

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad "B" Bench, Hyderabad

श्री विजय पाल राव, माननीय उपाध्यक्ष एवं श्री मंजूनाथ जी, माननीय लेखा सदस्य
SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
AND
SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1395/Hyd/2024
(निर्धारण वर्ष/ Assessment Year: 2021-22)

M/s. Callidus Cloud (India Private Limited, Hyderabad. PAN : AAABCO0022A (अपीलार्थी/ Appellant)	Vs.	The Deputy Commissioner of Income-tax, Circle – 1(1), Hyderabad. (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Alisagar Rampurawala, C.A.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Narendra Kumar Naik, CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	08.12.2025
घोषणा की तारीख/ Date of Pronouncement	:	10.12.2025

ORDER

PER MANJUNATHA G., A.M :

This appeal filed by the assessee is against the final assessment order passed under Sections 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income-tax Act, 1961 (for short "the Act"), dated

23.10.2024, in pursuance to the Directions dated 19.09.2024 of the learned Dispute Resolution Panel-1 (“DRP”), Bengaluru, passed under Section 144C(5) of the Act, pertaining to the assessment year 2021-22.

2. The grounds raised by the assessee read as under :

“1. General Ground

1.1. On the facts and in the circumstances of the case and in law, the Final Assessment Order, to the extent prejudicial to the Appellant, is not in conformity with the procedures laid out in Section 144B of the Act and is bad in law, void ab initio and contrary to the facts and circumstances of the case and is liable to be quashed.

2. Legal Ground – Timelines under Section 153 of the Act

2.1. On the facts and in the circumstances of the case and in law, the Final Assessment Order dated 23.10.2024 passed by the Assessment Unit under Section 143(3) r.w.s. Section 144C(13) r.w.s. Section 144B of the Act is barred by limitation and therefore is void-ab-initio, bad in law and is liable to be quashed.

Document Identification Number

2.2. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in issuing the directions quoting the Document Identification Number manually on the body of the said directions dated 19.09.2024 in contravention of CBDT Circular No. 19 of 2019, thereby rendering such directions invalid and deemed never to have been issued as per para 4 of the said Circular.

2.3. On the facts and in the circumstances of the case and in law, the Final Assessment Order dated 23.10.2024 passed under Section 143(3) r.w.s. Section 144C(13) of the Act by the Assessment Unit pursuant to invalid directions passed by the Hon'ble DRP is illegal and therefore null and void and liable to be quashed.

3. Software Development ('SWD') Services Segment (Tax Effect: ₹83,31,809/-)

3.1. On the facts and in the circumstances of the case and in law, the Hon'ble DRP / the Assessment Unit / learned TPO erred in making an upward adjustment of ₹3,31,04,770/- to the transfer price of the Appellant's international transactions in respect of SWD services provided by the Appellant to its AEs.

3.2. On the facts and in the circumstances of the case, the Hon'ble DRP / the Assessment Unit / learned TPO erred in:

(a) Rejection of Appellant's comparability analysis and application of additional filters:

i. Selection of time period as per Rule 10B(5) using only current year data (FY 2020-21)

ii. Rejection of companies with different financial year ending

iii. Rejection of companies having persistent losses based on PBT instead of operating profit/loss

iv. Exclusion of companies whose services revenue is less than 75% of total operating revenue

v. Exclusion of companies whose export service income is less than 75% of sales

vi. Exclusion of companies whose employee cost is less than 25% of turnover

(b) Use of non-contemporaneous data not available in the public domain at the time of preparing TP documentation.

(c) Inclusion of companies exceeding ₹200 crore turnover filter:

i. Mindtree Limited

ii. Great Software Laboratory Private Limited

iii. Nihilent Limited

iv. LTIMindtree Limited (formerly Larsen & Toubro Infotech Limited)

v. Wipro Ltd.

vi. Tata Elxsi Limited

vii. Infosys Limited

viii. Cybage Software Private Limited

(d) Inclusion of functionally different companies:

- i. Nihilent Limited*
- ii. LTIMindtree Limited*
- iii. Wipro Ltd.*
- iv. Net4Nuts Limited*
- v. Systango Technologies Limited*
- vi. Infosys Limited*
- vii. Robosoft Technologies Private Limited*
- viii. Aptus Software Labs Private Limited*
- ix. Ksolves India Limited*
- x. Cybage Software Private Limited*
- xi. Consilient Technologies Private Limited*
- xii. Yanolja Cloud India Private Limited (formerly eZee Technosys Private Limited)*

(e) Exclusion of comparable companies:

- i. e-Zest Solutions Limited*
- ii. Yudiz Solutions Limited*
- iii. Rheal Software Private Limited*

(f) Not including companies identified from TPO search:

- i. Hurix Systems Private Limited*
- ii. Indianic Infotech Limited*
- iii. Kireeti Soft Technologies Limited*
- iv. Orion India Systems Private Limited*

(g) Not rectifying mark-up computation of:

- i. Harbinger Systems Private Limited*
- ii. Infosys Limited*

(h) Not providing working capital adjustment.

(i) Not providing risk adjustment.

4. Technical Support Services ('TSS') Segment (Tax Effect: ₹1,75,04,930/-)

4.1. Upward adjustment of ₹6,95,52,327/- by recharacterising TSS as KPO services.

4.2. Arbitrary reasons for recharacterisation:

4.2.1. AE involved in engineering and high-level design.

4.2.2. Appellant provides marketing, consulting, research and HR services.

4.2.3. Appellant involved in project execution.

4.2.4. Appellant provides high-end, information-based services.

4.3. Errors in comparability analysis similar to SWD objections including turnover filter, functionality, contemporaneous data and exclusion/inclusion of companies:

Companies wrongly included:

i. Happiest Minds Technologies Limited

ii. L&T Technology Services Limited

iii. Sagacious Research Private Limited

iv. XS CAD India Private Limited

v. Datamatics Business Solutions Limited

vi. Musigma Business Solutions Private Limited

Company wrongly excluded:

i. Tata Elxsi Limited – Systems Integration & Support Services

Companies not considered from TPO search:

i. Anderson Business Solutions Private Limited

ii. CES Limited

iii. Innodata India Private Limited

iv. Sundaram Business Services Limited

5. Working capital and risk adjustment also denied. Remittance of Employee Stock Purchase Plan ('ESPP') (Tax Effect: ₹19,89,846/-)

5.1. Adjustment made ignoring that the remittance is only a reimbursement to SAP SE of employee salary deductions and no economic benefit accrues.

6. Notional Interest on Delayed Receivables from AEs (Tax Effect: ₹8,29,030/-)

6.1. Adjustment of ₹32,93,986/- towards notional interest.

6.2. Errors include:

- a. Treating receivables as loans
- b. Ignoring working capital adjustment impact
- c. Ignoring that Appellant is debt-free
- d. Using SBI rate instead of LIBOR

7. Levy of Interest under Section 234A / 234B (Tax Effect: ₹1,33,82,860/-)

7.1. Interest wrongly levied.

8. Penalty Proceedings

8.1. Penalty initiated under Section 274 r.w.s. Section 270A is bad in law."

3. The brief facts of the case are that the assessee, CallidusCloud India Private Limited, is engaged in the business of providing sales support, marketing and consulting services and software development to its group companies. The assessee filed its return of income for A.Y. 2021-22 on 19.02.2022, declaring total income of Rs. 10,18,18,510/-. The case was selected for scrutiny and during the course of assessment proceedings, a reference under

Section 92CA of the Income-tax Act, 1961 was made to the learned Transfer Pricing Officer to determine the arm's length price of the international transactions undertaken by the assessee. During the TP proceedings, the learned TPO noticed that the assessee had reported various international transactions including provision of software development services, provision of KPO services, remittance of ESPP contribution of employees and interest on delayed receivables, as reported in Form 3CEB filed along with the return of income. The A.O. further noted that the assessee had benchmarked its international transactions with its AEs by adopting TNMM as the most appropriate method with OP/OC as the PLI. After considering the TP documentation and submissions, the learned TPO proposed total adjustment of Rs. 13,56,42,964/- comprising adjustment towards provision of software development services, provision of KPO services, remittance of ESPP contribution of employees and interest on delayed receivables, vide order dated 29.10.2023 passed under Section 92CA(3) of the Act.

4. Thereafter, the A.O. passed the draft assessment order under Section 144C(1) of the Income-tax Act, 1961 on 04.12.2023, determining the total income at Rs. 23,87,68,544/- by making addition towards TP adjustment suggested by the learned TPO.

5. Aggrieved, the assessee filed objections before the Hon'ble Dispute Resolution Panel challenging the TP adjustments made by the learned TPO. The Hon'ble DRP, vide its directions issued under Section 144C(5) of the Act dated 11.09.2024, partly allowed the objections of the assessee. In pursuance of the directions of the Hon'ble DRP, the learned TPO passed a giving effect order and the A.O. thereafter passed the final assessment order under Section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act on 23.10.2024, determining the total income at Rs. 21,56,75,846/-. The TP adjustment was finally restricted to Rs. 11,38,57,336/- comprising adjustment towards provision of software development services of Rs. 3,31,04,770/-, provision of KPO services of Rs. 6,95,52,327/-, remittance of ESPP contribution of employees of Rs. 79,06,253/-, and interest on delayed receivables of Rs. 32,93,986/-.

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

7. The learned counsel for the assessee, Shri Alisagar Rampurawala, C.A., referring to the final assessment order passed by the A.O. under Section 143(3) r.w.s. 144C(13) r.w.s. 144B dated 23.10.2024, submitted that the assessment order passed by the A.O. is barred by limitation in view of the provisions of Section 153(1) read with sub-section (4) of the Act, which has been clearly laid down by the Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Private Limited (2022) 445 ITR 537 (Madras) and the Hon'ble Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (2023) 457 ITR 161 (Bombay), wherein it has been held that final assessment order passed by the A.O. beyond the time limit provided under Section 153(1) read with sub-section (4) of the Act is barred by limitation. The learned counsel for the assessee, further referring to the dates and events in the present case, submitted that the normal time limit for completion of assessment under Section 153(1) of the Act for the present Assessment Year 2021-22 is 9 months from the end of the relevant assessment

year, which would expire on 31.12.2022, and the period for completion of assessment shall stand extended by another 12 months, if any reference is made u/s 92CA, and the same would extend the time limit up to 31.12.2023, whereas the A.O. passed the final assessment order only on 23.10.2024, which is beyond the limitation provided under the Act, and therefore, cannot be sustained. Therefore, he submitted that the final assessment order passed by the A.O. should be quashed.

8. The Ld. CIT-DR for the Revenue, Dr. Narendra Kumar Naik, on the other hand, referring to provisions of Section 153 and provisions of Section 144C of the Act, submitted that, both the sections are mutually exclusive and operate for a different purpose which is evident from non-obstante clause under Section 144C of the Act, which overrides all other provisions of the Act, including the provisions of Section 153(1) and 153(4) of the Act. Therefore, the arguments of the counsel for the assessee in light of provisions of Section 153(1) and 153(4) of the Act, that upper limit provided for completion of assessment would also be applicable to the cases where reference under Section 92CA of the Act was made to the TPO, is devoid of merit and cannot be accepted going by the

wording of Section 144C of the Act. The Ld. CIT-DR further submitted that, although this issue is in favour of the assessee by the decisions of various High Courts, including the decision of Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Private Limited (supra) and also the Hon'ble Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra), but fact remains that the Revenue has challenged the order of the Hon'ble Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra) and the same has been stayed by the Hon'ble Supreme Court. Further, the Hon'ble Supreme Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra) has delivered a split verdict where one Hon'ble Judge has decided the issue in favour of the Revenue and another Hon'ble Judge has decided the issue in favour of the assessee and the matter is still pending for adjudication before a Larger Bench. Therefore, he submitted that, since the matter has not attained finality at the level of Hon'ble Supreme Court, either the matter may be kept pending on this issue or decided in favour of the Revenue.

9. We have heard both parties, perused the material available on record and had gone through the orders of the authorities below. We have also carefully considered relevant case laws relied upon by the learned counsel for the assessee, including the decision of the Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Private Limited (supra) and the Hon'ble Bombay High Court's decision in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra). It is an admitted fact that the Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Private Limited (supra) has decided the issue in favour of the assessee and held that, the upper time limit for passing the final assessment order under Section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act, is governed by the provisions of Section 153(1) and Section 153(4) of the Act, and if the final assessment order passed by the A.O. is beyond the time limit provided under Section 153(1) and 153(4) of the Act, then it is barred by limitation and is liable to be quashed. The relevant findings of the Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Private Limited (supra) are as under :

“18. The main contentions of the Department, through their counsel are that Section 144C is a code in itself and hence on remand by the ITAT, the power of DRP to take up the dispute on additions by IPO, is not circumscribed by Section 153 and that in the absence of any express time limits contemplated under the Act, the time limits under Section 153 for reassessment cannot be read into Section 144C more particularly when the provisions of Section 153 are excluded by the non-obstante clause in section 144C(13) and hence the proceedings are not barred by limitation. Per contra, it has been contended by the learned senior counsels appearing for the respondent(s)/assesseees that the outer time limit under Section 153 is applicable to every proceedings on remand and the department having slept over the issue for several years, cannot now redo the proceedings afresh, after certain rights have vested with the assesseees. Even if specific provisions are not there to deal with this situation, the proceedings must be concluded within a reasonable time and hence the impugned proceedings are liable to be struck down and rightly done so by the learned Judge.

19. Admittedly, the facts including the dates are not under dispute. As regards the appeal in W.A.No.1854 of 2021, even though the remand was on 24-1-2013 and the assessee had received the order on 8-2-2013, the first notice by the DRP was issued on 19-2-2014 and the first hearing in the Chennai office was on 10-3-2014. Therefore, it is lucid that the DRP had the knowledge of the order before 19-2-2014. The matter was heard on various dates in Chennai office and written submissions were also filed. Thereafter, the files have been transferred to Bengaluru by the CBDT notification dated 31.12.2014. The Learned Judge relying upon the findings in the batch of cases which was decided first and rendered additional findings, which have been extracted in paragraphs 10 and 11 above, has allowed the writ petitions holding that the time limit under Section 153 (2A) was not adhered to and in any case, the proceedings have not been concluded within a reasonable time.

20. As rightly contended by the learned senior counsels and affirmed by the Learned Judge, the DRP proceedings is a continuation of assessment proceedings. To put it further, it is a part of assessment proceedings, once the objections are filed and under section 144C (12) a period of 9 months is prescribed. within which, directions are in be issued by the DRP, falling which any directions are to be treated as otiose. As seen from the timeline discussed in the earlier paragraphs, the original assessment proceedings are to be completed within 21 months and the additional time of 12 months is granted when proceedings before TPO is pending. The TPO has to pass orders before 60 days prior to the last date. Then 30 days time is given to the assessee to file their objection before the DRP and the DRP is given 9 months time and thereafter, within one month from the end of the month of receipt of directions from DRP, the final order is to be passed. This court is not in consonance with the contention of the learned senior panel counsel for the appellants revenue that the time period of 33 months, provided initially is for the draft order and not for the final order. A careful perusal of the timeline would indicate that the time limit is for the final assessment and not for the draft order. The anomaly in the argument is that in the present cases, no fresh draft order was passed, but the DRP had Issued the notices. If the contention of the appellants/revenue was to hold some water, they must have passed the draft assessment order immediately on receipt of the order from the Tribunal, but instead, notice was issued by the DRP. In any case, it is a far cry for the revenue as because no order has been passed for more than 5 years.

21. As held above, the assessment has to be concluded within 21 months when there is no reference and when there is a reference, it has to be concluded within 33 months. In the additional 12 months, the draft order is to be passed, the objections have to be filed, the DRP has to issue the directions and the final order is to be passed. The provisions under section 144C and section 153 are not mutually exclusive as both contain provisions relating to Section 92CA and are inter-dependent and overlapping. On remand, prior to amendment as per Section 153 (2A), the Assessing officer is given 12 months to pass a fresh assessment order. Therefore, it is incumbent on him to do so, irrespective of the fact that DRP has completed the hearing and issued the directions or not. As rightly held by the learned judge, we are of the view that the DRP ought to have concluded the proceedings within 9 months from the date of receipt of the Tribunal's order, when it had issued a notice on 19-2-2014 and conducted the hearing as early as on 10-3-2014 and on several dates. The DRP at Chennai, in fact ought to have passed orders before 19-11-2014, even if the date of receipt of the notice is taken as 19-2-2014. In that event, the assessing officer ought to have passed the order before 31-12-2014 or at the latest before 31-3-2015 considering that the order was received during the Financial year 2013-14. The transfer of the files to Bengaluru, after the lapse of the time, will not indefinitely extend the time and can have no impact on the time lines. It is an inter-department arrangement and it cannot defeat the rights of the assessee.

22. Insofar as the non-obstante clause in Section 144C(13) is concerned, we concur with the view of the Learned Judge. The exclusion of applicability of Section 153 or Section 153 B is for a limited purpose to ensure that de hors larger time is available, an order based on the directions of the DRP has to be passed within 30 days from the end of the month of receipt of such directions. The section and the sub-section have to be read as a whole with connected provisions to decipher the meaning and intentions. At this juncture it would be useful to refer to the following decisions:

(i) *Suliana Begum v. Prem Chand* Join [1997] 1 SCC 373 at page 381:

"11. The statute has to be read as a whole to find out the real intention of the legislature.

12. In *Canado Sugar Refining Co. v. R.* [1898 AC 735:67 LJPC 125), Lord Davy observed

"Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

14. This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.

15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

- 1) *It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.*
- 2) *The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.*
- 3) *It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".*
- 4) *The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.*
- 5) *To harmonise is not to destroy any statutory provision or to render it otiose."*

(ii) *CIT v. Hindustan Bulk Carriers [2003] 126 Taxman 321/259 ITR 449:*

"16. *The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627:55 LJPC 69: 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513: 58 LJQB 174:60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352: (1959) 35 ITR 408]).*

18. *The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.*

19. *The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See RS. Raghunath v. State of Karnataka [(1992) 1 SCC 335: 1992 SCC (L&S) 286: (1992) 19 ATC 507: AIR 1992 SC 81]) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373: AIR 1997 SC 1006])."*

(iii) *Franklin Templeton Trustee Services (P.) Lid. v. Amruta Garg [2021] 124 taxmann.com 326/164 SCL 720:*

"17. *The concept of "absurdity" in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief*

[See Bennion on Statutory Interpretation, 5th Edn., p. 969.]. Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense. [Bennion on Statutory Interpretation, 5th Edn., p. 986.] When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society [Id, p. 971, quoting Griffiths, L.]. Therefore, when there is choice between two interpretations, we would avoid a "construction" which would reduce the legislation to futility, and should rather accept the "construction" based on the view that draftsmen would legislate only for the purpose of bringing about an effective result. We must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences [See Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edn., p. 50.]"

23. Further, similar non-obstante clause is also used in section 144C(4) with a same limited purpose to imply, even though there might be a larger time limit under Section 153, once the order of TPO is accepted or not objected to, causing a deeming fiction of acceptance, the final order is to be passed immediately. The object is to conclude the proceedings as expeditiously as possible and the authority need not wait for the last date to pass the orders. The limitation prescribed under the statute is for the assessing officer and therefore, it is his duty to pass order in time irrespective of whether the directions are received from DRP or not. As held by us above, the DRP will have no authority to issue directions after nine months and a further period of one month as per section 144C (13) and three months under section 153 (2A) is available, within which period no orders have been passed in the present cases. The reference made by the learned senior counsels on the judgments in Nokia India (P) Ltd. (supra) and Vedanta Ltd. (Supra) is well founded. The timeline given under the Act is to be strictly followed.

24. Insofar as the challenge to the show cause notice issued is concerned, though generally, the High Court will be circumspect to interfere at the stage of show cause notice, the law on the point is well settled with exceptions carved in the following cases;

- a. when the notice is issued beyond the period of limitation,
- b. when the notice is without authority,
- c. when notice is issued without following the procedures under the applicable Act or the rules framed thereunder and
- d. when the notice is issued with a prejudiced mind.

The challenge must be available *ex-facie* leaving no room for the court to peruse or discuss intricate facts. In the present case, the challenge is on the ground of limitation and hence, we hold that the proceedings under Article 226 of the constitution are maintainable,

25. As regards the relief sought in other appeals viz., W.A.No.1517/2021 etc. batch, the findings rendered above are equally applicable. In these cases, for the assessment year 2009-10, the order of remand to the Assessing officer was passed on 18-12-2015 and insofar as the assessment year 2010-11 is concerned, for one issue, it was passed on

18-12-2015 and for other two issues, it was passed on 23-9-2016 after the amendment, by which time, the time limit was brought down to 9 months. As such, fresh orders ought to have been passed before 31-3-2017 for the assessment year 2009-10 and for one issue relating to the assessment year 2010-11 reckoning the 12 months from the financial year 2015-16 and on or before 31-12-2017 reckoning 9 months from the financial year 2016-17. Therefore, the Assessing officer ought to have passed a draft assessment order immediately and asked the assessee to file their objections with the DRP. For the mistake and the lapse of the Assessing officer, the vested right of the Assessee cannot be taken away.

26. We are not oblivious of the fact that any finding on the aspect of reasonableness in time in passing orders when no time is provided would be superfluous in view of our decision in earlier paragraphs. It is necessary to decide on the issue as in this case, the revenue has taken more than 5 years in one appeal and 4 years in other appeals, which is unacceptable as rightly held by the learned judge. We are not alone on this issue and are fortified by the following judgments of the Hon'ble Supreme Court in this regard.

(i) *Bharat Steel Tubes Ltd. v. State of Haryana* 1988 taxmann.com 761

"15. Before we part with the case, we would like to indicate that assessment of tax should be completed with expedition. It involves the revenue to the State. In the case of a registered dealer who collects sales tax on behalf of the State, there is no justification for him to withhold the payment of the tax so collected. If a timely assessment is completed, the dues of the State can be conveniently ascertained and collected. Delay in completion of assessment often creates problems. The assessee would be required to keep up all the evidence in support of his transactions. Where evidence is necessary, with the lapse of time, there is scope for its being lost. Oral evidence as and when required to be produced by the assessing authority may not be available if a long period intervenes between the transactions and the consideration of the matter by the assessing authority. Long delay thus is not in the interest of either the assessee or the State, In view of the fact that a period of limitation has been prescribed for bringing the escaped turnover into the net of taxation, such an eventuality cannot be grappled with appropriately unless timely assessment is completed. In several taxing statutes, even in a situation like this, where assessment under Section 11(3) or 28(3) of the respective Acts is contemplated, a period of limitation is provided. Until by statute, such a limitation is provided, it is proper for the State Governments to require, by statutory rules or appropriate instructions, to ensure completion of assessments with expedition and reasonable haste but subject to rules of natural justice."

(ii) *Govt. of India v. Citedal Fine Pharmaceuticals* [1989] 3 SCC 483:

"6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in

the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

(iii) *State of Punjab v. Bhatinda District Co-op. Milk P. Union Ltd.*
[2007] 11 SCC 363:

17. *A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.*

18. *It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*

19. *Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.*

21. *In S.B. Gurbaksh Singh v. Union of India ((1976) 2 SCC 181: 1976 SCC (Tax) 177:(1976) 37 STC 425) Untwalia, J., speaking for the Bench, opined: (SCC p. 188, para 15).*

"15. Apropos the fourth and the last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was

no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time-limit has been prescribed for the assessee to move in revision. The appellate or the revisional powers in an appeal or revision filed by an assessee can be exercised in due course. No time-limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."

23. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretofore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4-9-2006, it is apparent that the revisional authority did not assign any reason as to why such a notice was being issued after a period of 5% years.

Generally, no hard and fast rule can be laid down to indicate what is a reasonable time. It though depends upon the facts of the each case, drawing a clue from Article 113 of the Limitation Act, the residual entry, it would be reasonable to conclude that in such cases, action is to be concluded within 3 years. Needless to say, if the statute prescribes shorter period, the doctrine of reasonable time will not be applicable and the timeline under the statute is to be strictly followed.

27. For the reasons set out herein before, we conclude as under :

- a) The provisions of Sections 144C and 153 are not mutually exclusive, but are rather mutually inclusive. The period of limitation prescribed under Section 153 (2A) or 153 (3) is applicable, when the matters are remanded back irrespective of whether it is to the Assessing Officer or TPO or the DRP, the duty is on the assessing officer to pass orders.*
- b) Even in case of remand, the TPO or the DRP have to follow the time limits as provided under the Act. The entire proceedings including the hearing and directions have to be issued by the DRP within 9 months as contemplated under section 144C(12) of the Income-tax Act.*
- c) Irrespective of whether the DRP concludes the proceedings and issues directions or not, within 9 months, the Assessing officer is to pass orders within the stipulated time,*
- d) In matter involving transfer pricing, upon remand to DRP, the Assessing officer is to pass a denova draft order and the entire proceedings as in the original assessment, would have to be completed within 12 months, as the very purpose of extension is to ensure that*

orders are passed within the extended period, as otherwise the extension becomes meaningless.

- e) The outer time limit of 33 months in case of reference to TPO under Section 153, would not refer to draft order, but only to final order and hence, the entire proceedings would have to be concluded within the time limits prescribed,*
- f) The non-obstante clause would not exclude the operation of Section 153 as a whole. It only implies that irrespective of availability of larger time to conclude the proceedings, final orders are to be passed within one month in line with the scheme of the Act,*
- g) When no period of limitation is prescribed, orders are to be passed within a reasonable time, which in any case cannot be beyond 3 years. However, when the statute prescribes a particular period within which orders are to be passed, then such period, irrespective of whether it is short or long, shall be applicable.*

28. With the above directions, all the writ appeals are dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed."

10. A similar view has been taken by the Hon'ble Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra) and after considering the relevant facts in paragraphs 23 to 34 of the order, it has been held as under :

"23. No doubt, section 144C of the Act is a self contained code of assessment and time limits are inbuilt at each stage of the procedure contemplated. Section 144C envisions a special assessment, one which includes the determination of Arms Length Price (ALP) of international transactions engaged in by the assessee. The DRP was constituted bearing in mind the necessity for an expert body to look into intricate matters concerning valuation and transfer pricing and it is for this reason that specific timelines have been drawn within the framework of section 1440 to ensure prompt and expeditious finalisation of this special assessment. The purpose is to fast-track a special type of assessment. That cannot be considered to mean that overall time limits prescribed have been given a go by in the process.

24. We find it difficult to accept the submissions of Mr. Suresh Kumar because it would in fact mean that, notwithstanding the twelve month period prescribed under section 153 (3) of the Act, where it says that an order of fresh assessment in pursuance of an order under section 254 of the Act may be made at any time before the expiry of twelve months from the end of the financial year in which order under section 254 of the Act is received by the Commissioner, would not apply to a case where section 144C of the Act is applicable. It would also mean that the time prescribed in section 153 (1) of the Act cannot apply where section 144C of the Act is applicable in the case of an eligible assessee. If Mr. Suresh Kumar was correct, then in our view, it would have been specifically so provided in section 153 of the Act. We would agree with Mr. Mistri that wherever the legislature intended extra time to be provided, it is expressly provided in section 153 of the Act. Sub-section (3) of section 153 of the Act also applies to fresh order under section 92 CA of the Act being passed in pursuance to an order under section 254 of the Act. Sub-section (4) of section 153 of the Act specifically provides that notwithstanding anything contained in sub-sections (1), (1-A), (2), (3) and (3-A) of the Act, where a reference under sub-section (1) of section 92 CA of the Act is made during the course of the proceeding for assessment or re-assessment, the period available for completion of assessment or re-assessment, as the case may be, under the said sub-sections (1), (1-A), (2), (3) and (3-A) of the Act shall be extended by twelve months.

25. Moreover, Explanation-1 below section 153 of the Act also provides for the periods which have to be excluded while computing the twelve months period mentioned in section 153 (3) of the Act. For example - it provides for exclusion of the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited or inventory valued under sub-section (2-A) of section 142 of the Act or in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application was made before the Settlement Commission and ending with the date on which the order is received by the Principal Commissioner or Commissioner or where the period commencing from the date on which an application made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section of section 2450 of the Act and ending with the date on which the Advance Ruling pronounced by it is received by the Commissioner or where reference for exchange for information is made by an authority competent under an agreement referred to in section 90 or section 90-A of the Act or where a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner etc, shall be excluded. There is no mention anywhere about section 144C of the Act.

26. If we accept the submissions of Shri Suresh Kumar that when there is a remand as in this case, the AO is unfettered by limitation, it would run counter

to the avowed object of provisions that were considered while framing the provisions of section 144C of the Act. Having set time limits every step of the way, it does not stand to reason that proceedings on remand to the AO may be done at leisure sans the imposition of any time limit at all.

27. Having considered the language of sections 144C and 153, we cannot accept that the provisions of section 153 are excluded to the operation of section 144C.

28. Mr. Mistri, therefore, is correct in his submissions that the time limit prescribed under section 153 of the Act would prevail over and above the assessment time limit prescribed under section 144C of the Act. This is because the Assessing Officer may follow the procedure prescribed under section 144C of the Act, if he deems fit necessary but then the entire procedure has to be commenced and concluded within the twelve months period provided under section 153 (3) of the Act. This is because, the procedure under section 141C(1) of the Act also has to be followed by the Assessing Officer only if he proposes to make any variation which is prejudicial to the interest of the eligible assessee. If the Assessing Officer did not wish to make any variation which is prejudicial to the interest of the eligible assessee, he need not go through the procedure prescribed under section 144C of the Act.

29. In our view, the assessment has to be concluded within twelve months as provided in section 153(3) of the Act when there has been remand to the AO by the ITAT under section 254 of the Act. Within this twelve months prescribed, the AO has to ensure that the entire procedure prescribed under section 144C is completed and pass a final assessment order. For this the AO has to be prompt in passing an order contemplated under section 144C(1) of the Act and not wait to be reminded like in this case and still take almost two years to start the process. Sub-section (13) of section 144C provides that an assessment officer shall, upon receipt of the directions, issued under sub-section (5), in conformity with the directions complete, notwithstanding anything to the contrary contained in section 153, 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. What is contemplated under section 144C (13) is the passing of the final assessment order. Twelve months as provided under section 153(3) would start from the end of the financial year in which the Principal Commissioner received the order under section 254 from the ITAT. The assessing officer should have taken steps to pass the final order under sub-section (13) of section 144C within 12 months period.

30. The exclusion of applicability of section 153, in so far as non-obstante clause in sub-section (13) of section 144C is concerned, it is for limited purpose to ensure that debers larger time available, an order based on the directions of the DRP has to be passed within 30 days from the end of the receipt of such

directions The section and sub-section have to be read as a whole with connected provisions to decipher the meaning and intentions.

31. We would also observe that a similar non-obstante clause is also used in section 144C(4) of the Act with the same limited purpose to imply, even though there might be a larger time limit under section 153, once the matter is remanded to AD by the ITAT under section 254, the process to pass final order under section 144C has to be taken immediately

32. The object is to conclude the proceedings as expeditiously as possible. There is a limit prescribed under the statute for the AO and therefore, it is his duty to pass an order in time. After 30th September 2021, the AO will have no authority to pass any final assessment order in this Case.

33. We cannot accept the submissions of Shri Suresh Kumar that passing of draft assessment order before 30th September 2021 would suffice. We find support for this view in Roca Bathroom (SB) (supra) and Roca Bathroom (DB) (supra).

34. In the circumstances, since no final assessment order can be passed in the present case as the same is time barred, the Return of Income as filed by Petitioner be accepted. This would however, not preclude the Revenue from taking any other steps in accordance with law.”

11. We further note that, the Co-ordinate Bench of the Tribunal, Hyderabad has also considered identical issue in the case of Aveva Solutions India LLP, Hyderabad Vs. ITO, Ward-8(1), Hyderabad in ITA No. 1170/Hyd/2024 dated 19.11.2025 where under identical set of facts, the Tribunal by following the decision of Hon'ble Madras High Court and also the decision in the case of Hon'ble Bombay High Court cited above has held as under :

“11. Therefore, following the Judgments of Hon'ble Madras High Court as well as Hon'ble Bombay High Court cited (supra), we hold that the assessment order passed by the Assessing Officer on 18.10.2024 is barred by

limitation and consequently, the same is liable to be quashed. We order accordingly.

12. Since the issue is pending adjudication before the Hon'ble Supreme Court in the case of ACIT-(International Taxation] vs., Shelf Drilling Ron Tappmeyer Ltd., [2025] 177 taxmann.com 262 (SC) and the first attempt to resolve the dispute by the Hon'ble Supreme Court is not successful due to divergent views of the Division Bench of the Hon'ble Supreme Court and, therefore, the matter is required to be resolved by the Larger Bench of the Hon'ble Supreme Court. Since the matter is yet to be resolved by the Hon'ble Supreme Court, therefore, we allow the parties to get this appeal revived if the decision of the Hon'ble Supreme Court on this issue necessitates modification of this order.

13. The Hon'ble jurisdictional High Court in the case of Kotha Kantaiah vs., Income Tax Officer in WP.No.344 of 2025 vide order dated 24.04.2025 while dealing with the issue of validity of the notice issued u/sec.148 issued by the Jurisdictional Assessing Officer [in short "JAO" instead of Faceless Assessing Officer (in short "FAO" as per the Faceless Assessment Scheme has quashed the notice issued u/sec. 148 by the JAO and consequently, re-assessment order, but, granted the liberty to the parties to get the petition revived as per the outcome of the Judgment of the Hon'ble Supreme Court on the identical issue. The relevant part of the Judgment of Hon'ble Jurisdictional High Court of Telangana in the case of Kotha Kantaiah vs., Income Tax Officer (supra) in Parus-15 to 18 of the said judgement is as under:

“15. What is worrying this Bench more is the fact that an endeavour is being made whole heartedly to ensure not to generate further litigation on issues which have been laid to rest by a large number of High Courts all of whom have taken a consistent stand that the action of the Income Tax Department being violative of the Finance Act, 2020 and Finance Act, 2021. Now, in order to protect the interest of the Revenue as also that of the assessee, it would be trite at this juncture, if we dispose of the writ petition with an observation/direction that the disposal of the instant writ petition in terms of the judgment rendered by this High Court in the case of Kankanala Ravindra Reddy (1 supra) shall however be subject to the outcome of the SLPs which were filed by the Income Tax Department and which is pending consideration before the Hon'ble Supreme Court.

16. In the given facts and circumstances, this Bench is of the considered opinion that unless and until we do not timely dispose of matters which are squarely covered by the decision of this Court and which stands fortified by the decisions of the various other High Courts on the very same issue, the pendency of this High Court would further

be burdened which otherwise can be decided and disposed of as a covered matter.

17. So far as the interest of the Revenue is concerned, we are of the considered opinion that the interest of the Revenue has already been considered and protected, as has been observed in paragraphs 36, 37 and 38 of the order which, for ready reference, is reproduced hereunder :

“36. For all the aforesaid reasons, the impugned notices issued and the proceedings drawn by the respondent-Department is neither tenable, nor sustainable. The notices so issued and the procedure adopted being per se illegal, deserves to be and are accordingly set aside/quashed. As a consequence, all the impugned orders getting quashed, the consequential orders passed by the respondent-Department pursuant to the notices issued under Section 147 and 148 would also get quashed and it is ordered accordingly. The reason we are quashing the consequential order is on the principles that when the initiation of the proceedings itself was procedurally wrong, the subsequent orders also gets nullified automatically.

37. The preliminary objection raised by the petitioner is sustained and all these writ petitions stands allowed on this very jurisdictional issue. Since the impugned notices and orders are getting quashed on the point of Jurisdiction, we are not inclined to proceed further and decide the other issues raised by the petitioner which stands reserved to be raised and contended in an appropriate proceedings.

38. Since the Hon'ble Supreme Court had, in the case of Ashish Agarwal, supra, as a one-time measure exercising the powers under Article 142 of the Constitution of India, permitted the Revenue to proceed under the substituted provisions, and this Court allowing the petitions only on the procedural flaw, the right conferred on the Revenue would remain reserved to proceed further if they so want from the stage of the order of the Supreme Court in the case of Ashish Agarwal, supra.”

18. We would only further like to make observations that since we are inclined to dispose of the instant writ petition, conscious of the fact that the earlier order of this High Court in the case of Kanakala Ravindra Reddy (1 supra) is subjected to challenge before the Hon'ble Supreme Court in SLP No.3574 of 2024, preferred by the Income Tax Department, we make it clear that allowing of the instant writ petition is subject to outcome of the aforesaid SLP preferred by the Revenue against the decision of this High Court in the case of Kanakala Ravindra Reddy (1 supra). This, in other words, would mean that either of the parties, if they so want, may move an appropriate petition

seeking revival of this writ petition in the light of the decision of the Hon'ble Supreme Court in the pending SLP on the very same issue."

12. 12. The sum and substance of ratio laid down by the Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Private Limited (supra) and the Hon'ble Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra), which was later followed by the Co-ordinate Bench of the Tribunal in the case of Aveva Solutions India LLP, Hyderabad Vs. ITO (supra), are that the upper time limit provided under Section 153(1) and 153(4) of the Act is applicable for the final assessment order passed by the A.O. under Section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act. In case the final assessment order passed by the A.O. under Section 143(3) r.w.s. 144C(13) r.w.s. 144B is beyond the upper time limit provided under Section 153(1) and 153(4) of the Act, then the said order is beyond the limitation prescribed and liable to be quashed. In the present case, there is no dispute with regard to the fact that the normal time limit available for passing the assessment order, as per the provisions of Section 153(1) of the Act, is 9 months from the end of the relevant assessment year, i.e., 31.12.2022 for

A.Y. 2021-22. Further, as per the provisions of Section 153(4) of the Act, where a reference under Section 92CA of the Act was made to the Transfer Pricing Officer (TPO), the time limit available stands extended by another 12 months, and in the present case, the upper time limit for completion of assessment proceedings would expire on 31.12.2023.

13. In the present case, the final assessment order passed by the A.O. under Section 143(3) r.w.s. 144C(13) r.w.s. 144B dated 23.10.2024 is clearly beyond the limitation prescribed under Section 153(4) of the Income-tax Act, 1961, and thus, liable to be quashed, as held by the Hon'ble Madras High Court and Hon'ble Bombay High Court in the cases of CIT Vs. Roca Bathroom Products Private Limited (supra) and Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra) respectively. Therefore, by respectfully following the decisions of the Hon'ble Madras High Court and the Hon'ble Bombay High Court in the above cases, we hold that the final assessment order passed by the A.O. under Section 143(3) r.w.s. 144C(13) r.w.s. 144B dated 23.10.2024 is barred by limitation and accordingly quashed.

14. We further noted that, although the decisions of the Hon'ble Madras High Court in the case of CIT Vs. Roca Bathroom Products Private Limited (supra) and the Hon'ble Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra) are in favour of the assessee, and we dispose of the appeal filed by the assessee by following the above two decisions and quashed the assessment order, but the fact remains that the revenue has challenged the decision of the Hon'ble Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra) by filing an SLP before the Hon'ble Supreme Court, and the Hon'ble Supreme Court has disposed of the appeal. Further, the Hon'ble Supreme Court has delivered a split verdict by two Hon'ble Judges on this issue, i.e., one in favour of the revenue and one in favour of the assessee. Therefore, in our considered view, the matter is still pending for adjudication before the Hon'ble Supreme Court in the case of Shelf Drilling Ron Tappmeyer Limited Vs. ACIT, International Taxation (supra) and is to be resolved by a Larger Bench of the Hon'ble Supreme Court on this issue. Therefore, considering the present legal position, we allow the parties to get

this appeal revived for adjudication of the other issues involved in the appeal on merits, if the decision of the Hon'ble Supreme Court on this issue necessitates modification of this order. Accordingly, we dispose of this appeal on this legal issue and keep open the other issues raised by the assessee on merits, in case the Hon'ble Supreme Court decides the issue otherwise.

15. In the result, the appeal filed by the assessee is allowed in terms of our observations given hereinabove.

Order pronounced in the Open Court on 10th December, 2025.

Sd/- श्री विजय पाल राव (VIJAY PAL RAO) उपाध्यक्ष /VICE PRESIDENT	Sd/- (मंजूनाथ जी) (MANJUNATHA G.) लेखा सदस्य/ACCOUNTANT MEMBER
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Hyderabad, dated 10.12.2025.
TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	M/s. Callidus Cloud (India) Private Limited, Unit 601, 6 th Floor, Building No.12B, Mindspace IT Park, Madhapur, Hyderabad – 500081, Telangana.
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income-tax, Circle – 1(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	The Disputes Resolution Panel-1, Kendriya Sadan, 4 th Floor, C-Wing, BENGALURU – 560 034. Karnataka		
5.	The Pr.CIT (IT & TP), Hyderabad.		
6.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
7.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad