

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.5223/Del/2010

निर्धारणवर्ष/Assessment Year: 2004-05

COCA COLA INDIA INC., Enkay Tower, Udyog Vihar, Phase-V, Gurgaon. PAN No.AAACC2638K	<u>बनाम</u> Vs.	DDIT International Taxation, Circle 3(2), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

आ.अ.सं./I.T.A No.5031/Del/2018

निर्धारणवर्ष/Assessment Year: 2014-15

COCA COLA INDIA INC., India Branch Office, 17 th Floor, One Horizon Centre, DLF Golf Course Road, DLF Phase-V, Sector-43, Gurgaon, Haryana. PAN No.AAACC2638K	<u>बनाम</u> Vs.	DCIT International Taxation, Circle, Gurgaon.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

आ.अ.सं./I.T.A No.431/Del/2021

निर्धारणवर्ष/Assessment Year: 2016-17

COCA COLA INDIA INC., India Branch Office, 17 th Floor, One Horizon Centre, DLF Golf Course Road, DLF Phase-V, Sector-43, Gurgaon, Haryana. PAN No.AAACC2638K	<u>बनाम</u> Vs.	ACIT International Taxation, Circle, Gurgaon.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

आ.अ.सं./I.T.A No.503/Del/2022

निर्धारणवर्ष/Assessment Year: 2017-18

COCA COLA INDIA INC., India Branch Office, 17 th Floor, One Horizon Centre, DLF Golf Course Road, DLF Phase-V, Sector-43, Gurgaon, Haryana. PAN No.AAACC2638K	<u>बनाम</u> Vs.	ACIT International Taxation, Circle, Gurgaon.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

आ.अ.सं./I.T.A No.4420/Del/2024

निर्धारणवर्ष/Assessment Year: 2020-21

COCA COLA INDIA INC., India Branch Office, 17 th Floor, One Horizon Centre, DLF Golf Course Road, DLF Phase-V, Sector-43, Gurgaon, Haryana. PAN No.AAACC2638K	बनाम Vs.	ACIT International Taxation, HSI IDC Building, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon, Haryana.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

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आ.अ.सं./I.T.A No.5316/Del/2024

निर्धारणवर्ष/Assessment Year: 2021-22

COCA COLA INDIA INC., India Branch Office, 17 th Floor, One Horizon Centre, DLF Golf Course Road, DLF Phase-V, Sector-43, Gurgaon, Haryana. PAN No.AAACC2638K	बनाम Vs.	ACIT or DCIT International Taxation, HSI IDC Building, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon, Haryana.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Nitesh Joshi, Advocate, Skhri Arun Siwach, Advocate & Shri Nikhil Garg, AR
Revenue by	Shri Dharm Veer Singh, CIT DR

सुनवाईकीतारीख/ Date of hearing:	12.01.2026
उद्घोषणाकीतारीख/Pronouncement on	23.01.2026

आदेश /O R D E RPER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present adjudication involves a batch of six appeals pertaining to the same assessee for AYs 2004-05, 2014-15, 2016-17, 2017-18, 2020-21 and 2021-22. In all these appeals the assessee has challenged the validity of the assessment order on the ground of limitation considering the provisions of section 144C(13) r.w.s. 153 of the Income Tax Act, 1961 (hereafter as “the Act”). This challenge to the validity of the impugned

order arises from the case of Commissioner of Income Tax vs. Roca Bathroom Products (P) Ltd. reported in 445 ITR 537 (Mad.), Sections 144C and 153 are mutually inclusive and not mutually exclusive as both contain provisions relating to section 92CA and are interdependent and overlapping and hence, period of limitation prescribed under section 153(2A) or 153(3) of the Act are applicable only. The specific grounds raised by the assessee are as under: -

1. AY 2004-05: Additional grounds of appeal nos. 1 & 2, raised vide application dated 07.08.2023.
 2. AY 2014-15: Additional ground of appeal no.1, raised vide application for admission of the same dated 07.08.2023.
 3. AY 2016-17: Additional ground of appeal no.1, raised vide application for admitting the same, dated 07.08.2023.
 4. AY 2017-18: Additional ground of appeal no.1 raised, vide application for admission of the same dated 09.01.2026.
 5. AY 2020-21: For this year ground no.1.1 in the Form 36 filed by the assessee challenges the limitation.
 6. AY 2021-22: In this case also ground of appeal no.1.1 in the Form 36 challenges the limitation.
2. In all these cases arguing on behalf of the Appellant - Assessee the Ld. AR relied on the decision rendered in the case of Roca Bathroom Products (supra) and submitted that the assessment orders for the

impugned assessment years, are barred by limitation. It was the submission that for determining the period of limitation for passing final assessment order, the provisions of section 144C of the Act are to be read with section 153 of the Act, to the extent that the total time available for passing the final order would be reckoned from the provisions of section 153 of the Act only. The Ld. AR furnished a chart of relevant dates for the assessment years under consideration, for tabulating the relevant period of limitation within which the final assessment order was required to be passed. The Ld. AR demonstrated through the chart of dates that in all the assessment years the final assessment order was passed by the Ld. AO beyond the stipulated deadline as per section 153 of the Act.

3. The Ld. DR objected to the adjudication of these appeals and submitted that the issue was sub-judice before the Hon'ble Supreme Court. He also filed detailed written submissions. It was argued that the Hon'ble Apex Court in the case of Shelf Drilling Ron Tappmeyer Ltd. reported in 177 taxmann.com 262 (SC), has examined this issue but due to divergent opinions expressed by the Hon'ble Judges, the issue is now referred for constituting a larger Bench. It was pointed out that even otherwise the Hon'ble Supreme Court in the case of Shelf Drilling Ron Tappmeyer Ltd. has held, vide interim order dated 22.09.2023, that the operative portion of the judgment delivered by the Hon'ble Bombay High court [153 taxmann.com 162 (Bom)] would not be cited as a precedent.

This interim order dated 22.09.2023 was placed before us for perusal. It was the further submission that in light of the said order passed by the Hon'ble Apex Court it would not be in the interest of judicial propriety to proceed with an identical matter. The Ld. DR further pointed out that the judgment of Hon'ble Bombay High Court in the case of PayPal Payments P. Ltd. in Writ Petition (L) No.30944 of 2023 decided on 13.08.2024, that the Hon'ble Bombay High Court refused to entertain the writ petition involving identical issue after taking note of the fact that the Hon'ble Apex Court stayed the operative part of the judgment in the case of Shelf Drilling (supra). The Ld. DR further referred to the decision of Hon'ble Supreme Court in the case of UP Rashtriya Chini Mill Adhikari Parishad Lucknow vs. State of U.P. & Others reported as (1995) AIR SC 2148, to argue that when an issue is referred to a larger Bench then during the pendency of such reference, matters involving identical issues should not be taken up for adjudication. Thereafter the Ld. DR read out from his detailed written submissions as under: -

"A. Introductory submission

"2. The present appeals raise the issue as to whether in cases governed by section 144C of the I.T. Act, the time consumed in the proceedings undertaken after draft assessment order under section 144C of the I. T. Act before the Dispute Resolution Panel ("DRP") and the Assessing officer get subsumed within the time limitation prescribed under section 153 of the I.T. Act or whether section 144C operates as a special statutory mechanism with its own distinct timelines for completing the assessment after passing of the draft assessment order.

3. The Revenue respectfully submits that this issue is highly contentious one and has not reached finality as it is pending before

the Hon'ble Supreme Court for consideration of Larger Bench. Therefore, final adjudication of limitation issue by this Hon'ble Tribunal at this stage would be premature and will result in avoidable multiplicity of proceedings, which will involve incurrence of significant cost and resources and lead to uncertainty in tax administration.

B. Supreme Court / High Court proceedings governing the issue

(i) Split verdict by S.C. and Larger Bench reference in case of Shelf Drilling

4. In ACIT (International Taxation) v. Shelf Drilling Ron Tappmeyer Ltd. reported in [2025] 177 taxmann.com 262 (SC), the Hon'ble Supreme Court delivered a split verdict on the interplay of sections 144C and 153 and referred the issue to a Larger Bench.

5. It is settled law that a split verdict declares no law under Article 141 of the Constitution and the legal position remains open until authoritatively settled by a majority decision.

(ii) Interim restraint on citing Bombay High Court judgment in case of Shelf Drilling

6. At the admission stage of the matter arising from the Bombay High Court judgment in case of Shelf Drilling Ron Tappmeyer Ltd. [2023] 153 taxmann.com 162 (Bombay), the Hon'ble Supreme Court passed an interim order dated 22.09.2023, directing that the High Court judgment shall not be cited as a precedent in any other subsequent matter until further orders. The relevant part of the said order is reproduced as under:

"Having heard the respective senior counsel for the parties, we observe that the impugned judgment shall not be cited as a precedent in any other subsequent matter until further orders.

We also clarify that the operative portion of the judgment shall apply only insofar as the respondents herein are in question"

This interim order has not been vacated or modified and continues to bind all courts, tribunals and judicial authorities in India. Interim orders subsist unless expressly vacated.

7. From the language used by Hon'ble Supreme Court in its interim order, it is evident that it is the ration, reasoning or basis of judgement of Hon'ble High Court of Bombay in case of Shelf Drilling (supra) which cannot form basis for decision on the same issue in any other case including instant appeals. In other words, it is not only that above judgment in case of Shelf Drilling cannot be used as precedent in any other case, but also the reasoning given in judgement of Bombay High Court in case of Shelf Drilling Ron Tappmeyer Ltd or similar reasoning given in any other case

including in the judgment of Madras High Court in case of Roca Bathroom Products (P.) Ltd cannot form basis for deciding the above issue of time limitation. Any such reliance would also be contrary to sound principles of judicial propriety and institutional respect. This argument is duly supported by the judicious view taken by Hon'ble High Court of Bombay in the case of Pay pa! Payments Pvt. Ltd as discussed in subsequent paragraph.

(iii) Bombay High Court decision in case of Paypal Payments Pvt. Ltd. (WPL (L) No.30944 of 2023, order dated 07.08.2024)

8. The Revenue further places reliance on the order dated 07.08.2024 passed by the Hon'ble Bombay High Court in case of Paypal Payments Private Limited v. ACIT (Writ Petition (L)No.30944 of 2023). In the said order, the Hon'ble Bombay High Court, while considering the very issue of interpretation of section 144C(1), 144C(4) and 144C(13) vis-a-vis section 153, recorded that the Supreme Court had, on 22.09.2023, directed that the Shelf Drilling judgment shall not be cited as precedent and clarified that the operative portion applies only inter parties. The Hon'ble High Court further noted that there was "quite a debate" on what one is permitted to do with the Shelf Drilling decision in view of the Supreme Court restraint. After hearing both parties in detail and after taking into consideration judgement of Hon'ble Madras High Court in the case of Roca Bathroom, Hon'ble Bombay HC, in its wisdom, has not quashed the assessment order and gave the parties the liberty to apply in the event of rendering a final order by Hon'ble Supreme Court on the impugned issue. The said view was again reiterated in the case of same assessee i.e. Paypal Payments Private Limited for another year in Writ petition (I) no. 27849 of 2024 vide judgement dated September 9, 2024 reported at [2024] 166 taxmann.com 521 (Bombay).

9. The above decision supports the Revenue's submission that, pending Supreme Court adjudication, the justifiable course available for this Hon'ble Tribunal is to defer adjudication of present appeals respecting the higher wisdom of Hon'ble High Court and Hon'ble Supreme Court.

(iv) Grant of leave in Roca Bathroom and pendency before Hon 'ble S. C. - legal implications

10. The Hon'ble Supreme Court has granted leave in CIT v. Roca Bathroom Products (P.) Ltd., reported in [2023] 147 taxmann.com 224 (SC). The grant of leave signifies that the issue is admitted for final adjudication, and the correctness of the Madras High Court judgment stands squarely under scrutiny. The order granting leave neither affirm the High Court's view, nor does it declare law. Once leave is granted, the High Court judgment loses finality.

11. *It is respectfully, submitted that the ratio laid down by the Hon'ble Bombay High Court in Shelf Drilling Ron Tappmeyer Ltd. and by the Hon'ble Madras High Court in Roca Bathroom Products (P.) Ltd. arises on the same legal controversy, namely the computation of limitation involving the interplay of sections 144C and 153. The principle enunciated in both decisions is, in substance, identical-i.e., that the timelines under section 153 continue to govern and must subsume the DRP mechanism under section 144C. In this context, it is material that the Hon'ble Supreme Court has passed a specific interim direction that the judgment of the Hon'ble Bombay High Court in case of Shelf Drilling shall not be cited as a precedent in any other subsequent matter. The Revenue, therefore, submits that, when the Supreme Court has expressly restrained reliance on the Shelf Drilling ratio, the same ratio cannot be permitted to be applied indirectly through relying on another non-jurisdictional decision (Such as Roca Bathroom decision of Madras High Court) laying down an identical preposition, particularly when said Roca Bathroom decision of Madras High Court itself is under appeal, and leave has been granted by the Hon'ble Supreme Court. Accordingly, Roca Bathroom decision or any other decision on the said issue cannot be treated as determinative or enforced as a basis to conclude the controversy in present appeals, and the issue ought to await authoritative settlement by the Hon'ble Supreme Court.*

(v) *Hon 'ble Supreme Court judgment in case of UP Rashtriya Chini Mill Adhikari Parishad, Lucknow Vs. State of U.P. and others, I.A No. 4 of 1995 in SLP(C) no 19963 of 1992 dated 2nd July 1995 (copy enclosed) :*

12. *In this case, Hon'ble Supreme Court had made following observation when a Division Bench of High Court decided an issue which was pending consideration before Full Bench of High Court.*

"The matter was pending consideration before a Full Bench of High Court. Needless to say that the appropriate course for the Division Bench would have been to wait the decision of the Full Bench which finally delivered his verdict on 15.11.1994 overruling the Division Bench."

The above observation of Hon'ble Supreme Court even if in the nature of obiter dicta would be binding on this Hon'ble Bench as in present appeals too, the issue of time limitation agitated by the assessee is pending for consideration of Larger Bench of Hon'ble Supreme Court."

4. Per contra, the Ld. AR stated that the assessee was solely placing reliance on the decision rendered by the Hon'ble Madras High Court in the case of Roca Bathroom Products (supra). It was a matter of record

that this particular case was not stayed by the Hon'ble Apex Court. It was the submission that even if there is a stay on any order of a High Court by the Hon'ble Supreme Court then also the "*ratio decidendi*" of the said judgment shall remain valid till such time that it is reversed or set aside by the higher court. The Ld. AR again reiterated the point that the Roca Bathroom case (supra) was not stayed or reversed by the higher court and hence would constitute a significant judicial precedent. It was also pointed out that the Hyderabad Bench of the ITAT has already passed certain reported orders following the Roca Bathroom case (supra):

- i. Aveva Solutions India LLP vs. ITO, 180 taxmann.com 731 (Hyd-Trib.);
- ii. Western UP Tollway Ltd. vs. DCIT, 181 taxmann.com 406 (Hyd-Trib); &
- iii. Hindustan Zinc Ltd. vs. ACIT, ITA No.623/JODH/2024 decided on 03.01.2025

5. At this stage it deserves to be mentioned that in a Coordinate Bench decision rendered by this very same combination, in ITA Nos.180/Del/2022 and ITA No.3819/Del/2024, in the case of Li & Fung (India) P. Ltd., vide order dated 21.01.2026, the arguments of the Ld. DR and from the assessee's side have been discussed and recorded at length. Since the surrounding facts and circumstances are similar, hence, the operative portion of this Coordinate Bench order deserves to be extracted as under: -

“5. Both sides heard. The issue which arises for consideration before us at the preliminary stage is whether we can proceed with the hearing of issue in appeal when on a similar issue the operative portion of the judgment passed by the Hon’ble High Court in the case of Shelf Drilling Ron Tappmeyer Ltd. (supra) has been stayed by the Hon’ble Supreme Court of India. In the present case, the appellant/assessee has placed reliance on the decision rendered in the case of Roca Bathroom Products P. Ltd. (supra). The identical objection now raised by the Id. DR was examined by the Hon’ble Bombay High Court in the case of PayPal Payments P. Ltd. (supra). The Hon’ble High Court deferred hearing of the issue for the reason that the hearing may not bring about any concrete conclusion as the similar question of law is pending determination before the Hon’ble Supreme Court of India. The Hon’ble Court further observed that similarly placed assesseees who have succeeded before the Hon’ble Madras High Court inter alia in Roca Bathroom Products P. Ltd. (supra) as also before the Hon’ble Delhi High Court in Nokia India P. Ltd. (supra), the proceedings arising from said decisions of the Hon’ble Madras High Court and the Hon’ble Delhi High Court are pending before the Hon’ble Supreme Court of India. The said orders of the Hon’ble High Courts setting aside the assessment orders are not stayed by the Hon’ble Apex Court. Thus, it is evident that in so far as the decision rendered in the case of Roca Bathroom Products P. Ltd. (supra) by the Hon’ble Madras High Court, the same is not stayed.

It is a well settled legal proposition that when the operation of a specific order is stayed by the Higher Court, then its enforcement is stayed but the ratio decidendi of such order/judgment is not nullified unless explicitly set aside. The Hon’ble Supreme Court of India in the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust (supra) has held that an order of interim stay does not result in quashing of the impugned order. It only means that the order will not be operative from the date that it is stayed. In the case of Govt of AP vs. N. Rami Reddy & Others 2011 AIR-AP 226, one of the issue for consideration before the Hon’ble High Court was; Whether the interim stay of a High Court order by the Hon’ble Supreme Court of India has the effect of wiping out the ratio of the High Court’s order or otherwise nullifying the precedent relied upon by the petitioner? The Hon’ble High Court held that the ratio of judgment represents the reasons assigned in support of the conclusion. An order of interim stay actually stays the operative part of the decision, but does not wipe out its ratio decidendi.

6. Be that as it may, the assessee has not placed reliance on the judgment rendered in the case of Shelf Drilling (supra) but has pleaded its case following the decision rendered in the case of Roca Bathroom Products P Ltd. (supra) in which there is no stay order. Therefore, in our humble opinion there is no impediment in hearing the appeal of the assessee on the issue of “limitation in passing the

final assessment order with reference to the provisions of section 144C r.w.s. 153 of the Act". Thus, the preliminary objection raised by the Department is rejected.

7. On merits the ld. DR has made following written submissions:-

"C. Revenue's submissions on merit of the limitation issue- interplay of sections 144C and 153 of the Act (without prejudice to earlier arguments):

13. Without prejudice to the prayer for deferral of present appeals, the Revenue respectfully submits that time limits given in section 153 of the Act are independent of those provided under section 144C of the Act. The legislative design of section 144C indicates that it is a special self contained code in itself with regard to assessment of eligible assessee and prescribes entire procedure and time line for the framework of Dispute Resolution Panel (DRP) to work: The provisions of this section cannot be interpreted in a manner that renders the entire scheme unworkable. As such, it is clearly stipulated in the said section by way of use of multiple non-obstante clauses that the timelines prescribed under section 153 will not apply to the final assessment order passed u/s 144C(13) of the Income Tax Act.

14. Section 144C prescribes a complete statutory cycle: This section deals with passing of draft order; right to file objections within statutorily defined time; DRP directions within statutorily defined time; and final order thereafter within a statutorily defined time. The Act itself allocates specific time windows for different actions, indicating that Parliament contemplated a multi-stage mechanism involving different authorities operating beyond the draft assessment order.

15. A harmonious construction of section 144C and 153 of the Act suggests that section 153 governs the stage up to passing of the draft order in time, while the special regime of section 144C governs time taken from draft order to completion of process before DRP to passing of final assessment order after the draft stage. Otherwise, the mandatory statutory time windows within section 144C would be rendered redundant or illusory, which can never be intent of legislature.

16. The non obstante language in section 144C dealing with passing of the final order makes it evident that Parliament intended post-draft finalization under section 144C to operate notwithstanding the general limitation in section 153.

17. A further significant facet is that it is the eligible assessee, which has option to activate or not to activate the DRP route. If objections before DRP are not filed, the statute permits expedited finalization. If objections are filed, the statutory mechanism consumes time by design. Still it remains expeditious way of finalization of dispute as stage of appeal before CIT(A) is done away with if option to file objection before DRP is chosen by the Assessee. Further, demand crystallizes only after DRP direction is given effect to by the Assessing officer. Hence, this is the way objective of expeditious disposal of disputes and ease of doing business is sought to be achieved by section

144C. The assessee cannot, after choosing the statutory route of DRP and availing benefit of expeditious and easier disposal of disputes provided by the code, contend that the assessment becomes void due to the time consumed in the process statutorily created for benefit of assessee.

18. In case, interpretation provided by the assessee is accepted, then it would lead to many absurdities in operation of 144C provisions. Firstly, at the stage of passing of draft assessment order, it is not known to the A.O. as to whether the assessee would choose DRP route or not. If the interpretation furthered by the assessee is accepted, then in every case of eligible assessee, which involved issue of draft assessment order, the AO would be required to pass draft assessment order at least 11 months before the time barring date prescribed under section 153 of the Act irrespective of the fact whether the assessee chooses DRP route or not. If Assessee does not choose DRP route, then while on one hand, such early finalization of assessment cuts down time available with the AO to pass assessment order affecting level of inquiries/verifications, on the other hand the DRP route would go unutilized. This contradiction itself shows that interpretation of section 144C of the Act relied upon by the assessee is required to be discarded. Secondly, with the overall time limits for completing assessments as prescribed under section 153 of the Act ever decreasing as an effort by the legislature to cut down overall time, if period of 11 months is counted backward from such shortened time limit allowed under section 153, then in many cases (such as not involving TP reference), the draft assessment order would be required to be issued even before end of the relevant assessment year. In many cases even involving Transfer Pricing Reference, such time available with the A.O. and T.P.O will be only few months, effectively scuttling possibility of any meaningful verification or scrutiny of details frustrating very purpose of entire scrutiny assessment related provisions under the I.T. Act. Such a situation will be hit by doctrine of impossibility or doctrine of frustration and courts should avoid any interpretation of 144C and 153 provisions of the Act which leads to such situations as 'Law does not compel the impossible'. This aspect having serious repercussions has not been considered while interpreting the interplay between section 153 and 144C of the Act. This again creates a very absurd situation which could never have been contemplated by the Legislature. Thirdly, it needs to be appreciated that overall mandate to reduce time lines for completing the assessment is being achieved by the Legislature over the years by way of shortening time lines given in section 153 of the Act. Section 144C is not meant for that as it has already very shortened and stiff timelines prescribed. Section 144C is meant for providing the alternate dispute resolution mechanism to eligible assessee and for doing away with one appellate level i.e. CIT(A) from entire chain of tax litigation. This objective requires to be appreciated for interpretation of section 144C of the Act.

19. Reliance is placed on principle of 'ut res magis valeat quam pereat' which has been upheld by Hon'ble S.C. In multiple cases (such as N B Sanjana Vs Elphinstone Spinning & Weaving Mills, AIR 1971 SC 2039, Cit Vs. Sun Engineering Works, AIR 1993 SC 43, P 57), it has been held by Hon'ble Supreme Court that one important consideration in construing

a machinery section is that it should be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable. Further, in case of W TRamsey Ltd v Inland Revenue Commissioners (1981) 1 All ER 865, it has been held that the context, scheme of the relevant Act as a whole and its purpose are as relevant in construing a taxing Act as in construing any other Act. (Source : Principles of Statutory Interpretation by Justice G P Singh, 15th Edition, page 629, 639).

20. *Non applicability of judgement in the case of Roca Bathroom Products P. Ltd [2022] 140 taxmann.com 304 (Madras)-*

In the case of Roca Bathroom, the assessment years involved were A.Y. 2009-10 and 2010-11 and there issue involved was relating to section 153(2A) of the Act and there was inordinate delay on the part of the Department in passing final assessment order during set aside proceedings. Hence, that judgement was passed in its own peculiar facts and would not be applicable to any other case not involving such inordinate delay. As highlighted in para 18 above, that if the interpretation as argued by the assessee is accepted, then it would create a situation where in some of the assessment years in many cases, time available with the AO to pass final assessment year would be reduced to negative or hardly few months. Similar will be the case with the TPO. This is due to the fact that different assessment years have different time lines to complete final assessment as given in the proviso below 153(1) of the Act. Such cases and assessment years would be hit by doctrine of impossibility and interpretation as submitted by the assessee cannot accepted at all. Therefore, each case and Assessment year would be required to be dealt and examined separately to see if sufficient or at least some reasonable time was available with the AO and TPO to finalize the assessment. Mass application of ration of Roca Bathroom (supra) decision cannot be made due to distinguishable facts in the case of Roca Bathroom (supra). Hence, without prejudice to all other arguments, the ration of Roca Bathroom decision can be made applicable only where there is inordinate delay in completing set aside proceedings similar to the case of ROCA Bathroom, there was delays of many years. Hence, without prejudice to all arguments in earlier paragraphs, the ration of Roca Bathroom decision cannot be applied to present appeals due to distinguishable facts as discussed above.

21. *In view of the above, it is submitted that time limits prescribed under section 144C are in addition to the time limit prescribed under section 153 of the I.T. Act. In present appeals, the final assessment order has been passed within the time limit prescribed under section 144C of the Act. Further the case of Roca Bathroom is distinguishable on facts and hence, no applicable to present appeals. Hence, the assessee's contention is required to be rejected on merit on this count."*

8. *We have considered the submissions made by rival sides on merits of the issue before us for adjudication. The crux of submissions on merits by the department is, that limitation for passing the final assessment order under section 144C(13) of the Act*

is to be seen only with reference to the timeline specified u/s. 144C of the Act only without referring to provisions of section 153 of the Act. We find that identical submissions were made by the Department before the Hon'ble Madras High Court in the case of Roca Bathroom Products P. Ltd. (supra). The Hon'ble High Court rejected the arguments of the Department and held that provisions of section 144C and 153 of the Act are mutually inclusive as both contain provisions relating to section 92CA of the Act and are inter-dependent and are overlapping. Hence, the period of limitation for passing the final assessment order u/s.144C(13) of the Act has to be determined with reference to section 144C r.w.s 153 of the Act. For the sake of completeness, the relevant excerpts from the judgment rendered in the case of Roca Bathroom ProductsP. Ltd. (supra) are reproduced herein below:-

“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 TPO, 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 to be issued by the DRP, failing 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-dependant 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."

[Emphasized by us]

9. *The stand of the Revenue is that section 144C of the Act is a complete code in itself for completing the assessments where reference is made to Dispute Resolution Panel (DRP) and in sub section (1) to section 144C of the Act there is “non obstante” clause which mandates exclusion of all other provisions contained in the Act. The Hon’ble Single Judge of the Madras High Court in the case of Roca Bathroom Products (P.) Ltd. vs. Dispute Resolution Panel-2, 127 taxman.com 332 (Madras) while dealing with aforesaid arguments made on behalf of the Department in a lucid manner explained the reason for reading section 144C & 153 of the Act together for determining limitation for passing the final assessment order, and held:-*

“15. No doubt, section 144C is a self contained code of assessment and time limits are inbuilt 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 144C to ensure prompt and expeditious finalisation of this special assessment.

16. The purpose is to fast-track a specific type of assessment. This does not however lead to the conclusion that overall time limits have been eschewed in the process. In fact, the argument to the effect that proceedings before the DRP are unfettered by limitation would run counter to the avowed object of setting up of the DRP a high powered and specialised body set up for dealing with matters of transfer pricing. Having set time limits every step of the way, it does not stand to reason that proceedings on remand to the DRP may be done at leisure sans the imposition of any time limit at all.

17. Sub-section (13) to section 144C, in my view, imposes a restriction on the Assessing Officer and denies him the benefit of the more expansive time limit available under section 153 to pass a final order of assessment as he has to do so within one month from the end of the month when the directions of the DRP are received by him, even without hearing the assessee concerned.

18. Barring this, I find nothing in the language of sections 144C or 153 to lead me to the conclusion that the latter is operated from the operation of the former. The specific exclusion of section 153 from section 144C(13) can be read only in the context of that specific sub-section and once again, reiterates the urgency that sets the tone for the interpretation of section 144C itself.”

The Division Bench affirmed aforesaid findings of the Hon’ble Single Judge and further after considering various decisions viz. Sultana Begum vs. Prem Chand Jain [1997] 1 SCC 373; CIT vs. Hindustan Bulk Carriers [2023] 126 Taxman 321/259 ITR 449; & Franklin Templeton Trustee Services (P.) Ltd. vs Amruta Garg 124 taxmann.com 326, held as under:-

“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.”

[Emphasized by us]

Thus, the Hon'ble High Court negated the arguments made by the Department on 'non obstante' clause used in section 144C of the Act. The Hon'ble High Court thus, concluded:-

“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 denovo 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.”

6. Considering the extract of the relevant portion from the case of Li & Fung (supra), we now need to consider the relevant dates in all these years for deciding whether the ratio in the case of Roca Bathroom (supra) applies or not. The date-sheet is as under: -

Assessment year	Due date for passing final assessment order u/s 144C(13) r.w.s. 153 of the Act	Actual date of passing final assessment order
2004-05 *	28.01.2010	29.10.2010
2014-15	31.12.2017	30.05.2018
2016-17	31.12.2019	15.03.2021
2017-18 **	30.09.2021	29.01.2022
2020-21	30.09.2023	29.07.2024
2021-22	31.12.2023	27.09.2024

Notes:

*AY 2024-05: It is seen from the assessment order that there was a stay granted by the High Court from 18.11.2005 to 17.12.2008. Accordingly, the limitation u/s 153(1) of the Act expired on 28.01.2010.

**AY 2017-18: In this case there was extension of time considering TOLA, due to which the limitation as per section 153(1) of the Act expired on 30.09.2021.

6.1 The dates mentioned in the above table have not been disputed by the Ld. DR. A perusal of the sequence of the dates for all the six assessment years involved would clearly show that the date on which the

final assessment order was passed by the Ld. AO is beyond the period of limitation for passing the order u/s 144C(13) r.w.s. 153 of the Act. Accordingly it is held that the final assessment orders are barred by limitation and are, hence, quashed.

7. Since the assessee has succeeded on the legal issue of validity of the final assessment order, we do not, at this stage, intend to adjudicate the other grounds of appeal. Hence, all other grounds of appeal are left open.

8. Before parting with this issue, it deserves to be observed that both parties are at liberty to revive the aforesaid appeals in case the Hon'ble Apex Court reverses the law expounded by the Hon'ble Madras High Court in the case of Roca Bathroom Products (supra).

9. In the result, all six appeals of the assessee are allowed.

Order pronounced in the open court on 23.01.2026

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(SANJAY AWASTHI)
ACCOUNTANT MEMBER

Dated: 23.01.2026

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI