VISION: Journal of Indian Taxation
Vol. 8(1), Jan-Jun 2021, pp. 19-37
DOI: 10.17492/jpi.vision.v8i1.812102
www.journalpressindia.com/vjit
© 2021 Journal Press India

International Tax Disputes and the Ouster of General Limitational Rules in the Dispute Resolution Mechanism in Indian Tax Law

*Ajit Kumar Singh**

ABSTRACT

The dispute resolution mechanism is a special procedure in income tax law to address the tax disputes in the context of international transactions, especially the transfer pricing disputes, and certain specified domestic transactions. One of the recent legal disputes, which has been engaging the attention of the stakeholders of international transactions time and again, relates to the question whether the draft order or the final order passed under section 144C of the Indian Income Tax Act is governed by the general limitational proscriptions prescribed in section 153 thereof that. The recent single-judge decision of the Madras High Court in the Roca Bathroom case has intensified this polemic. The object of this article is to examine the interplay of section 153 vis-à-vis section 144C and review the judicial pronouncements on the relevant interpretive question in international tax disputes.

Keywords: *Dispute resolution mechanism; International tax disputes; Dispute resolution panel; General rule of limitation; Income Tax Act, 1961.*

1.0 Introduction

Although the law of limitation is procedural in nature,[1] it affects the substantive rights of citizens and cannot be brushed aside in a cavalier manner. The rules of limitation in a statute aims at preventing 'disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or latches'.[2] It is intended 'to compel a person to exercise his rights of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims'.[3] The rules of limitation, therefore, must be interpreted with the utmost circumspection.

**Sr. Commissioner of Income Tax, Department of Revenue, Government of India, Delhi, India. (E-mail: ajit1991@yahoo.co.in)*

In the context of tax law, the limitational rules require even a stricter construction, as no taxes are to be levied or collected except with the authority of law. It is for this reason that there is a general predilection among the lawyers to assiduously craft a limitational assail to the tax proceedings to block them at the threshold. One of the recent legal disputes, which have arisen mostly in the context of international transactions and certain specified domestic transactions, relates to the question whether the draft order or the final order passed under section 144C of the Income Tax Act (hereafter 'the Act') is governed by the general limitational proscriptions prescribed in section 153 of the Act.

2.0 Section 153 and its Operating Frontiers

This question, especially, assumes significance in the cases where the assessment order is remanded by the ITAT, High Court or the Supreme Court to the Assessing Officer (AO), Transfer Pricing Officer (TPO) or the Dispute Resolution Panel. As per section 153(3) of the Act, an order of fresh assessment is required to be made before the expiry of nine months from the end of the month in which the order, setting aside or cancelling the relevant assessment, is received by the Principal Commissioner or the Commissioner. Section 153(3) of the Act provides as follows:

"153. …. …. ………………………………………………………………

(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before *the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or*, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:"

[Emphasis Supplied]

However, a bare look at section 153 reveals that the limitation contained in section 153 applies only to assessment, reassessment or re-computation done in pursuance of an order passed under section 143 or section 144 as evident from the very opening sentence of section 153(1). The said provision reads as follows:

"Time limit for completion of assessment, reassessment and recomputation.

153. (1) *No order of assessment shall be made* under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:

> [Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words 'twenty-one months', the words 'eighteen months' had been substituted:
>
> Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words 'twenty-one months', the words 'twelve months' had been substituted.]'
>
> (2) *No order of assessment, reassessment or re-computation* shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:
>
> [Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.]"
>
> [Emphasis Supplied]

Thus, it is manifest that the rules of limitation prescribed in section 153 shall be relevant only when such an assessment under section 143 or section 144 is set aside or cancelled under section 254 or section 263 or section 264 of the Act. The limitation contained in section 153 cannot be extended to a draft order proposed under section 144C or a final order under section 144C(3) or 144C(13) framed either in original proceeding or in a proceeding remanded by the appellate authority under the Act.

3.0 Section 144C: A Self-Contained Code

It is trite that section 144C is a self-contained code in itself and a fortiori, it will be governed by the terms of the limitation, if any, set out therein. Section 144C was inserted in the Act by the Finance Act, 2009 with effect from 1 October 2009. The Notes on Clauses to the Finance Bill, 2009, offers the following rationale of this legislative intervention:

> "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[sic] very long time with the existing appellate structure.
>
> With a view to provide [sic] 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".[4]

The taxpayer had to earlier approach the Commissioner of Income Tax (Appeals) if he wanted to raise objections against the assessment order. But with the insertion of section 144C, he has an additional option to approach the Panel on the basis of a draft order issued by AO, within thirty days of the receipt of that order. In case the variations made in the draft order are acceptable to him, he can file his acceptance to the draft order with the AO within thirty days of the receipt thereof. If no acceptance is filed within thirty Days, the AO completes the assessment on the basis of the draft order within one month from the end of the month, in which, the acceptance is received or the period of filing of objections expires. Thus, this additional mechanism of section 144C is a separate and complete code in itself and recourse to any other provisions of the Act will be alien to the context of this mechanism and will not be permissible.

The working of a self-contained code was explained by the Supreme Court of India in PR Metrani v CIT[5], where a question arose whether the presumption under section 132(4A) was limited to the passing of an order under section 132(5) only or whether the same could be raised for framing the regular assessment as well. Rejecting the Revenue's contention, Bhan J explicated the context of a self-contained code in the following terms:

"26. Section 132 *being a complete code in itself cannot intrude into any other provision of the Act. Similarly, other provisions of the Act cannot interfere with the scheme or the working of section 132 or its provisions.*

27. Presumption under section 132(4A) is available only in regard to the proceedings for search and seizure and for the purpose of retaining the assets under section 132(5) and their application under section 132B. It is not available for any other proceeding, except where it is provided that the presumption under section 132(4A) would be available.

28. In our considered view, the High Court of Allahabad in *Pushkar Narain Sarraf's case (supra)* and the High Court of Delhi in *Daya Chand's case (supra)* have taken the correct view in holding that the presumption under section 132(4A) is available only in regard to the proceedings for search and seizure under section 132. Such presumption shall not be available for framing the regular assessment. The High Court of Karnataka in the impugned judgment has clearly erred in holding to the contrary. Consequently, question No. 1 of the Revenue is answered in the affirmative,

i.e. against the Revenue and in favour of the assessee".

[Emphasis Supplied]

4.0 The Sanmina SCI India Judgment: Madras High Court

The Madras High Court in *Sanmina SCI India*[6] had an occasion to examine the scheme of section 144C, where a question arose whether the AO could make fresh variation in the order of final assessment, which was not proposed in the draft order. Negating the claim of the Revenue, the High Court elucidated the independent status of the scheme of assessment prescribed under section 144C as follows:

> "7. We have heard the submissions of the Learned Counsel appearing on both sides. Section 144C of the Act was inserted vide Finance (2) Act 2009 with retrospective effect from 1.4.2009 to provide for a scheme of assessment in respect of matters that included Transfer Pricing adjustments. *It is a self-contained code and the sequence of events as contemplated thereunder are (sic) as follows;*
>
> 144C(1) - An order of draft assessment proposing a variation to the income or losses returned by an assessee is to be forwarded to the assessee by the Assessing Officer.
>
> 144C(2) - Upon receipt thereof, an assessee is given two options to be exercised within thirty (30) days of receipt of the draft order - either to accept the draft order and intimate the assessing officer accordingly or file objections to the proposed variations with the DRP and the Assessing Officer.
>
> 144C(3) - If option (1) is exercised by the assessee or objections not received within the specified period, then the Assessing Officer shall complete the assessment on the basis of the draft order.
>
> 144C(4) - A time limit of one month from the end of the month in which acceptance is received or the period for filing of objection expires, is provided for passing of the order of final assessment in terms of Section 144C(3).
>
> 144C(5) - Where objections are filed by an assessee, the DRP shall issue such directions as it thinks fit enabling the Assessing Officer to complete and issue the order of final assessment.
>
> Sub-sections (6), (7), (8) and (9) of s.144C set out the procedure to be followed by the DRP in issuance of directions.

144C(10) - This sub-section mandates that every direction issued by the DRP shall be binding on the Assessing Officer.

144C(11) ensures adherence to the principles of natural justice by the DRP, protecting the interests of the assessee as well as Revenue prior to the issuance of directions.

144C(12) stipulates a time limit of nine (9) months from the end of the month when the draft order is forwarded to the assessee for the issuance of directions.

144C(13) - Upon receipt of the directions of the DRP, the Assessing Officer shall pass an order of final assessment in conformity with the directions of the DRP within one month from the end of the month in which the direction is received. The provision specifies that there shall be no requirement for affording an opportunity of being heard to the assessee prior to passing of an order of final assessment.

8. *The question posed relates essentially to whether the impugned order of Final Assessment dated 20.2.014 is an excess of jurisdiction by the Assessing Officer or within the powers granted to him in terms of s.144C of the Act. The answer reveals itself on an analysis of the Scheme itself. The tone is set in sub-section (1) thereof wherein the role of an Assessing Officer and the limits of his jurisdiction are demarcated, in that, the order of draft assessment is to set out the proposed variations and forward the same to the assessee for response. Then again, sub-section (3) of 144C requires the Assessing Officer to complete the assessment on the basis of the draft order. In setting out the scope of the DRP to issue directions, sub-section (6) restricts the DRP to consideration of the draft order and the objections filed by the assessee along with connected evidence, report, records, and enquiries*".

[Emphasis Supplied]

5.0 The Headstrong Services India Case

The Delhi High Court in *Headstrong Services India*[7], after analysing the provisions, explained the self-contained nature of section 144C in the following words:

"17. In the opinion of this Court, Section 144C is a self-contained provision which carves out a separate class of assesses i.e. 'eligible assessee' i.e. any person in whose case the variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of Section

92CA. For this class of assessees, it prescribes a collegium of three commissioners, once objections are preferred. Dispute Resolution Panel's powers are co-terminous with the CIT(A), including the power to confirm, reduce or enhance the variation proposed and to consider the issues not agitated by the assessee in the objections".

From the perusal of the above, it is clear that section 144C is a complete code in itself and must be construed on its own terms and the temporal limits of assessment prescribed therein will have to be accordingly adhered to. It is to be noted here that the scheme under section 144C envisages limitation only for three purposes, viz.,

(i) for framing of assessment within one month from the date of acceptance of the draft order or the expiry of period of filing of objection; and

(ii) for issuing directions by the DRP; and

(iii) for passing final assessment in conformity with the direction of the DRP.

There is, however, no time limit for counting limitation after the matter is remanded to the TPO and the AO, and the limitation under section 153, therefore, would not apply in such cases.

6.0 The Non-Obstante Clause

It may further be noted that under section 144C(13), there is a negative covenant against the application of section 153 or 153B of the Act. The said provision is extracted here for easy reference:

"Reference to dispute resolution panel.

144C. …………………………………………………………………

(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 [or section 153B]*, 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".

[Emphasis Supplied]

Thus, the provision contains a non-obstante clause which directs the AO to complete the assessment within one month from the end of the month in which the direction of the DRP is received, without being circumscribed by the provisions of section 153 or 153B. The Madras High Court in Sanmina explains this aspect of law in the following unequivocal terms:[8]

"16. *Sub-section 13, the interpretation of which is a subject matter of this appeal contains a substantive mandate cast upon the Assessing Officer in the following terms as extracted below*. It is relevant to mention, at this stage that there is no equivalent in s.144B to sub-section (13) of s.144C.

(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 (or section 153B), 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.'

17. *Sub-section (13) of s.144 C is specific and mandates that the Assessing Officer shall issue the order of final assessment in conformity with the directions of the DRP without provision of any further opportunity of being heard to the assessee, within one month from the end of the month, in which the directions are received*. There is thus a vital distinction in the scheme of assessment as provided under s.144 B vis-a-vis that which is set out in s.144C. While the Assessing Officer in terms of s.144 B is bound by the directions issued by the IAC, the Statute is silent as regards any fetter to his powers otherwise. Contrast this with sub-section (13) of s.144C, the elements of which have been set out in detail above. It reveals a conscious decision by Legislature to limit the independent participation of the Assessing Officer in the process of assessment only to the stage of proposal of variations in terms of s.144C(1) and not thereafter. The express language of sub-section (13) thereof would admit of no other interpretation".

[Emphasis Supplied]

7.0 The Honda Trading Corporation Case: Delhi ITAT

Repelling a limitational challenge to orders passed under section 144C, the Delhi Bench of ITAT in *Honda Trading Corporation*[9], excluded the applicability of section 153 in the proceedings under section 144C in the following words:

"5.24 We have noticed above that the term 'draft order' has been statutorily coined u/s 144C (1). It means that the term 'draft order' has been recognized as and is actually different in ambit from the term 'assessment order'. With the insertion of section 144C, which led to the birth of the draft order, the legislature did not substitute the term 'order of assessment' with the term 'draft order' in section 153. *If the intention of the legislature had been to*

substitute the hitherto time limit for passing of the assessment order as the time limit for the passing of draft order henceforth, on shifting the time limit for passing of the final assessment order to section 144C(4) or (13), then it would have made necessary changes in section 153 by substituting the term 'draft order' with the term 'order of assessment'. In fact, the term 'draft order' is totally absent in section 153, which indicates that it has been treated as alien to section 153. If we accept the contention of the ld. AR that after the introduction of section 144C, the time limit provided u/s 153 applies only to the draft order, it would amount to re-writing section 153 which falls in the exclusive domain of the Parliament. We are unable to read the term 'draft order' interchangeably with the term 'assessment order' in the context of section 153 or practically for any other purpose.

5.25 Now we take up the next argument of the ld. AR that if the time limit prescribed u/s 153 is considered as relating to the completion of assessment, this will leave no other provision setting out the time-frame for passing of the draft assessment order. He argued that it cannot be contemplated that the legislature has given unlimited time-frame to the AO for passing a draft order. *We find that, in fact, no time limit has been prescribed for the passing of the draft order*. It is also equally relevant to note that prior to the introduction of sub-section (3A) to section 92CA by the Finance Act, 2007, there was no time limit for the passing of the order by the TPO, though sub-section (3) requiring the passing of order by the TPO, was inserted by the Finance Act, 2002. It means that during the interregnum, though there was a requirement for the passing of order by the TPO, but there was no specific time limit for the passing of such order. The mere fact that no time limit has been prescribed for the passing a draft order, does not and cannot mean that the time limit for the completion of assessment given u/s 153 should be inferred as that for passing a draft order.

[Emphasis Supplied]

8.0 The Religare Capital Markets Decision: ITAT, Delhi

In a recent decision, *Religare Capital Markets*,[10] the Delhi Bench of the ITAT negatived a similar challenge once again and reiterated the legal position as follows:

"12………*The provisions of the income tax act 1961 sets out a special scheme for the assessment of an entity engaged in international transaction*

under Chapter X of the income tax act in terms of section 144C (1) to section 144C (14) of the income tax act. Therefore, it is apparent that it is not an assessment scheme as applicable to other assessees. It is a scheme of assessment in respect of matters that included the transfer pricing adjustment. According to the provisions of section 144C (1) and order of the draft assessment proposing a variation to the income or loss as returned by the assessee is to be forwarded to the assessee by the assessing officer. On receipt of that order assessee is given 2 options to be exercised within 30 days of the receipt of the draft order either to accept the draft order and intimate the assessing officer accordingly or to file objections to the proposed variations with the dispute resolution panel and the assessing officer. If the assessee exercised an option to accept the draft order nothing else is required to be done except to complete the assessment on the basis of the draft order. Such order i.e. the draft order becomes the final order when acceptances received or the period for filing of the objection expires. If the objections are filed by the assessee the dispute resolution panel issue [sic] directions as it thinks fit and enabling the assessing officer to complete and issue the order of final assessment. Provisions of subsection 6, 7, 8 and 9 of section 144C sets out the procedure to be followed by the dispute resolution panel in issue of the direction. The section further provides that every direction issued by the dispute resolution panel shall be binding on the assessing officer. Thus, it seen that AO cannot tinker or apply anything further than what was mentioned in the draft assessment order except what is directed by the learned dispute resolution panel. The provisions of principles of natural justice are ingrained in the provisions of section 144C of the act. It further says a time limit of 9 months from the end of the month when the draft order is forwarded to the assessee for passing of issue of any directions. Upon receipt of the direction the AO shall pass an order of final assessment which is in conformity with the direction of the dispute resolution panel within one month from the end of the month in which the directions are received. There is no further provision of granting any opportunity to the assessee of further hearing. Thus, the above provisions are a self-contained code. In this code, the role of the assessing officer ends the movement, the objections are filed by the assessee or draft order is accepted by the assessee. Therefore, the learned assessing officer cannot make any upward adjustment to the income of the assessee after passing of the draft assessment order. He also cannot initiate any further penalties which are attached to the

assessment order if same are not initiated in the draft order. The rights of the variation to the income of the assessee are solely rest with the dispute resolution panel. Therefore, the dispute resolution panel has a correcting power to the draft assessment order. AO does not have any power to do so. Therefore, it is apparent that on the plain reading of the above provisions for all practical purposes the role of the assessing officer comes to an and the movement he passes the draft order. He is only authorized to pass the final assessment order which is according to the directions of the learned dispute resolution panel. *The above provisions also contained the separate time limits and it has its own timelines which binds the revenue as well as the assessee. The Honourable Madras High Court in CIT v. Sanmina SCI India (P.) Ltd. [2017] 85 taxmann.com 29/398 ITR 645 in para number 7 has held that it is a self-contained code in itself. Thus, the provisions contained therein only determine the timelines of the passing of such order and not as provided u/s. 153 of the act. Thus, this argument of the assessee deserves to be rejected.*

13. Further according to the provisions of section 253 of the Act pertaining to appeals to the tribunal, clause (d) of subsection 1 also separately carves out the appealable order as order passed by the assessing officer under subsection 3 of section 143 of section 147 of section 153A or section 153C in pursuance of the directions of the dispute resolution panel. Further, it may also be possible that in certain circumstances the provisions of section 263 of the income tax act also do not apply to orders passed under directions of the dispute resolution panel. *Thus, law has seen the assessment passed in pursuance of direction u/s. 144C of the act different from the regular assessment as envisaged u/s. 153 of the act [sic]".*

[Emphasis Supplied]

Following *Religare Capital*, another Bench of ITAT, Delhi took the same view in *Steria (India)*[11] and Huawei Technologies[12].

9.0 The Envestnet Asset Management Case: Cochin ITAT

In *Envestnet Asset Management*[13], the Cochin Bench of the ITAT construed the limitation under section 144C in the following terms:

"4.1 We further find from section 144C of the Act, that when the Assessing

Officer drafted a proposed assessment order and the assessee accepted the variation made by the Assessing Officer in the draft order, then the Assessing Officer has to pass the assessment order within one month from the end of the month in which the acceptance of the assessee is received by the Assessing Officer. This period of limitation provided in section 144C(4) of the Act [sic]. Whenever the assessee objects to the proposed assessment order drafted by the Assessing Officer, the DRP should issue directions as provided in section 144C(5) of the Act. Sub-section (12) of section 144C prohibits the DRP from issuing any direction after 9 months from the end of the month in which the draft assessment order is forwarded to the eligible assessee. Sub-section (13) of section 144C mandates the Assessing Officer to pass assessment order within one month from the end of the month in which such direction from the DRP was received. Therefore, it is obvious that section 153 provides for limitation of 3 years prior to the end of the assessment year in which the income was first assessable. Section 144C(5) provides for limitation of one month in the end of the month from which the acceptance of the assessee was received by the Assessing Officer [sic]. However, section 144C(13) provides for period of one month in the end of the month from which the direction of DRP was received by the Assessing Officer. *Since different period of limitations are provided in different provisions as stated above, wherever the transfer pricing adjustment are involved the question arises for consideration is which provisions of the Income-tax Act would be applicable when the DRP directed the Assessing Officer to make transfer pricing adjustment. It is well settled principles of rule of interpretation that whenever conflicting provisions are provided in the enactment all the provisions of the Act shall be read harmoniously so as to give effect to all the provisions of the Act. If for any reasons any of the provisions could not be reconciled, the latter provision will prevail over the former*. By keeping this Rule of interpretation as approved by the Privy Council and the Apex Court in mind, let us now examine, whether the impugned order of assessment is barred by limitation or not?

4.2 Section 153(1) provides for 3 years for passing the assessment order from the end of the assessment year in which the income was first assessable. In this case, admittedly, the income is assessable for assessment year 2009-2010. Thus, three years period expired on 31.03.2013. However, the assessment order was admittedly passed on 28.3.2014. Therefore, it is beyond the period prescribed u/s 153.

4.3 144C (13) reads as follows:

'(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 [or section 153B], 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.'

4.4 *In view of section 144C (13), notwithstanding anything contained in section 153, the Assessing Officer has to pass order within one month from the end of the month in which the direction of the DRP is received. Therefore, even though the period of limitation provided in 3rd proviso to section 153(1) expired on 31.3.2013. Section 144C (13) gives extension of further period of one month from the date of receipt of direction from the DRP*".

[Emphasis Supplied]

10.0 The L&T Thales Technology Services Decision: Chennai ITAT

Following the decision of the Cochin Bench in *Envestnet Asset Management*[14], the Chennai Bench of the ITAT rejected a similar limitational assail in *L&T Thales Technology Services (P) Ltd*[15], holding that 'for the purpose of a proceedings which come under the ambit Sec.144C of the Act, there can be no application of Sec.153 of the Act'.

11.0 The Volvo India Case: Bangalore ITAT

In a more recent decision in Volvo India[16], the Bangalore Bench of ITAT vide its order dated 08.05.2019 took a similar view as follows:

"8. It is the plea of the Revenue that in the case of an eligible assessee the procedure to be followed is first to pass a draft assessment order as per the provisions of Sec.144C(1) of the Act which has a non-obstante clause. The assessee has a right to file objection to the draft assessment order or convey his acceptance to the proposals in the draft assessment order and the time limit for doing so is 30 days from the date of receipt of the draft assessment order. If the assessee conveys his acceptance to the draft assessment order or does not file objections to the DRP within the time limit specified in Sec.144C(2), the AO has do pass final assessment order within one month

from receipt of acceptance or expiry of period for filling objection to DRP and no such objection is filed (Sec.144C(3) of the Act). If objections are filed before DRP, the DRP shall issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment u/s. 144C(5). In terms of Sec.144C(12) directions u/s.144C(5) has to be issued on or before expiry of nine months from the end of the month in which the draft order is forwarded to the eligible assessee. Sec.144C(13) of the Act lays down the time limit for the AO to pass an order giving effect to the directions of the Tribunal and it reads thus:- '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 or section 153B, 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'.

9. According to the revenue, the non-obstante clause in Section 144C(13) of the Act, gives the AO, a time limit of one month from the end of the month in which direction is received by the AO and if that be so, the order of assessment passed on 18.10.2012 is within the period of limitation and is valid.

…………………………………………………………………………………

13. We have considered the submissions of the learned counsel for the assessee. *We however find similar issue has already been considered and decided against the assessee by the ITAT Delhi Bench in the case of Honda Trading Corporation vs. CIT: (2015) 61 taxmann.com 233 wherein it was held that the provisions of section 144C override the provisions of section 153 of the Act. While rejecting the assessee's contention that the limitation in section 153 referred to passing of draft assessment order, the Tribunal held that:*

(i) Section 144C gives a complete go bye to section 153; and

(ii) The Act does not contemplate any limitation for passing of draft assessment order, which can be passed within a reasonable time.

14. Though arguments were advanced that the aforesaid decision does not lay down the correct law, we are of the view that a co-ordinate Bench decision is binding on us, and we find no reason for not following the same. We therefore reject the additional ground raised by the assessee on the question of limitation".

[Emphasis Supplied]

12.0 The Acer India (P) Ltd Ruling: Bangalore ITAT

The Bangalore Bench of ITAT in another decision dated 10 May 2019 in *Acer India (P) Ltd*[17] rejected a similar plea by reasoning, thus:

> "8. We notice that various benches of Tribunal are taking the view that the provisions of sec.144C(13) give extension of further period of one month from the end of month in which the direction of DRP was received. In the instant case, there is no dispute that the assessing officer has passed the assessment order within one month from the end of the month in which direction of DRP was received. Accordingly, consistent with the view taken by various benches of Tribunal, we reject the legal ground urged by the assessee".

13.0 The Pricewaterhouse Coopers Case: Kolkata ITAT

More recently on 29 May 2020, the Kolkata Bench of the ITAT adopted the same approach in *Pricewaterhouse Coopers*[18], following *Religare*.[19]

> "21. We now consider the issue of limitation. This issue is covered against the assessee and in favour of the revenue by the decision of the Delhi Bench of the Tribunal in the case of *Religare Capital Markets Ltd. v. Dy. CIT* [2019] 111 taxmann.com 387, wherein it was held as follows:-
>
> '15. No doubt, the final order of assessment is passed pursuant to the direction of the learned dispute resolution panel but it cannot be said that that limitations provided under section 153 applies to it. As we have already held that it is a complete code in itself as held by the Honourable Madras High Court, which also provides for specific limitations, if a particular procedure adopted by the assessee, then timelines provided therein will only apply.
>
> 16. Further, over and above the above decision of the *Honda Trading Corp. Japan v. DCIT* in ITA number 1132/del/2015 dated 15-9-2015 we also draw support from decision of the coordinate bench in case of *Volvo India Private Limited v. ACIT IT* (TP) Appeal No. 1537/bang/2012 dated 8-5-2019 and *Acer India Pvt Ltd v. DCIT* 502/bang/2017 dated 10/5/2019 which has also taken similar view against the assessee holding that if the assessment orders are passed within the timelines provided under section 144C of the income tax act, irrespective of the timelines prescribed under section 153 of

the income tax act, they are passed within the timelines provided under the law and are not time barred.

17. In view of the above reasons we dismiss the additional ground raised by the assessee. We direct the registry to post the hearing of the appeal on other grounds before the regular bench in due course.'

22. Respectfully following the same, we dismiss this ground of the assessee".

14.0 The Single-Judge Bench Decision in Roca Bathroom Products

However, in a recent decision, a single-judge Bench of the Madras High Court in *Roca Bathroom Products*,[20] even while holding that section 144C is a self-contained code in itself, proceeded to hold that the overall time limits under section 153 have not been eschewed in the process. The following reasoning of Sumanth J is noteworthy in this regard:

"15. *No doubt, Section 144C is a self-contained code of assessment and time limits are inbuilt [sic] each stage of the procedure contemplated*. Section 144C envisions a special assessment, one which includes the determination of Arm's 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"*.

[Emphasis Supplied]

The aforesaid reasoning of the learned single judge is ex facie flawed, being contrary to the settled law on the interpretation of self-contained code in a statute. A three-judge Bench of the Supreme Court in *Inamati Mallappa*[21] , it was held that the

provisions of Order 23, Rule 1 CPC, relating to withdrawal of suits, could not be made applicable to the election petitions as they would come in conflict with the provisions of the Act. It was observed by Bhagwati J, speaking for the Supreme Court, that the effect of the provisions contained in Sections 90 to 96 of the Act is to postulate that the Act is a self-contained code governing the trial of election petition or abandonment of a part of the claim, on the analogy of the provisions of Order 23, Rule 1, C.P.C., would not be permitted as there are specific provisions in the Act contained in Section 189 and Section 110 relating to withdrawal of election petitions.

The law was reiterated by the Supreme Court in *Upadhyaya Hargovind Devshankeri*[22] to the effect that where the special Act sets out a self-contained code, the applicability of the general law procedure would be impliedly excluded.

In *Fuerst Day Lawson*,[23] the Apex Court illustrated the law on self-contained code, through Alam J, in the following words:

> "72…………………. Once it is held that the Arbitration Act is a self- contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it "a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done". In other words, a Letters Patent Appeal would be excluded by application of one of the general principles that where the special Act sets out a self-contained code, the applicability of the general law procedure would be impliedly excluded".

This principle was reiterated by the Supreme Court in the context of tax law in *PR Metrani*[24] to the effect that a complete code in itself cannot intrude into any other provision of the Act. Similarly, other provisions of the Act cannot interfere with the scheme or the working of section 132 or its provisions.

In *Hyundai Heavy Industries*[25], Sirpurkar J, as his Lordship then was, excluded the applicability of the general provisions section 44DA of the Act in the context of section 44BB which was held to be a self-contained code relating to the taxability of non-resident for providing services in connection with prospecting for, extraction of, and production, of mineral oils.

The Madras High Court in *Adyar Gate Hotel*[26] did not allow the deduction of losses incurred in another unit owned by the assessee while granting 80HHD deduction and held that a self-contained code, like the provisions of 80HHD, must be interpreted solely on its language and bearing in mind the spirit and intention with which it was inserted.

Following the same reasoning, the Gujarat High Court, in *Sabarmati Paper Udyog*[27], did not permit the application of section 234B and 234C of the Act, if income was assessed under section 115J of the Act, which was a self-contained code in itself.

In *B & B Infratech*[28], the Karnataka High Court took a similar view, holding that section115JB was a complete code by itself and any deduction which was otherwise not provided by *the Explanation* would be outside the scope of operation of section 115JB.

Thus, the law is settled to the effect that while interpreting a statute or a provision of a statute, which is a complete code in itself, other statutes or the other provisions of that statute cannot be imported into it by construction, unless there is a specific reference in the statute or the provision itself for such import. The single-judge decision in *Roca Bathroom Products*[29], therefore, is clearly erroneous, being in conflict with the law laid down by the Supreme Court and the division benches of various High Courts.

15.0 Conclusion

From the above discussion, it is clear that in the context of the scheme prescribed under section 144C, there is a total ouster of the general rules of limitation prescribed under section 153 of the Act and the AO is merely circumscribed by the timeframe provided in section 144C. Where there is no temporal limit for any other purpose in section 144C, the rules of limitation in other provisions cannot be taken recourse to create a limitation. Even in cases where the appellate authority directs the AO to decide the matter de novo, it means that a new hearing of matter has to be conducted, as if the original hearing has not taken place and consequently the AO has to decide the matter in accordance with the elaborate procedure mentioned in section 144C and not de hors it.[30] Thus, the timeline contained in section 144C is final and conclusive and the general rules of limitation under section 153 of the Act do not alter it in any manner.

Endnotes

1. BK Educational Services Pvt Ltd v Parag Gupta & Associates (2019) 11 SCC 633 (SC).
2. Rajender Singh & Ors v Santa Singh & Ors 1974 SCR (1) 381.
3. BB & D Mfg Co v ESI Corpn AIR 1972 SC 1935.
4. See Notes on Clauses to the Finance Bill, 2009 < https://www.incometaxindia.gov.in/pages/budget-and-bills/finance-bill.aspx > accessed 15 April 2021.

5. [2006] 157 Taxman 325 (SC).
6. CIT v Sanmina SCI India (P) Ltd [2017] 85 taxmann.com 29 (Madras).
7. PCIT v Headstrong Services India (P) Ltd [2021] 125 taxmann.com 262 (Delhi).
8. See n. 5.
9. Honda Trading Corporation, Japan v DCIT [2015] 61 taxmann.com 233 (Delhi - Trib).
10. Religare Capital Markets Ltd. v DCIT [2019] 111 taxmann.com 387 (Delhi - Trib.).
11. Steria (India) Ltd v Addl CIT [2020] 116 taxmann.com 738 (Delhi - Trib).
12. Huawei Technologies Co Ltd v ACIT [2020] 122 taxmann.com 130 (Delhi - Trib.).
13. Envestnet Asset Management (India) (P) Ltd v ACIT [2015] 53 taxmann.com 430 (Cochin - Trib.).
14. See n. 11.
15. L & T Thales Technology Services (P) Ltd v DCIT [2017] 78 taxmann.com 16 (Chennai – Trib).
16. Volvo India Pvt Ltd v ACIT IT(TP)A No.1537/Bang/2012 AY 2008-09 dated 8 May 2019.
17. Acer India (P) Ltd v DCIT App nos. 502, 2837 (Bang) of 2017 AY 2012-13 & 2013-14 dated 29 May 2020.
18. Pricewaterhouse Coopers (P) Ltd v DCIT [2020] 117 taxmann.com 276 (Kolkata - Trib.).
19. See n. 8. [1]
20. Roca Bathroom Products(P) Ltd v DRP-2 & others WP Nos 919, 922, 1068 and 1070 of 2020 &WMP Nos.1102, 1104, 1273 and 1274 of 2020, decision dated 23 December 2020 (Mad).
21. Inamati Mallappa Basappa v Desai Basavaraj Ayyappa AIR 1958 SC 698.
22. Upadhyaya Hargovind Devshanker v Dhirendrasinh Virbhadrasinhji Solanki (1988) 2 SCC 1 SC.
23. Fuerst Day Lawson Ltd v Jindal Exports Ltd (2011) 8 SCC 333
24. See n. 5.
25. Hyundai Heavy Industries Co Ltd, In re [2017] 88 taxmann.com 537 (AAR - New Delhi).
26. CIT v Adyar Gate Hotel Ltd [2017] 81 taxmann.com 397 (Mad).
27. DCIT v Sabarmati Paper Udyog Ltd [2017] 85 taxmann.com 356 (Guj).
28. B & B Infratech Ltd v ITO [2016] 76 taxmann.com 188 (Kar).
29. See n. 19.
30. Headstrong Services India (n. 7).