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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

INCOME TAX APPEAL NO.1238 OF 2018

Pr. Commissioner of Income Tax-13,
Mumbai, Room No.122, 1st Floor,
Aayakar Bhavan, Maharshi Karve
Road, Mumbai – 400 020

.. Appellant

Versus

Sterling Oil Resources Ltd.
329, Sandesara House, Jawahar Nagar,
Road No.13, Goregaon (West),
Mumbai – 400 062
PAN:AAKCS 0055J AY-2010-11

.. Respondent

Mr. Akhileshwar Sharma for the appellant.

Mr. P. J. Pardiwalla, Senior Advocate a/w Mr. Sankalp A. Sharma, Mr. Ameya Vaidya, Mr. Rajesh Poojary and Mr. Sukh Sagar Syal i/b. Mint & Confreres for the respondent.

***CORAM : M. S. Sonak &
Jitendra Jain, JJ.***

***RESERVED ON : 5 February 2025
PRONOUNCED ON : 11 February 2025***

Judgment (Per Jitendra Jain) :-

1. This appeal is filed under Section 260A of the Income Tax Act, 1961 ('The Act') by the appellant-revenue for the assessment year 2010-11 challenging the order of the Income-tax Appellate Tribunal ('Tribunal') dated 22 June 2016.

2. The following substantial question of law proposed by the appellant-revenue is admitted and by consent of both the parties taken up for final

hearing :

“Whether on the facts and in circumstances of the case and in law, the Hon’ble ITAT was justified in considering the order passed by the AO under Section 143 (3) r.w.s. 144C (13) being barred by limitation of time and not deciding the issue on merits ?”

3. Brief undisputed facts are as under :-

- (i) The respondent-assessee filed its return of income for the assessment year 2010-11 on 13 October 2010. On 6 September 2012, a reference was made under Section 92CA of the Act to the Transfer Pricing Officer (TPO), who vide order dated 28 January 2014 proposed an adjustment of Rs.108.36 crore to be made to the arm’s length price of the international transactions. Pursuant to the said TPO’s order, a draft assessment order was framed on 28 March 2014.
- (ii) The appellant objected to the above draft assessment order by filing objections with the Dispute Resolution Panel (DRP) in terms of Section 144C of the Act. On 19 December 2014, the DRP gave its direction and held that share application money was in the nature of interest-free loan and directed the TPO/Assessing Officer (AO) to consider the SBI PLR of FY 2009-10 for evaluating the interest that should be charged on the loan transaction.
- (iii) The directions of the DRP were received by the AO on **23 December 2014**. The said directions were forwarded by the AO to the TPO on 5 January 2015. The TPO carried out the mandate of the DRP and re-determined the adjustments to be made to Rs.49.39 crore. The said re-determination by the TPO was made on 27 January 2015. The final assessment order under Section 144C (13) of the Act was passed on **27 February 2015**.

4. Being aggrieved by the final assessment order, the respondent-assessee filed an appeal to the Tribunal and the Tribunal vide impugned

order dated 22 June 2016 held that as the assessment order is framed beyond the period of one month from the end of the month in which the DRP's directions were received by the AO, the assessment order was barred by limitation as per Section 144C (13) of the Act.

5. It is on the above backdrop that the present appeal is filed by the appellant-revenue challenging the order of the Tribunal.

Submissions of the Appellant-Revenue :

6. Mr. Sharma, learned counsel for the appellant-revenue submits that the time limit provided by Section 144C (13) of the Act is directory and not mandatory and, therefore, the delay of a month should not be treated as fatal for coming to the conclusion that the assessment order is bad and barred by limitation. He submits that the efforts put in by 3 Commissioners constituting the DRP would go in vain if such an interpretation is adopted. He submits that the Co-ordinate Bench of this Court in the case of *APM Terminals India Private Limited Vs. Assessment Unit, Income Tax Department-NFAC & Ors.*¹ and *Sulzer Pumps India Private Limited Vs. Dy. Commissioner of Income Tax, Circle-15(3)(2) & Ors.*² supports the submissions made by him. Mr. Sharma, therefore, submits that the order of the Tribunal should be reversed and question should be answered in favour of the appellant-revenue.

Submissions of the Respondent-Assessee :

7. Mr. Pardiwalla, learned Senior Counsel for the respondent-assessee submits that the provisions relating to limitation should be construed strictly and there is no provision for condoning the delay if the order is not passed within the time limit provided under Section 144C (13) of the Act.

1 (2024) 159 taxmann.com 742 (Bombay)

2 (2024) 465 ITR 619

Learned Senior Counsel submits that the time limit provided under the Act should be strictly complied with by the Officers in passing the order and in the absence of any power to condone the delay, any order passed beyond the time limit provided is barred by limitation. Mr. Pardiwalla, refers to the scheme under Section 144C of the Act to support his submission that the time limit provided under Section 144C (13) of the Act for passing the order is mandatory.

8. Mr. Pardiwalla in support of his submissions relied upon the decisions in the cases of *Vodafone Idea Ltd. Vs. Central Processing Centre*³, *Louis Dreyfus Company India (P) Ltd. Vs. Deputy Commissioner of Income Tax*⁴, *K.M. Sharma Vs. Income-tax Officer*⁵ and *Renaissance Services BV Vs. Deputy Commissioner of Income-tax (International Tax)*⁶ and defended the order of the Tribunal.

9. We have heard Mr. Sharma, learned counsel for the appellant-revenue and Mr. Pardiwalla, learned Senior Counsel for the respondent-assessee.

Analysis and Conclusions :-

10. The issue which arises for our consideration is on the interpretation of Section 144C (13) of the Act as to whether the time limit provided under this sub-section for completing the assessment as per the directions of the DRP is mandatory or directory and consequences thereto. For deciding this issue, it is necessary to analyse the provisions of Section 144C of the Act.

11. Section 144C as it stood at the relevant time i.e. assessment year 2010-11 is transcribed hereinbelow:-

3 (2023) 156 taxmann.com 258 (Bombay)

4 (2024) 159 taxmann.com 244 (Delhi)

5 (2002) 122 taxmann.com 426 (SC)

6 (2022) 139 taxmann.com 450 (Bombay)

“Reference to dispute resolution panel.

Section 144C.

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

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,-

- (a) file his acceptance of the variations to the Assessing Officer, or*
- (b) file his objections, if any, to such variation with,*
- (c) the Dispute Resolution Panel; and*
- (ii) the Assessing Officer.*

3) The Assessing Officer shall complete the assessment on the basis of the draft order, if-

- (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or*
- (b) no objections are received within the period specified in sub-section (2).*

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,-

- (a) the acceptance is received; or*
- (b) the period of filing of objections under sub-section (2) expires.*

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:-

- (a) draft order;*
- (b) objections filed by the assessee;*
- (c) evidence furnished by the assessee;*
- (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;*
- (e) records relating to the draft order;*
- (f) evidence collected by, or caused to be collected by, it; and*
- (g) result of any enquiry made by, or caused to be made by, it.*

(7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5), -

- (a) make such further enquiry, as it thinks fit; or*
- (b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.*

8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed

variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, 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.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

(15) For the purposes of this section,-

(a) "Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;

(b) "eligible assessee" means,-

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

(ii) any foreign company."

Objective of Insertion of Section 144C :

12. Prior to the insertion of Section 144C by the Finance (No.2) Act of 2009, the hierarchy of the adjudication for resolving disputes under the Income-tax Act was the AO, Commissioner (Appeals), Tribunal, High Court and Supreme Court. This hierarchy of dispute resolution was found to be time consuming which was one of the reasons why foreign investors were reluctant to invest in India. Therefore for ease of doing business and to remedy this situation, Section 144C was inserted to address the concern of the Multi-National Companies and to provide mechanism for speedy

disposal of the cases, so as to attain finality in facilitating expeditious resolution of dispute between the revenue authorities and the assessee. Therefore, a step was taken to give option to the assessees to approach Tribunal directly by replacing the Commissioner (Appeal) with DRP. This object of insertion of Section 144C is evident from the Explanatory Circular of the Finance (No.2) Act of 2009 and notes to clauses of the Finance (No.2) Bill of 2009. By this insertion, an attempt was made to replace the hierarchy of Commissioner (Appeals) with a Dispute Resolution Panel consisting of three Commissioners of Income Tax constituted by the Board.

Scheme of Section 144C :

13. We now analyse the scheme of Section 144C of the Act. Section 144C is applicable to “an eligible assessee” which is defined to mean (i) a person in whose case the variations in the income arises as a consequence of the order of the TPO passed under Section 92CA(3) and (ii) foreign company. Therefore, it is necessary to examine certain provisions of Section 92CA(3) of the Act.

14. Section 92CA provides for reference to the TPO where an assessee has entered into an international transaction and the AO considers it necessary to refer the computation of the arm’s length price in relation to the said international transaction. The TPO has to give an opportunity of hearing to the assessee and after considering various information, documents and response sought determine the arm’s length price in relation to the international transaction and a copy of such order determining the arm’s length price is sent to the AO and to the assessee. Section 92CA (3A) provides that if a reference is made after 1 June 2007, an order determining the arm’s length price by the TPO should be made before sixty days prior to the date on which the period of limitation referred to Section 153 or 153B for making the order of assessment expires. This takes us to Section 153 of

the Act.

15. Section 153(1), for completing the assessment, at the relevant time provided time limit of two years from the end of the assessment year in which the income was first assessable. However, if the reference is made to the TPO under Section 92CA, the limitation period of two years is substituted by thirty-three months. That means an order of assessment in case of the assessee where a reference is made under Section 92CA should be made before the expiry of thirty-three months from the end of the assessment year in which the income was first assessable.

16. The reason for providing sixty days time limit under Section 92CA before which the TPO has to pass an order is that on receipt of the TPO's order, the AO has to make and forward a draft order of the assessment incorporating the arm's length price determined by the TPO and this draft order of assessment is to be communicated to the eligible assessee. On receipt of the draft order, the eligible assessee shall within thirty days of receipt has to file his acceptance of the said draft order or has to file his objections to the draft order with the DRP and the AO.

17. Sections 144C (3) and 144C (4) provides that if the assessee intimates to the Assessing Officer his acceptance of the draft assessment order; or no objections are received within the period of thirty days then, the AO shall complete the assessment within one month from the end of the month in which the acceptance letter is received; or on the expiry of the period provided for filing of objections and no such objections are filed.

18. If the objections are filed, then, the DRP shall issue directions for the guidance of the AO to enable him to complete the assessment. Such directions are to be issued under Section 144C (5) of the Act. However,

before issuing such directions, the DRP has to consider the draft order, objections filed by the assessee, evidence furnished by the assessee, TPO's report or any other report, records relating to the draft order and **evidence collected by or caused to be collected by the DRP and result of any enquiry made by, or caused to be made by the DRP**

19. Section 144C (7) empowers DRP to make such further enquiry, or cause any further enquiry to be made by any income-tax authority and report the result of the same to the DRP.

20. Section 144C (8) empowers the DRP to confirm, reduce or enhance the variations proposed in the draft order. However, the DRP shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

21. Section 144C (10) provides that every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

22. Section 144C (12) is couched in negative and it provides that no direction under sub-section (5) of Section 144C shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee. Section 144C (13) thereafter provides that upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in Section 153, 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.**

23. Section 144C (13) of the Act overrides the time limit provided under Section 153 which means that on receipt of the directions from the DRP

and by adding one month from the end of the month in which such directions are received, the Assessing Officer has to pass an order on or before expiry of end of the month in which directions are received. This is in consonance with the objective for which the dispute resolution mechanism was inserted by virtue of Section 144C of the Act.

Interpretation of Section 144 C (13) :

24. On a reading of the Scheme of Section 144C of the Act, and more particularly on a conjoint and harmonious reading of Sections 144C(4), 144C (12) and 144C (13), we cannot accept the submission of the learned counsel for the appellant- revenue that the time limit provided in Section 144C (13) is only directory. In our view, Section 144C (13) provides that the assessing officer has to complete the assessment within one month from the end of the month in which such direction is received. This provision overrides the general limitation time contained in Section 153 of the Act but it does not override the nature of effect of completion of assessment in time provided under Section 144C (13).

25. Under Section 144C (13), the assessing officer does not merely do a ministerial work so as to accept the submission of the appellant-revenue. The exercise carried out by the DRP is for the guidance of the AO and, therefore, completing assessment in accordance with DRP directions cannot be said to be ministerial. The assessing officer has to complete the assessment which would mean passing the assessment order, computing tax liability raising demand on the assessee and initiating penalty proceedings, if any. In our view and more particularly under the Income-tax Act, the effect of this exercise results into cause of action being arisen by raising the demand. If the contention of the appellant- revenue is accepted, then there would be no certainty with respect to time limit within which an assessing

officer should complete the assessment under Section 144C (13). This would be not only contrary to the object of Section 144C which was inserted for reducing the time for resolving the disputes but it would also be contrary to the mandate of Section 144C (13).

26. The importance of completing the assessment within the time provided is required to be analysed. The provisions of the assessment proceedings before the taxing authorities is to assess correctly the tax liabilities of the assessee in accordance with law and by following the relevant provisions of law. The Income-tax Act contains inbuilt safeguards to prevent possible abuse of the power by the assessing officer to the prejudice of the assessee. Providing time limit to complete the assessment is one such inbuilt safeguard and more so in the context of Section 144C which has been inserted for expeditious disposal of the dispute between the assessee and revenue. The assessment order is accompanied by a notice of demand under Section 156 of the Act and order without notice of demand or the notice of demand without order does not subserve the purpose of the assessment.

27. The object of completing the assessment in time is to ensure timely recovery of tax due from the assessee and such tax is to be collected immediately on the passing of the assessment order and raising demand notice. Making of the assessment order resulting in the demand notice is a condition precedent for the tax arrears to be recovered by various proceedings prescribed under the Act. In our view, if the time limit provided under Section 144C (13) is not strictly complied with, then it would not only be contrary to the intention of the legislature in inserting Section 144C but also it would result into delay in recovery of tax by the revenue. Therefore, it is by adopting the balancing approach that Section 144C

provides for expeditious disposal of the dispute by adopting the dispute resolution mechanism of DRP

28. Section 144C (13) uses the phrase ‘upon receipt, the assessing officer **shall** ...’. Sub-section 13 is to be read alongwith sub-section 12 and if read together, we have no doubt in our mind that Section 144C (13) has to be read as mandatory. It is settled position and more particularly in any fiscal statutes that if an authority under the Act is required to complete the assessment within certain time frame, then the same has to be done within the prescribed time limit. If any order is passed beyond the time limit provided under the Act, then the same would be barred by limitation.

29. The phrase used in Section 144C (13) is “*shall complete the assessment within one month received.*” The word “shall” gives a clear indication of the intention of the legislature, moreso on looking at the objective of insertion of Section 144C, that the time limit provided is imperative and mandatory. On a complete reading of Section 144C (13), there is an affirmative direction to the AO to complete the assessment within the time limit provided therein. The affirmative mandate to complete the assessment in time is absolute, explicit and peremptory. On reading of the provision of Section 144C (13) r.w.s. 144 (12) and the scheme and objective of insertion of Section 144C (13), it is implied that no order order under Section 144C (13) can be made within one month from the end of the month in which directions under Section 144C (5) of the DRP is received. Any other interpretation as suggested by the appellant-revenue would be contrary to the intention of the legislature and also contrary to the scheme of Section 144C as analysed by us above.

30. The expression ‘assessment’ in Section 144C (13) is referable to the

final order of assessment made by the assessing officer inclusive of the whole procedure of imposition of tax and its finality. Section 144C (13) imposes a fetter upon the assessing officer to make an assessment after the expiry of the period mentioned therein. This is a statutory fetter which is not for the assessee to release or waive. In other words, the power to make assessment lapses completely upon the expiry of period mentioned in Section 144C (13). Therefore, in our view, an assessment order made after the expiry of time limit provided under Section 144C (13) has to be held as invalid.

31. The fixation of periods of limitation to some extent may be arbitrary and may frequently result in hardships, but in construing such provisions and more particularly fiscal statutes, equitable considerations are out of place and the strict grammatical meaning of the words is the only safeguard. It is settled position that the Court cannot take any extraneous consideration, such as, hardship or any equitable consideration in construing the provisions relating to the limitation. In construing the limitation provisions, equitable considerations are out of place and the limitation provision is to be construed as per the plain language of the statute. The Court should not be concerned with the result, however injurious it may be in giving effect to the plain language used nor is it the duty of the Court, not to give effect to it merely because it would lead to hardship. The Court cannot on equitable grounds extend the time allowed by the law of limitation or postpone its operation or introduce an exception not recognised by the statute of limitation. Therefore, the contentions of the appellant-revenue on consequences of assessment order being held to be void is to be rejected.

32. In our view, therefore, Section 144C (13) which overrides Section

153 is to be construed as mandatory and not directory. Under the scheme of Section 144C, at the stage of sub-section (13), the assessing officer has to merely carry out the directions of the DRP without giving any opportunity of hearing to the assessee. It is, therefore, the time limit of only one month from the end of the month in which the direction is received that the section mandates the assessing officer to complete the assessment.

33. Section 144C (13) is reincarnation of Section 153 which provides for time limit for completion of the assessments. If the provisions of Section 153 are to be construed mandatorily, then, we fail to understand as to how the provisions of Section 144C (13) cannot be construed mandatorily moreso looking at the object of insertion of Section 144C and the consequences and the effect of completion of the assessment proceedings.

34. The law of limitation is intended to give certainty and finality of tax proceedings and to avoid exposure to risk of litigation for indefinite period on future unforeseen events.

Application of Section 144C (13) to Present Case :

35. In the instant case, there is no dispute on the dates. The directions of the DRP were received by the AO on 23 December 2014. The DRP with respect to the share transaction which was re-characterized as loan directed the TPO/AO to consider the SBI PLR of FY 2009-10 as arms length price for evaluating the loan transaction. Pursuant to the same, the TPO vide order dated 27 January 2015 informed the AO that the total adjustment as per the directions of the DRP would be Rs.49,39,21,930/-. However, the final assessment order was passed by the AO on 27 February 2015, which according to the Tribunal is beyond the period of one month from the end of the month in which the directions were received. The said period of one

month from the end of the month in which the directions of the DRP were received expired on 31 January 2015. But since the final assessment order was passed on 27 February 2015, the Tribunal held the same to be barred by limitation.

36. In our view, on a plain reading of Section 144C (13), the final assessment order ought to have been passed latest by 31 January 2015 since the directions of the DRP were received by the AO on 23 December 2014. However, since the final assessment order was passed on 27 February 2015 which is beyond the expiry of one month from the end of the month in which the directions were received, in our view, the assessment order dated 27 February 2015 passed under Section 143 (3) read with Section 144C (13) of the Act is beyond the limitation period provided and, therefore, the assessment order is bad in law.

37. We may observe, although not argued by any of the parties, that the period provided under Section 144C (13) cannot be counted from the end of the month in which the TPO's order dated 27 January 2015 were received. We say so for more than one reason. Firstly, since the TPO's order is pursuant to the DRP's direction which was received much before 31 January 2015 and there is no justification for the AO not to have passed the assessment order before 31 January 2015. Secondly, the date of TPO's order pursuant to the DRP's directions cannot be counted as a starting date since sub-section (13) of Section 144C provides for the starting period to commence for the purpose of completion of the assessment as the end of the month in which the directions of the DRP were received by the AO. If the TPO's order dated 27 January 2015 is considered to be the starting point for the purpose of Section 144C (13), then we would be reading into the said section something which is not there and it is settled position that

the Court cannot re-draft the provisions of the law. The provision of Section 144C (13) has to be read as it stands in the statute book. Provisions of Sections 144C (6) and 144C (7) requires the DRP to carry out enquiry before any directions under Section 144C (5) are issued to the AO. This clearly shows post Section 144C (5) directions, no authority other than AO intervenes. Therefore, looked from any angle, in our view, the final assessment order made on 27 February 2015 is beyond the limitation period provided under Section 144C (13) of the Act.

38. It is also important to note that the period of Section 144C (13) cannot be counted from the end of the month in which the transfer pricing officer gives effect of the direction of the DRP under Section 144C (5) of the Act. This is so because Section 153 (5A) provides that the assessment pursuant to the TPO giving effect of the order or direction under Section 263 should be completed within two months from the end of the month in which such an order of the TPO received. If the intention of the legislature was to calculate the time limit provided under Section 144C (13) to start from the TPO's order giving effect to the direction under Section 144C (5) then there would have been a similar provision like Section 153 (5A) of the Act. Therefore, even on this count post direction of the DRP, the AO has to complete the assessment within one month from the end of the month in which the direction of the DRP are received which would include any intervening exercise if at all required to be done.

Decisions relied by the Respondent-Assessee :

39. Mr Pardiwalla is justified in relying upon the decision of this Court in the case of *Vodafone Idea Limited (Supra)* wherein the Co-ordinate bench of this Court held that Section 144C is a self contained provision which carves out a separate class of assessee and if the provisions of Section 144C

of the Act as mandated by the statute are not strictly adhered to, the entire object of providing alternate redressal mechanism in the form of the DRP stands defeated, which is not the intention of the legislature while inserting this Section. The Co-ordinate bench, further, observed that once the statute has prescribed the limitation period for passing the final order, it is expected that the internal procedure of the department to mold itself to give meaning to and act in aid of the provision. The Co-ordinate bench further came to the conclusion that failure on the part of the department to follow the procedure under Section 144C of the Act is not merely a procedural irregularity but is an illegality and vitiates the entire proceeding. In our view, the ratio of the decision of the Co-ordinate bench in the case of ***Vodafone Idea Limited (Supra)*** squarely applies to the interpretation of whether the provision of Section 144C (13) is mandatory or directory and, therefore, it is to be held that Section 144C (13) of the Act time limit is mandatory.

40. Mr. Pardiwalla, learned senior counsel for the respondent-assessee is justified in placing reliance on the decision of the Delhi High Court in the case of ***Louis Dreyfus Company India (P) Ltd. (supra)***. The facts of the present case before us are very close and similar to the facts before the Delhi High Court. Before the Delhi High Court, the TPO proposed adjustments of Rs.25.82 crore which found its place in the draft assessment order. The assessee filed objections before the DRP and the DRP ultimately passed an order on 20 June 2022 affirming the transfer pricing adjustments made to the income of the assessee. The said directions were uploaded on the Income Tax Business Application portal on 24 June 2022. Pursuant to the directions framed by the DRP, the TPO by an order dated 25 July 2022 revised the transfer pricing adjustments to Rs.20.24 crore and the assessment order came to be passed on 24 August 2022. On these facts, it

was the contention of the revenue that the limitation period provided under Section 144C (13) should be counted from the date of TPO's order dated 25 July 2022 and therefore, the assessment order was passed within the limitation period provided under Section 144C (13). The Delhi High Court after examining the scheme of Section 144C and after relying upon the decision of this Court in the case of *Vodafone Idea Ltd. (supra)* rejected the contention of the revenue and observed that the procedure of assessment as provided under Section 144C does not envisage or contemplate the interdiction or involvement of the TPO once a directive has been framed by the DRP. The Delhi High Court further observed that the role of the TPO comes to an end once an order as contemplated under Section 92 CA(4) of the Act is framed and remitted to the AO. In our view, even on this count following the decision of the Delhi High Court, the assessment order passed on 27 February 2015 is barred by limitation.

41. Mr. Pardiwalla is also justified in placing reliance on the decision of this Court in case of *Renaissance Services BV (supra)* where again the assessment order passed beyond the time limit prescribed under Section 144C (4) was held to be bad in law since the same was passed after the limitation period expired under Section 144C (4) of the Act.

Decisions relied by the Appellant-Revenue :

42. We now deal with the decisions relied upon by the learned counsel for the appellant-revenue. In the case of *APM Terminals India Private Limited (supra)*, the final assessment order dated 30 December 2023 was challenged by the assessee. The argument of the assessee was that although the assessee had filed objections with the DRP, the AO proceeded to pass the assessment order. The argument of the revenue was that the copy of the objections filed by the assessee was not made available to the

AO. However, the AO admitted in the assessment order that the objections were available on the portal. The Court observed that the AO cannot be faulted for passing the impugned order but however, since the objections were filed with the DRP and the Officer was bound to comply with the directions of the DRP, the assessment order was set aside. We fail to understand as to how this decision can be of any assistance to the appellant-revenue. The facts and the issue before the Co-ordinate Bench was different than what we are called upon to adjudicate. Therefore, reliance placed on the decision in the case of *APM Terminals India Private Limited (supra)* by the appellant-revenue is misconceived.

43. Similarly, on very similar facts as that in the case of *APM Terminals India Private Limited (supra)*, the decision relied upon by the appellant-revenue in the case of *Sulzer Pumps India Private Limited (supra)* is also not applicable to the facts before us.

44. Learned counsel for the appellant-revenue has placed for our consideration the decision of the Bangalore Bench of the Tribunal in the case of *M/s. Himalaya Drug Company Vs. Dy. Commissioner of Income Tax, Circle (1), Bangalore*⁷ for the proposition that non-compliance of Section 144C (13) would not vitiate the assessment order and it is only a procedural irregularity. We are informed that the appeal against the said order is pending before the Karnataka High Court. Therefore, it would not be appropriate for this Court to comment on the same since it would amount to giving our views on matter which is not before us.

Further Decisions relied by the Court :

45. Very recently, the Telangana High Court in the case of *Rapiscan*

⁷ I. T. (T.P.) A. No.807/Bang/2016

*Systems (P) Ltd. Vs. ADIT (Int. Tax)*⁸ have also taken a view that provisions of Section 144C (13) is mandatory although fact situation before the Telangana High Court was as to when can AO be said to have received the directions of the DRP if same are uploaded on the portal.

46. The Delhi High Court in the case of *CIT Vs. Mavenir Uk Holdings*⁹ had an occasion to consider provision of Section 144C (4) which requires the AO to pass within one month from the end of the month in which the assessee intimates his acceptance to draft order or does not file objections with DRP and period for such filing expires. The Delhi High Court held any order passed after the period provided under Section 144C (4) is bad-in-law.

47. The Kerala High Court in the case of *Allianz Cornhill Information Services Private Limited Vs. The Union of India*¹⁰ held that provisions of Section 144C (13) and time-limit provided therein is not a procedural irregularity but mandatory and therefore, order passed beyond the time provided therein is barred by limitation.

48. Before parting we may observe that we have not been shown any judgment of the High Court which has taken contrary view.

Conclusion :

49. **Importance of time :**

- Ask runner who loses the medal by fraction of second ;
- Ask doctor who can't reach patient on time;
- Ask student who loses medical seat because of delay in uploading

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the form by few minutes ;

- Time is too precious. You may delay but time will not. World is running after time in this era of competition and we can't be lagging behind in making our Country as one of the best to discharge the duties in time for ease of doing business. The phrase 'time and tide wait for no man' emphasises that nothing is more precious than time moreso in this global competitive world.

50. In view of the above, we dismiss the revenue's appeal and answer the questions raised and admitted in the appeal against the appellant-revenue and in favour of the respondent-assessee. However, our judgment would not preclude the appellant-revenue to take fresh proceedings if so available in accordance with law for assessing the respondent-assessee.

(Jitendra Jain, J.)

(M. S. Sonak, J.)