

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1505/Chny/2024  
निर्धारणवर्ष/Assessment Year: 2016-17

M/s. Saint Gobain India Pvt. Ltd.,  
Level 7, Sigapi Achi Building,  
18/3, Rukmani Lakshmi pathy Road,  
Chennai-600 008.  
[PAN: AABCS 4338 M]

(अपीलार्थी/Appellant)

v.

The DCIT,  
NCC-8(1),  
Chennai.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.1672/Chny/2024  
निर्धारणवर्ष/Assessment Year: 2016-17

The DCIT,  
NCC-8(1),  
Chennai.

(अपीलार्थी/Appellant)

v.

M/s. Saint Gobain India Pvt.  
Ltd.,  
Level 7, Sigapi Achi Building,  
18/3, Rukmani Lakshmi pathy  
Road,  
Chennai-600 008.  
[PAN: AABCS 4338 M]

(प्रत्यर्थी/Respondent)

Assessee by

:

Mr.Vikram Vijayaraghavan,  
Advocate (virtual)

Department by

:

Ms.E. Pavuna Sundari, CIT

सुनवाईकीतारीख/Date of Hearing

:

23.10.2025

घोषणाकीतारीख /Date of Pronouncement

:

18.12.2025



ITA Nos.1505 & 1672/Chny/2024 (AY 2016-17)  
M/s. Saint Gobain India Pvt. Ltd.

:: 2 ::

## आदेश / ORDER

### **PER ABY T. VARKEY, JM:**

These are cross-appeals preferred by the assessee as well as the Revenue against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter referred to as 'Ld.CIT(A)'), Chennai-16, dated 22.03.2024 for the Assessment Year (hereinafter referred to as 'AY') 2016-17.

2. For the present case in hand, an additional ground was filed by the Assessee/ Appellant on 22.10.2025 challenging the AO's order as time barred on the Jurisdictional ground that the Transfer Pricing Order dated 01.11.2019 and Final assessment order passed u/s 143(3) r.w.s. 144C (3) of the Act dated 28.02.2020 is barred by limitation under section 153(1) r.w.s 153 (4) of the Act and hence, the AO's order is void ab initio based on timelines of the case and binding judicial precedents. The additional grounds are noted as under;-

1. The impugned assessment is liable to be quashed as invalid and without jurisdiction on account of being barred by limitation under Section 153(1) read with Section 153(4) of the Act, since the Appellant is not an eligible Assessee under Section 144C(1) of the Act as the transfer pricing proceedings have become void ab--initio subsequent to the order of the Madras High Court in WP NO 32669 of 2019 upheld by WA No. 1148 of 2021, followed by Chennai Tribunal in Verizon Data Services India Private Limited (TS825 ITAT 2022 Chny-TP) and Pfizer Healthcare India Private Limited in ITA No 641/Chny/2023 for the assessment year 2016-17 dated 03.06.2024.

2. Thus, the AO has erred in law, by passing the final assessment order on 28.02.2020 which is beyond the timeline for completion of proceedings provided under Section 153(1) read with Section 153(4) of the Act (i.e., beyond 33 months) and hence the final assessment order is invalid and unsustainable in law.

3. The Appellant prays the Hon'ble Tribunal to permit raising the above additional ground as part of the appeal filed for AY 2016-17.



3. Facts relevant to the legal issue are that the Assessee Company filed its ITR/RoI for the AY 2016-17 on 30.11.2016 admitting total income of Rs.245,63,06,280/- under the normal provisions and book profits of Rs.392,27,00,897/-. Subsequently, the Assessee filed a revised return on 30.03.2018, revising the total income to Rs.247,98,23,940/- under the normal provisions and book profits of Rs.392,77,40,155/- under section 115JB of the Act and claimed a refund of Rs.34,77,56,250/-. A reference u/s 92CA of the Act was made to the TPO-3, Chennai wherein the TPO, vide order dated 01-11-2019, proposed a downward adjustment of Rs. 67,83,46,826.

4. However, against the aforesaid TPO Order dated 01 November 2019 **the Assessee-company, Saint Gobain India Pvt Ltd, filed Writ Petition before Hon'ble High Court of Madras in WP No. 33751 of 2019** [etc. a batch of Writs]. The Hon'ble Single Bench vide order dated 07.09.2020 held that the TP order as barred by limitation. In this common decision, [of similar Assessee's] Hon'ble High Court held that the TPO order passed u/s 92CA(3) was barred by limitation by one day. It was noted that in terms of Sec.92CA(3A), an order has to be passed by TPO before 60 days prior to the last day on which the period of limitation referred to in Sec.153 for making assessment expires. And that the assessment is to be completed within 21 months from end of assessment



:: 4 ::

year in which the income was first assessable. Therefore, counting from 31.03.2017, the assessment was to be framed on or before 31.12.2019. The period of 60 days prior thereto would run till 01.11.2019 and any date prior thereto would mean 31st of October or before. And since the TPO order was passed on 01.11.2019, the same was held to be barred by limitation.

5. Meanwhile, the AO completed the assessment under section 143(3) r.w.s.144C of the Act on 28.02.2020 *without incorporating the TPO additions in the Final Assessment Order*, against which the Assessee preferred an appeal before the Ld. CIT (A).

6. Meanwhile, it is to be noted that the Revenue's writ appeals against aforementioned Hon'ble Single Bench Order came up for hearing before the Division Bench of the Hon'ble Madras High Court in WA 1120 of 2021 etc. batch which was disposed-off vide order dated 31.03.2022 wherein the writ appeals were dismissed and the adjudication of the Ld. Single Bench was upheld/confirmed. This dismissal of Writ Appeal filed by Department has also been acknowledged by CIT(A) in his Order dated 22.03.2024 in Para 3.4 Page No. 12.[Copy of the order is placed before us for reference].



:: 5 ::

7. However, the Ld. CIT (A) proceed to adjudicate on the merits of the case, partly allowing the appeal. Aggrieved by this action of Ld CIT(A), the Assessee/Revenue has preferred this appeal before us.

8. During the course of hearing, the Assessee is noted to have filed additional grounds (supra), challenging the AO's order as time-barred on the Jurisdictional ground that the Transfer Pricing Order dated 01.11.2019 and Final assessment order passed u/s 143(3) r.w.s 144C (3) of the Act dated 28.02.2020 is barred by limitation under section 153(1) r.w.s 153 (4) of the Act.

9. The Ld AR, assailing the impugned action of AO passing the Final assessment order on 28.02.2020 passed u/s 143(3) r.w.s 144C (3) of the Act, as time-barred under section 153(1) r.w.s 153 (4) of the Act, brought to our notice the sequence of events to demonstrate that the assessment order is time barred.

<b>Particulars</b>	<b>Date</b>
End of the Assessment Year	31/03/2017
Time limit for completion of assessment as per Section 153(1) of the Income Tax Act, 1961 ('the Act') - 21 months from the end of the Assessment year	31/12/2018
Time limit for completion of assessment as per Section 153(4) of the Act in case of the Appellant since transfer pricing reference was made additional 12 months	31/12/2019
Time limit for issuance of Transfer Pricing Order as per Section 92CA(3A) of the Act - as upheld by the Hon'ble Madras High Court in the case of the Appellant in WA No. 1120 of 2021	31/10/2019
Date of issuance of Transfer Pricing Order in the case of the Appellant	01/11/2019
Date of issuance of Draft Assessment Order in the case of the Appellant	31/12/2019
Date of issuance of Final Assessment Order in the case of the Appellant	28/02/2020



:: 6 ::

10. According to the Ld AR, since the transfer pricing proceedings were barred by limitation of time, the order dated 01.11.2019 is void-ab-initio and accordingly, the transfer pricing adjustment is non-est. Consequently, the Assessee cease to be an *eligible assessee* as defined under section 144C(15)(b) of the Act; and therefore, the machinery provisions of Section 144C of the Act wouldn't get triggered in the present case. In such an event, the assessment in the case of the Assessee ought to have been completed within 33 months from the end of the Assessment year as per Section 153(1) read with Section 153(4) of the Act, i.e., on or before 31.12.2019. However, since the assessment was concluded vide the final assessment order dated 28.02.2020, the impugned assessment is barred by statutory limitation. Accordingly, the impugned assessment for the subject year is void-ab-initio. For such a proposition, the assessee relies upon the decision of this Tribunal in the case **of M/s Pfizer Healthcare India Pvt. Ltd. (ITA No. 641/Chny/2023, order dated 03.06.2024)**, which the Ld AR points out to be pertaining to the same Assessment Year 2016-17 as in the present case and interestingly involves identical dates as of the present case (In the case of **M/s Pfizer Healthcare India Pvt. Ltd.** also the Transfer Pricing Order was dated 01.11.2019 and the Final Assessment Order was dated 28.02.2020). In that case, the Ld AR pointed out that this Tribunal held that since the Transfer Pricing proceedings were barred by limitation, the corresponding



:: 7 ::

assessment was consequently time-barred and void-ab-initio. The relevant observation of this Tribunal is as follows:

*"9. From the tabulation of Ld. AR, it is quite clear that the since Transfer Pricing proceedings were barred by limitation of time, the transfer pricing adjustment would be non-est. Consequently, the assessee would cease to be an eligible assessee as defined u/s 144C(15)(b) of the Act and therefore, the machinery provisions of Section 144C of the Act would not get triggered in the assessee's case. In such a scenario, the assessment in the case of the assessee ought to have been completed within 33 months from the end of the Assessment year as per Sec. 153(1) read with Section 153(4) of the Act, i.e., on or before 31-12-2019. As a matter of fact, assessment has been concluded on 28-02-2020 which is clearly barred by statutory limitation. Therefore, we have no hesitation to hold that the impugned assessment for the subject year would be null and void-ab-initio. The argument of Ld. CIT DRP that it was not possible for Ld. AO to predict that fate of Ld. TPO's order do not appeal to us since any order passed beyond prescribed statutory time limit, for whatever reasons, could not be held to be a valid order. In the result, the corporate additions made in the assessment order would not survive. The appeal stand allowed on legal grounds. Delving into the merits of additions has been rendered academic in nature.*

*10. The appeal stand allowed in terms of our above order."*

11. The Ld AR brought to our notice that in the case of M/s Pfizer Healthcare (cited supra) the Tribunal had relied upon the case of **M/s Verizon Data Services India Pvt Ltd, IT (TP) A No. 37/Chny/2021 dated 18.11.2020** wherein this Tribunal took similar view for the same Assessment Year 2016-17 and held as under:

*"8. The undisputed position that emerges is that now the division bench has dismissed the Writ appeals of the revenue and confirmed the adjudication of Hon'ble Single Judge. Accordingly, the legal plea as raised by Ld. Sr. Counsel squarely favors the case of the assessee. Therefore, we would hold that considering the statutory time limit, the order passed by Ld. TPO u/s 92CA(3) on 01.11.2019 would be barred by limitation and consequence as mentioned in para-4 would follow. In other words, this order would be time barred as a result of which the*



:: 8 ::

*assessee would cease to be an eligible assessee and therefore, the machinery of Sec. 144C would not be triggered. The Ld. AO is not required to pass the draft assessment order; DRP would not have any jurisdiction to adjudicate the matter. Consequently, the final assessment order passed on 30.04.2021 would be barred by limitation since in terms of Sec. 153(1) r.w.s. 153(4), the same should have been passed on or before 31.12.2019. The same is accordingly, liable to be quashed. Accepting first two legal propositions of Ld. Sr. Counsel, we would hold that the assessment would be nullity since it is barred by limitation. Delving into other legal ground as well as entering into the merits of the assessment has been rendered merely academic in nature.*

*10. The appeal stand allowed in terms of our above order."*

12. And the Ld AR cited decisions of this Tribunal for the same assessment year in the following cases:

- i. M/s.Eaton Power Quality (P.) Ltd. (152 taxmann.com 258)
- ii. M/s.Durr India Pvt. Ltd. (2023 (8) TMI 714)

And it is noted that same view was taken by the Coordinate Benches of the Tribunals in the following cases:

- i. Shell India Markets Pvt. Ltd. (Mumbai ITAT- ITANo.2933 and 3016/Mum/2016)
- ii. Atos India Pvt. Ltd., (Mumbai ITAT - ITA No. 1795/Mum/2017)
- iii. Colgate-Palmolive (India) Limited (Mumbai ITAT- ITA No. 3488/Mum/2016)
- iv. Tata AIA Life Insurance Company Limited (Mumbai ITAT - ITA No. 2860/Mum/2015)

13. Based on the above position of law and judicial precedents, the Assessee pleads that the assessment concluded vide order dated 28.02.2020 to be held as barred by limitation and accordingly, as void-ab-initio.



:: 9 ::

14. Per contra, Ld.DR supported the action of the TPO/AO and opposed the contentions raised by assessee and submitted that unless TPO determines Arms Length Price (ALP) of the transaction referred to him, the AO couldn't have passed the assessment order. According to the Ld.DR, the AO can't be said to be clairvoyant (meaning have the power to predict the future). Therefore, the AO couldn't have predicted the order passed by the Hon'ble High Court and pass assessment orders. According to the Ld.DR, hence the contention raised by the assessee is akin to AO being asked to perform an impossible task. Therefore, according to him, it is illogical to raise such a plea and therefore wants us to dismiss the legal issue and also referred to the following decisions of the Hon'ble Supreme Court:-

(a) Shyamal Sarkar v. Commissioner of Income-tax, Siliguri reported in 250 Taxman 18 (SC)

(b) VLS Finance Ltd v. Commissioner of Income-tax, reported in 239 Taxman 404(SC)

15. In the light of the aforesaid submission, the Ld.DR wants us to dismiss the legal issue.

16. We have heard both parties and perused the records and we note that the assessee in this case had filed the ITR/ROI for the AY 2016-17 on 30.11.2016 admitting total income of Rs.2,45,63,06,280/- under the normal provisions and book profits of Rs.3,92,27,00,897/-. Subsequently, the Assessee filed a revised return on 30.03.2018 by revising the total



ITA Nos.1505 & 1672/Chny/2024 (AY 2016-17)  
M/s. Saint Gobain India Pvt. Ltd.

**:: 10 ::**

income to Rs.2,47,98,23,940/- under the normal provisions and book profits of Rs.3.92,77,40,155/- u/s.115JB of the Act and claimed a refund of Rs.34,77,56,250/-. Later, the ITR of assessee was selected for scrutiny and the AO made a reference u/s.92CA of the Act to the TPO, who vide order dated 01-11-2019, proposed a downward adjustment of Rs. 67,83,46,826/-. It is noted that the assessee company along with few other companies filed Writ Petition before the Hon'ble High Court (Single Bench), wherein they challenged the action of TPO order being barred by limitation. And their Lordship was pleased to uphold the plea of the assessee that TPO's order dated 01.11.2019 for AY 2016-17 as barred by limitation. The Department is noted to have filed a Writ Appeal before the Hon'ble High Court (Divisional Bench) which is also noted to have been dismissed vide order dated 31.03.2022. From a perusal of the Hon'ble High Court's order (Single Bench), it is noted that the Hon'ble High Court by relying on the decision in the case of M/s.Pfizer Healthcare India Pvt. Ltd. & Ors (supra), held that in terms of Sec.92CA(3A), an order has to be passed by TPO before 60 days prior to the last day on which the period of limitation referred to in Sec.153 for making assessment expires. And the assessment is to be completed within 21 months from end of assessment year in which the income was first assessable. Therefore, counting from 31.03.2017, the assessment was to be framed on or before 31.12.2019. The period of 60 days prior thereto would run till 01.11.2019



**:: 11 ::**

and any date prior thereto would mean 31<sup>st</sup> of October or before. And since the TPO order was passed on 01.11.2019, the same would be barred by limitation. The Hon'ble Division Bench is noted to have confirmed this action.

17. Before us, the assessee had assailed the action of the AO passing final assessment order dated 28.02.2020 as barred by limitation. In this regard, we note from the date of events shown in the Chart supra (which has been verified by us), we note that the order dated 01.11.2019 passed by the TPO is non-est in the eyes of law. Consequently, the assessee would cease to be an eligible assessee as defined u/s.144C(15)(b) of the Act and therefore, the machinery provisions of Section 144C of the Act would not get activated in the instant assessee's case. This being the position, the assessment in the case of the assessee ought to have been completed within 33 months from the end of the Assessment year as per Sec. 153(1) read with Section 153(4) of the Act, i.e., on or before 31.12.2019. However, since the impugned assessment has been concluded only on 28.02.2020 it is found to be barred by limitation. Therefore, we hold that the impugned assessment for the subject year would be non-est in the eyes of law. In the result, the assessee succeeds on legal issue and consequently, we quash the impugned assessment order dated 28.02.2020. Hence, Revenue appeal doesn't survive and so dismissed.



ITA Nos.1505 & 1672/Chny/2024 (AY 2016-17)  
M/s. Saint Gobain India Pvt. Ltd.

:: 12 ::

18. In the result, appeal filed by the assessee is allowed and appeal filed by the Revenue is dismissed.

Order pronounced on the 18<sup>th</sup> day of December, 2025, in Chennai.

**Sd/-**  
(जगदीश)  
**(JAGADISH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 18<sup>th</sup> December, 2025.

**TLN**

**Sd/-**  
(एबी टी. वर्की)  
**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF