. 5.9 of such an assessment order.

15. There is no challenge to the observation of the CIT(A) that the assessee is a resident in Cyprus. Learned CIT(A) examined the material available before her in the light of the provisions of section 6(3) of the Act and also the orders passed by TPO in the case of Focus Energy Ltd for the assessment years 2006-07 to 2012-13. All these materials had shown that M/s. Focus Energy Ltd. had international transactions with the assessee. M/s. Focus Energy Ltd. is undisputedly an Indian Company. It is, therefore, inferred that since the transaction between Focus Energy Ltd. with the assessee was accepted as an international transaction continuously over a period of time, it goes without saying that other party, i.e., the assessee is a foreign company. Any transaction between Indian Company and Indian company cannot be an international transaction and therefore, the international transaction of Focus Energy Ltd. which is an Indian Company, will necessarily be with the foreign company. On this premise also, CIT(A) concluded that it an unmistakable pointer that the assessee is a foreign company and such a fact is admitted by the Assessing Officer while dealing with the transactions of Focus Energy Ltd. with its foreign AEs continuously over a period of time. Basing on these facts, learned

CIT(A) concluded that the material on record is more than enough to conclude that the assessee is a foreign company and therefore, under the provisions of section 144C, the Assessing Officer shall, in the first instance, forward a draft order of the proposed assessment to the assessee if he proposes to make any variation which is prejudicial to the interest of assessee.

16. Evidently, no draft order was passed in this case. Hon'ble Delhi High Court in the case of Turner International India Pvt. Ltd. vs. DCIT (supra) held as under -

"10. The short ground on which the aforementioned final assessment orders and the consequent demand notices have been challenged is that there was non-compliance with the mandatory provision contained in Section 144C(1) of the Act requiring the AO to first frame draft assessment orders.

11. The question whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of first passing draft assessment order in terms of Section 144C(1) of the Act is no longer res integra. There is a long series of decisions to which reference would be made presently.

12. In Zuari Cement Ltd. v. ACIT (decision dated 21st February, 2013 in WP(C) No. 5557/2012), the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of the Act would result in rendering the final assessment order "without jurisdiction, null and void and unenforceable." In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013.

13. In Vijay Television (P) Ltd. v. Dispute Resolution Panel [2014] 369ITR 113 (Mad.), a similar question arose. There, the Revenue sought to rectify a mistake by issuing a corrigendum after the final assessment order was passed. Consequently, not only the final assessment order but also the corrigendum issued thereafter was challenged. Following the decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra) and a number of other decisions, the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel (supra) quashed the final order of the AO and the demand notice. Interestingly, even as regards the corrigendum issued, the Madras High Court held that it was beyond the time permissible for issuance of such corrigendum and, therefore, it could not be sustained in law.

14. Recently, this Court in ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of Indi [2016] 388 ITR 383 (Del.), following the

decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra), the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel, Chennai (supra) as well as the Bombay High Court in International Air Transport Association v. DCIT (2016) 290 CTR (Bom) 46, came to the same conclusion.

15. Mr. Dileep Shivpuri, learned counsel for the Revenue sought to contend that the failure to adhere to the mandatory requirement of issuing a draft assessment order under Section 144C (1) of the Act would, at best, be a curable defect. According to him the matter must be restored to the AO to pass a draft assessment order and for the Petitioner, thereafter, to pursue the matter before the DRP.

16. The Court is unable to accept the above submission. The legal position as explained in the above decisions is unambiguous. The failure by the AO to adhere to the mandatory requirement of Section 144C (1) of the Act and first pass a draft assessment order would result in invalidation of the final assessment order and the consequent demand notices and penalty proceedings.

17. For the aforementioned reasons, the final assessment orders dated 31st March, 2015 passed by the AO for AYs 2007-08 and 2008-09, the consequential demand notices issued by the AO and the initiation of penalty proceedings are hereby set aside.

18. The petitions are allowed in the above terms. No order as to costs."

17. Further, reference was made by the ld. AR to the CBDT Circular No. 09/2013 dated 19.11.2013 wherein the Assessing Officer is required to forward a draft assessment order to the eligible assessee, if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

18. For the sake of completeness we deem it necessary to extract the contents of CBDT Circular which reads as under :

"Section 144C, providing for reference to Dispute Resolution Panel (DRP), was inserted in the Income-tax Act, 1961 by Finance (No.2) Act, 2009. Sub section (1) of section 144C reads as under:

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

2. *Explanatory Circular for Finance (No.2) Act, 2009 i.e. Circular No. 5 of 2010 dated 03.06.2010, in para 45 has explained the said new section 144C and the consequential amendments made in other sections of Income-tax Act.*

Para 45.5 of the Circular No.5/2010 dated 03.06.2010 reads as under:

"45.5 Applicability: These amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years. The Dispute Resolution Panel Rules have been notified by S. O. No. 2958 (E) dated 20th November, 2009. "

In the above extracted Para 45.5 there has been an inadvertent error in stating the applicability of the provisions of section 144C inserted vide Finance (No.2) Act, 2009 that amendments will apply in relation to the assessment year 2010- 11 and subsequent assessment years. Accordingly, para 45.5 is replaced with the following:

"45.5. Applicability: Section 144C has been inserted with effect from 1st April, 2009. Accordingly, the Assessing Officer is required to forward a draft assessment order to the eligible assessee, if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee. In other words section 144C is applicable to any order which proposes to make variation in income or loss returned by an eligible assessee, on or after 1st October, 2009 irrespective of the assessment year to which it pertains. Amendments to other sections of the Income-tax Act referred to in para 45.3 of the circular 5/2010 dated 3 rd June, 2010 shall also apply from 1st October, 2009 ".

19. It is, therefore, clear that the assessment order is bad for invoking the jurisdiction u/s. 153C without proper satisfaction and also for not passing the draft assessment order as required u/s. 144C, and as explained by Hon'ble Delhi High Court."

20. In view of the above facts and circumstances as the Assessing Officer has passed the Final Assessment orders without adhering to the provisions of section 144C(1) of the Act, the impugned Final Assessment orders passed by the AO stands vitiated. Therefore, we find no error or infirmity in the order of the CIT(A) in setting aside the

Final Assessment orders. Accordingly, the ground Nos. 2 to 6 of the Revenue are dismissed.

21. Ground No. 7 being general in nature requires no adjudication. Accordingly, ground no. 7 of the Revenue is dismissed.

22. In the result, the appeals of the Revenue in ITA Nos. 4055 & 4056/Del/2015 are dismissed.

23. Since, we have dismissed the appeal of the Revenue by upholding the impugned orders of the CIT(A), the Cross Objections No. 391/Del/2015 and CO No. 32/Del/2016 have become in-fructuous. Accordingly, COs of the Assessee are dismissed.

Order pronounced in the open court on 19th September, 2025

Sd/-

**(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Date:- 19.09.2025
Subodh/R.N, Sr.P.S*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI