

Vodafone Idea Limited v. Central Processing Center, Bengaluru & Ors.

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REPORTABLE

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

WRIT PETITION (L) NO. 15398 OF 2023

1. Vodafone Idea Limited,  
(P.A. No.:AAACB2100P)  
(As successor to Vodafone Mobile-Services  
Ltd., P.A. No.:AAACS4457Q) having  
his address at 10<sup>th</sup> Floor,  
Birla Centurion, Century Mills Compound,  
Pandurang Budhkar Marg, Worli,  
Worli Colony, S.O. Mumbai,  
Mumbai – 400 030, Maharashtra, India. ...Petitioner

Versus

1. Central Processing Centre, Bengaluru,  
1<sup>st</sup> Floor, Prestige Alpha No. 48/1, 48/2,  
Beratenaagrahara Begur, Hosur Road,  
Uttarahalli Hobli, Bengaluru, Karnataka –  
560 100.
2. Assistant Commissioner of Income-tax,  
Circle-5(2)(2), Mumbai  
[now Circle-5(2)(1)] Mumbai,  
Room No. 571, 5<sup>th</sup> Floor, Aayakar Bhavan, Maharishi  
Karve Road, Mumbai – 400 020.
3. Principal Chief Commissioner of Incometax,  
Room No. 321, 3<sup>rd</sup> Floor,  
Aayakar Bhavan, Maharishi Karve Road, Mumbai –  
400 020.
4. Union of India through the Secretary,

Department of Revenue,  
Ministry of Finance, Government of India,  
North Block, New Delhi – 110 001.

...Respondents

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Mr. J. D. Mistri, Senior Advocate a/w Mr. Madhur Agrawal i/b Mr.  
Jitendra Singh for Petitioner.

Mr. Devang Vyas, learned Additional Solicitor General a/w Mr. Devvrat  
Singh, Ms. Sangeeta Yadav & Mr. Jagdish Choudhary for Respondents-  
Revenue.

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CORAM : K. R. SHRIRAM & DR.  
NEELA GOKHALE, JJ.

RESERVED ON : 3<sup>rd</sup> November 2023

PRONOUNCED ON : 8<sup>th</sup> November 2023

JUDGMENT (Per Dr. Neela Gokhale, J.) :

1. Rule. Rule made returnable forthwith. By consent, the petition is taken up for final hearing at the admission stage.

2. Petitioner has called in question the failure of Respondent Nos.

1 & 2 to refund the amount paid by Petitioner for Assessment Year (“AY”) 2016-2017, which Petitioner claims to have paid in excess of the legitimate tax due on the returned income of Petitioner and seeks a refund of the said amount along with applicable interest.

3. The case of Petitioner is quite elementary and we are constrained to observe the complete apathy and negligent approach of the assessing officer

concerned in discharging his duties, in accordance with the provisions of Income Tax Act, 1961 (“the Act”). Any dereliction and remissness on the part of officers entrusted with a duty to act within the strict contours of law affects the exchequer and has far reaching consequences on the prosperity and economic stability of the nation. Laxity in this regard has a propensity to destroy and bring to naught any effective system put in place by the Government for efficient and transparent administration of taxation laws and its regulations. Such an adverse effect on the exchequer is revealed in the present case.

4. The present proceedings emerge from a Return Of Income (“ROI”) filed by Petitioner for Assessment Year (“AY”) 2016-2017. The ROI disclosed a loss of Rs. 47,50,07,95,276/- under the normal provisions of the Act and loss of Rs. 292,80,62,889/- under Section

115JB of the Act. There was a claim of refund of prepaid taxes of Rs.

1128.47 crores, comprising of Tax Deducted at Source and Advance

Tax. The assessment was selected for scrutiny and notice under Section 143(2) of the Act was issued. Since transactions of Petitioner involved international and specified domestic transactions with its associated enterprises, a reference was made under Section 92CA(1) of the Act to the Transfer Pricing Officer (“TPO”) for determination of Arms Length Price for the relevant AY. There is a history of proceedings filed by Petitioner for

refund of various AYs including the subject year before the Delhi High Court as well as the Supreme Court. The same, however, is not directly relevant to determine the issue under consideration in the present proceedings, save and except a direction of the Apex Court dated 29<sup>th</sup> April 2020 passed in Civil Appeal No. 2377 of 2020 directing the Revenue to conclude the assessment proceedings for AY 2016-2017 at the earliest.

5. In the meantime, the TPO passed an order proposing an adjustment to the value of the international transaction of Petitioner. The Assessing Officer (“AO”) passed a draft order dated 29<sup>th</sup> December 2019 under Section 144C(1) of the Act for the relevant AY and proposed various additions/disallowances. Petitioner filed objections under Section 144C(2)(b) of the Act before the Dispute Resolution Panel (“DRP”) on 27<sup>th</sup> January 2020. A notice was issued by the DRP and Petitioner responded by filing relevant documents/evidence in support of objections raised by it. Finally the DRP issued directions dated 25<sup>th</sup> March 2021 under Section 144C(5) of the Act. The directions of DRP were uploaded on the Income Tax Business Application (“ITBA”) portal on the same date and the said directions were served on Petitioner vide e-mail dated 6<sup>th</sup> April 2021. The grievance of Petitioner essentially is that the AO failed to pass the final order in terms of the directions of DRP within 30 days, the period of limitation prescribed by

Section 144C(13) of the Act and consequently prays that the ROI as filed originally has to be accepted and excess tax paid be refunded with interest.

6. After the petition was filed on 8<sup>th</sup> June 2023, the AO passed the assessment order dated 31<sup>st</sup> August 2023. The same has been placed on record as an additional document.

7. Mr. Mistri for Petitioner raised various grounds to justify seeking a refund from the department. He emphasized the admitted fact that despite the DRP issuing directions on 25<sup>th</sup> March 2021, no order was passed by the AO within the period prescribed by law. When no order is passed pursuant to the directions of DRP within the statutory period as prescribed under Section 144C(13) of the Act, the income declared by Petitioner is deemed to be accepted by the department and Petitioner is entitled to a refund of the amount paid by Petitioner in excess of the legitimate tax due from Petitioner. Mr. Mistri took us through the documents on record including the affidavits filed by the Chief Commissioner of Income Tax (International Taxation and Transfer Pricing) West Zone, Mumbai and also that filed by the Joint Commissioner of Income Tax, Ratlam, who was the JAO at the relevant point of time. Mr. Mistry also took us through the affidavits in sur-rejoinder filed by the Deputy Commissioner of Income Tax-5(2)(1), Mumbai ("DCIT") and also the order sheet details filed by Respondents in support of the affidavit of DCIT. Mr. Mistri finally relied on a decision of this Court in the

matter of

Shell India Markets (P.) Ltd. v.

Additional/Joint/Deputy/Assistant commissioner of Income-tax/ Income-tax Officer, National Faceless Assessment Centre, New Delhi <sup>1</sup>, to buttress his contention that the AO is duty bound to complete the assessment within the prescribed time set out under Section 144C(13) of the Act.

8. Mr. Devvrat Singh for the Revenue defended the acts of the department and that of the Faceless Assessing Officer (“FAO”) in passing the final order on 31<sup>st</sup> August 2023 upon receipt of the directions from the DRP. Mr. Singh’s contention is that the directions of DRP dated 25<sup>th</sup> March 2021 were received in the Case History Noting (“CHN”) of FAO only on 23<sup>rd</sup> August, 2023 and as the assessment in conformity with the directions of DRP was completed on 31<sup>st</sup> August 2023, it was within the one month prescribed under Section 144C(13) of the Act as the limitation period ran from the date of receipt by him of the order and not the date when the same were uploaded on the ITBA portal. Mr. Singh thus says that it was only on the receipt of the directions of DRP that the FAO was duty bound to complete the assessment, i.e., pass the final order. Mr. Singh thus prayed for dismissal of the petition.

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<sup>1</sup> [2022]139 taxmann.com 335(Bombay).

9. Therefore, admittedly, the DRP issued the directions on 25<sup>th</sup> March 2021 whereas the assessment was completed and an order came to be passed on 31<sup>st</sup> August 2023.

10. At the outset it is important to note that the entire assessment proceedings are governed by the Faceless Assessment Mechanism under the scheme known as the e-Assessment Scheme (“eAS”), 2019 as notified by the Ministry of Finance (Department of Revenue) on 12<sup>th</sup> September 2019. The salient features of the scheme include defining the scope of scheme, jurisdiction of e-Assessment Centre, procedure for assessment, penalty proceedings for non-compliance amongst other features. The Central Government amended the FAS of 2019 and the first amendment came into effect on 17<sup>th</sup> February 2021. Paragraph 5(1) of the original scheme was substituted by the amendment. The amended paragraph 5(1) reads thus :

“In the said Scheme, for sub-paragraph (1) of paragraph 5, the following sub-paragraph shall be substituted, namely,—

(1) The assessment under this Scheme shall be made as per the following procedure, namely:—

(i) the National e-Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143 of the Act;

(ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (i), file his response to the National eAssessment Centre.

(iii).....

.....

.....

.....

(xxviii) the National e-Assessment Centre shall, -

- (a) upon receipt of acceptance as per clause (xxvii); or
- (b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C of the Act,

finalise the assessment within the time allowed under sub-section (4) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel, the National e-Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C of the Act, forward such directions to the concerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution panel under sub-section (5) of section 144C of the Act prepare a draft assessment order in accordance with sub-section (13) of section 144C of the Act and send a copy of such order to the National eAssessment Centre;

(xxxi) the National e-Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, upon the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxxii) The National e-Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.”

11. An analysis of eAS and the amendment indicate that various notices, summons and orders are received and issued by the National e-Assessment Centre (“NeAC”) set up to conduct e-assessment proceedings in a centralized manner. Paragraph 4(2) of the eAS provides as under :

“4(2). All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or with any other person with respect to the information or documents or evidence or any other details, as may be necessary for the



purposes of making an assessment under the scheme shall be through the National e-Assessment Centre.”

Thus, any notice, summons, order is deemed to have been received by the FAO once it is available to the NeAC.

12. On 1<sup>st</sup> August 2023, when the matter was listed before this Court, a statement was made by Mr. Singh that because of the commencement of the Faceless Assessment Regime, the directions given by DRP were not received by the FAO and therefore, the FAO did not pass order under Section 144C(13) of the Act and DRP had forwarded the order to the Jurisdictional Assessing Officer (“JAO”). Per contra, Mr. Mistri showed us an e-mail dated 6<sup>th</sup> April 2021 addressed to Petitioner by “ITO HQ TO DRP2 WZ” forwarding a copy of the directions issued by the DRP. The said directions of DRP also form part of the attachment to the e-mail. This email being brought to our notice, we passed the following order/directions dated 1<sup>st</sup> August 2023 :

“1 Mr. Singh states that because of the Faceless Assessment Regime being started, the directions given by DRP was not received by the Faceless Assessing Officer and, therefore, the Faceless Assessing Officer did not pass order under Section 144C(13) of the Income Tax Act, 1961. Mr. Singh states that DRP had forwarded the order to the Jurisdictional Assessing Officer.

2If that is the case, we wonder why the Jurisdictional Assessing Officer did not forward the order to the Faceless Assessing Officer. Moreover, if the Faceless Assessment Regime had already begun, we are certain that DRP would have been aware of that and should have, if what Mr. Singh stated is correct, forwarded a copy of their directions to the Faceless Assessing Officer as well.

3 We also have to note that there is an email, printout of which is at Exhibit “C” to the petition, which reads as under :

From : MUMBAI mumbai.ito.hq.drp2  
[mailto:mumbai.ito.hq.drp2@incometax.gov.in]

Sent: Tuesday, April 6, 2021 3:21 PM

To: Jain, Surbhi (COR), Vodafone Idea  
<Surbhi.Jain@vodafo neidea.com>

Subject: DRP Directions in case of Vodafone Idea Limited

(formerly 'Vodafone Mobile Services Limited) (VMSL) which merged with Idea Cellular Ltd and consequently known as "Vodafone Idea Limited")

Please find the attached directions in case of Vodafone Idea Limited (formerly 'Vodafone Mobile Services Limited) (VMSL) which merged with Idea Cellular Ltd and consequently known as 'Vodafone Idea Limited'). The same was issued through ITBA on 25.03.2021

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(ANITA VIJAYNATH KUNDER)  
ITO HQ TO DRP 2 WZ  
MUMBAI - 400005  
022-22180539

4 Therefore, it will be more appropriate if the Chief Commissioner or Principal Chief Commissioner or whoever is the person heading the Dispute Resolution Panel files an affidavit explaining, inter alia, as to why when the Faceless Assessment Regime had already kicked in, DRP's directions were sent to the

Jurisdictional Assessing Officer instead of to the Faceless Assessing Officer. So also the Jurisdictional Assessing Officer, who had received the directions of DRP, and it will be the same officer who was in that post when the directions were received and not any successor, shall file an affidavit explaining why he/she did not forward the directions of DRP to the concerned Faceless Assessing Officer particularly when, as Mr. Singh states, the Faceless Assessment Regime had begun. These affidavits shall be filed and copy served by 10<sup>th</sup> August 2023.

5 Stand over to 22<sup>nd</sup> August 2023."

13. Pursuant to our directions of 1<sup>st</sup> August 2023, two affidavits were filed, one by Mr. Satish Sharma, the Chief Commissioner of Income Tax (International Taxation and Transfer Pricing) West Zone,

Mumbai and another by Ms. Anne Varghese, JCIT, Ratlam on 10<sup>th</sup>

August 2023. The relevant portion of the affidavit of Mr. Satish Sharma reads thus :

“4. I respectfully say that I have called the factual position and the relevant records from the DRP and perused them in connection with the directions of the Hon’ble Bombay High Court in the aforesaid order dated 01.08.2023 and accordingly, based on the record, I am conversant with the facts of the issue and I am able to depose the same. I respectfully say that I am filing this affidavit on the direction of the Hon’ble Bombay High Court in the aforesaid order for the limited purpose of explaining as to why, when the Faceless Assessment Regime had already kicked in, DRP’s directions were sent to the Jurisdictional Assessing Officer (hereafter JAO) instead of the Faceless Assessing Officer (hereafter FAO).

5. That the DRP passed directions (with DIN) on 25.03.2021 in the name of Vodafone Mobile Services Pvt. Ltd. (VMSL) (predecessor of Vodafone Idea Ltd.-VIL) by uploading the same on the Income Tax Bussiness Application System. A copy of the ITBA system generated noting/case history is hereto annexed and marked as EXHIBIT-1 . The DRP directions are automatically visible to FAO in the ITBA system, if any assessment work item is pending related to that particular PAN.

6. There is an additional feature on the ITBA system in the DRP segment from which communication through e-mail can be made through ITBA system. As precaution, the copy of direction was sent to the assessee and the JAO on their available e-mail IDs. The e-mails were sent on sameer.baig@vodafoneidea.com and mumbai.dcit5.2.2@ income tax.gov.in. These e-mails bounced and a copy of ITBA system generated delivery status is hereto annexed and marked as EXHIBIT-2.

7. Therefore, as a matter of abundant precaution, the DRP ascertained the details of JAO [DCIT(5)(2)(1)] under whose domain the VMSL PAN was placed and delivered to him/her a downloaded physical copy of the uploaded/passed direction on 30.03.2021 for consequential actions on his/her part. Here it is stated that since the entire process was automated on the ITBA system, therefore, the DRP was not mandated to send a physical copy of the direction to the FAO, whose identity is not known to any authority. As mentioned above, the physical copy of the direction was sent to the JAO also only as an abundant precaution because the Faceless Assessment regime was new.

8. Further, the DRP also e-mailed a copy of the direction to the Petitioner on a different e-mail ID on 06.04.2021. The same e-mail is mentioned in the referred order of the Hon’ble Bombay HC.”

(emphasis supplied)

14. The relevant portion of the affidavit of Ms. Anne Varghese reads thus :

“3. I say that at the relevant time I was working as Jurisdictional Assessing Officer in my capacity as Deputy Commissioner of Income Tax 5(2)(1), Mumbai.

4. I respectfully say that Physical copy/offline order of the Dispute Resolution Panel (D.R.P.) dated 25.03.2021 was received in tapal/inward register by the Jurisdictional Assessing Officer in its office on 30.03.2021 in the case of “Vodafone Mobile Services Limited”.

5. I respectfully say that the physical copy of the D.R.P. order was not forwarded to the Faceless Assessing Officer since it was ascertained that the said direction dated 25.03.2021 of the D.R.P. was available under the “View Download – Order/Letter/Notices Tab” Functionality of the Income Tax Business Application (I.T.B.A.). I say that the documents which are visible under the “View Download – Order/Letter/Notices Tab” Functionality of the Income Tax Business Application (I.T.B.A.) are also available to other officers (AO of Faceless Assessment Unit (F.A.U.) in this case) having jurisdiction over the PAN.

6. I respectfully say that Document Identification Number (D.I.N.) had been duly generated for the directions of the D.R.P. which is visible on the first page of the hard copy of the D.R.P. directions received by the undersigned which clearly indicated that the directions by D.R.P. were passed digitally on the Income Tax Business Application (I.T.B.A.).

7. I respectfully state that it was under these circumstances that the undersigned was not required to forward the directions of D.R.P. to the concerned Faceless Assessing Officer.”

(emphasis supplied)

15. Annexed to the affidavit of Mr. Satish Sharma is a screenshot of the CHN-Case History Notings of DRP proceedings uploaded on the ITBA portal. The screenshot is of the page as it appears on the ITBA portal. A perusal of the screenshot of CHN of DRP read with the affidavit filed by Mr. Satish Sharma, the CCIT and Ms. Anne Varghese, the JCIT, clearly indicate that once the DRP directions are uploaded and the Document

Identification Number (“DIN”) is generated, which is also visible on the first page of the hard copy of DRP directions, the said document is visible to the AO of the Faceless Assessment Unit

(“FAU”) having jurisdiction over the PAN of the assessee concerned. Thus, both the affiants agree that the DRP directions once uploaded on the ITBA portal are automatically visible to the FAO, if any assessment work item is pending related to a particular PAN.

Admittedly assessment proceedings of Petitioner were pending. Thus, undoubtedly the DRP directions uploaded on the ITBA portal were readily and clearly visible and accessible to the FAO of assessee.

16. A reply affidavit in sur-rejoinder dated 14<sup>th</sup> September 2023 filed by Shri. L. A. Janbandhu, the Deputy Commissioner of Income Tax-5(2)(1), Mumbai also affirms that the DRP directions were uploaded on the ITBA portal on 25<sup>th</sup> March 2021. In fact Mr. Singh, in fairness admitted the directions of DRP were available on the ITBA portal. The defense of Respondents, however, was that the direction of DRP under Section 144C(5) of the Act were noted in the CHN of FAO only on 23<sup>rd</sup> August 2023 and hence, that is the day he should be deemed to have received it. On the Court putting a question to Mr.

Singh as to how and under what mechanism are the directions of DRP noted in the CHN of FAO, Mr. Singh candidly stated that was entered by the FAO. The fact remains that the DRP directions were always visible and accessible to the FAO on the ITBA portal.

17. Mr. Singh made all attempts to persuade us that despite the ITBA portal displaying the DRP directions and the same being accessible to the FAO, it was only on 23<sup>rd</sup> August 2023 that the same were received by the FAO. We cannot accept this because, the E-assessment Scheme itself provides that all communication is deemed to have been received by the assessment units concerned once received through the NeAC. Thus, once the E-assessment Centre is in receipt of the DRP directions, the period of limitation runs from that day. There is no requirement of a deep dive in an analysis of the phrase ‘upon receipt of directions’ as it appears in Section 144C(13) of the Act. The fundamental principle of interpretation is to assign words their natural, original and precise meaning, provided that the words are clear and take into account the purpose of the Statute. It is settled law that a provision should be interpreted in its literal sense and given its natural effect. This is the elementary golden rule of interpretation of Statutes. Since there is no ambiguity pertaining to the phrase ‘upon receipt of the directions issued under Sub-section 5 of 144C of the Act, the AO shall .....’ there is no requirement of delving in a further in-depth analysis of the clear provision.

18. Another important aspect is that the FAO himself has not filed any affidavit to affirm the date on which he purportedly 'received' the directions of DRP. But in the affidavit of Mr. Janbandhu, it is explained that the contents of his affidavit are the inputs from the PCIT (AU) and CCIT (IT & TP) along with all the relevant records available in the office in connection with the issue as also the comments of FAO invited by him through the National Faceless Assessment Centre. He says that the procedure of handling writ litigation regarding proceedings by FAO are contained in the SOP dated 1<sup>st</sup> August 2022 issued by CBDT which have been followed in dealing with the present proceedings. Since said Mr. Janbandhu has affirmed that the affidavit contains the comments of FAO, we safely presume that the FAO has said what he will through this affidavit.

19. Surprising to note is not what is stated, but that which remains unstated in this affidavit. The deafening silence in the affidavit of Mr.

Janbandhu, to the affirmed statements of Mr. Satish Sharma and Ms.

Anne Varghese as quoted above itself speak volumes. Though Mr. Janbandhu admits being aware of the affidavits of Mr. Satish Sharma and Ms. Anne Varghese, there is neither any rebuttal nor an explanation to the statements of Mr. Satish Sharma and Ms. Anne

Varghese regarding availability of DRP directions on the ITBA portal.

That the DRP directions were automatically visible to the FAO in



ITBA system, JAO was not mandated to forward the directions to FAO whose identity was not known to any authority etc. Mr. Janbandhu states that only on 23<sup>rd</sup> August 2023 the JAO has uploaded the DRP order dated 25<sup>th</sup> March 2021 in response to his letter dated 23<sup>rd</sup>

August 2023 and therefore, he received the order only on 23<sup>rd</sup> August 2023 and hence, the assessment was within time. This according to us is an unacceptable statement in view of what Ms. Anne Varghese in her affidavit has stated that the physical copy was not forwarded to the FAO since it was ascertained that the directions dated 25<sup>th</sup> March 2021 of the DRP were available under “the view Downloadorder/letter/notices Tab” functionality of ITBA and those were visible to the FAO also who had jurisdiction over the PAN. Moreover, Mr. Satish Sharma states the DRP directions cannot be sent to the FAO directly because no authority will be aware of his identity. Though we had highlighted all these defects in Revenue’s case in our order dated 5<sup>th</sup> September 2023, no attempt has been made to clarify. It is thus very difficult to agree with the proposition advanced by Mr. Singh that as per the CHN the DRP direction was received by the FAO only on 23<sup>rd</sup> August 2023. There is no whisper of any explanation as to why the FAO, who was seized with the pending assessment of Petitioner, remained inactive and silent for two long years and swung into action only when information about filing of this writ petition was uploaded on the CHN. Strangely enough a noting pertaining to this writ petition filed on 8<sup>th</sup> June 2023 appears on the CHN of 11<sup>th</sup> July 2023, but still the DRP directions of 25<sup>th</sup> March 2021 appear only on 23<sup>rd</sup> August

2023. No explanation on behalf of the department is forthcoming. We have to draw adverse inference.

20. Section 144C of the Act is a self contained provision which carves out a separate class of assesseees, i.e., 'eligible assessee'. Section 144C of the Act was inserted in the Finance Act of 2009 and came into effect from 1<sup>st</sup> October 2009. In the notes on clauses to the Finance Bill, 2009 (Budget 2009-2010), the reason for insertion of Section 144C is given as under :

“The subjects of transfer pricing audit and the taxation of foreign company are at nascent stage in India. Often the Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The correction of such view take very long time with the existing appellate structure.

With a view to provide speedy disposal, it is proposed to amend the Income-tax Act so as to create an alternative dispute resolution mechanism within the income-tax department and accordingly, section 144C has been proposed to be inserted so as to provide inter alia the Dispute Resolution Panel as an alternative dispute resolution mechanism.”

21. Thus, if the provisions of Section 144C as mandated by the Statute are not strictly adhered the entire object of providing for an alternate redressal mechanism in the form of DRP stand defeated. That is not the intention of the legislature when the provision was introduced in the Act. Section 144C(10) of the Act provide that the directions of DRP are binding on the AO. By failing to pass any order in terms of the provision, the AO cannot be permitted to defeat the entire exercise and render the same futile. When a Statute

prescribes the power to do a certain thing in a certain way, then the thing must be done in that way and other methods of performance are forbidden. Once the statute has prescribed a limitation period for passing the final order, it is expected that the internal procedure of the department should mould itself to give meaning to and act in aid of the provision. Any procedural defect (there is none in this case) in the internal mechanism of the working of E-assessment Scheme, cannot operate against the interest of assessee. Hence, the FAO cannot be believed that the DRP direction was received by him only on 23<sup>rd</sup> August 2023 despite being uploaded on the ITBA portal on 25<sup>th</sup> March 2021. The failure on the part of 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.

22. In a decision in the matter of Turner International India Private Limited v. Deputy Commissioner of Income Tax, Circle-25(2), New Delhi <sup>2</sup>, the Delhi High Court has held that the question “whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of Section 144C of the Act?”, is no longer res integra and any order passed contrary to Section 144C of the Act cannot be sustained.

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<sup>2</sup> 2017 SCC OnLine DEL 8441.

23. In a decision cited by Mr. Mistri in the matter of Shell India Markets (P.) Ltd. (supra), this Court has also held as follows :

“10. Sub-section (13) of Section 144C, therefore, is very clear inasmuch as the Assessing Officer shall, upon receipt of the directions issued under Sub-section (5), in conformity with the directions, complete the assessment within one month from the end of the month in which such direction is received. Sub-section (13) also provides that the Assessing Officer can complete the assessment without providing any further opportunity of being heard to the assessee. This means that the moment the Assessing Officer receives the directions under Sub-section (5), he has to straightaway complete the assessment and he does not even have to hear the assessee. The Assessing Officer shall simply comply with the directions received from the DRP within one month from the end of the month in which such directions is received.”

24. In view of the aforesaid discussion, we have no hesitation in holding that the assessment order dated 31<sup>st</sup> August 2023 passed by FAO two years after the DRP directions, is time barred and cannot be sustained. Consequently, the ROI as filed has to be accepted. Petitioner is entitled to receive the refund together with interest, in accordance with law. The procedure to be completed within 30 days of this order being unloaded. This would, however, not preclude revenue, should the need arise, from reopening the assessment by following due process and in accordance with law.

25. Rule is thus made absolute in terms of prayer clause (A) which reads as under :

“A. that this Hon’ble Court be pleased to issue a Writ of Mandamus or any other writ in the nature of Mandamus, order or direction under Article 226 of the Constitution of India calling for the records of the case so as to examine the failure of Respondent Nos. 1 and 2 to give refund of tax paid by the Petitioner for the assesment year 2016-2017 which is in excess of legitimate tax due on the returned income of the

Petitioner and directing Respondent Nos. 1 and 2 to forthwith grant the refund for the assessment year 2016-2017 along with the applicable rate of interest.”

26. Before we part, we strongly recommend that a detailed enquiry be initiated on the failure on the part of the Faceless Assessing Officer concerned to act in accordance with the provisions of the Act and the lack of diligence on the part of officials concerned and the system itself insofar as it relates to the present assessment. Strict action should be taken against persons responsible for the laxity and lethargy displayed which has caused a huge loss to the exchequer and in turn to the citizens of this country. A copy of this order be circulated to the CBDT and the Principal Secretary, Ministry of Finance, GOI.

27. Mr. Singh seeks stay of the judgment. Stay refused.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

GITALAXMI  
KRISHNA KOTAWADEKAR

Digitally signed by  
GITALAXMI KRISHNA KOTAWADEKAR  
Date: 2023.11.08  
15:04:00 +0545