IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA Nos.2161 & 2162/Mum/2014
(Assessment Years: 2005-06 & 2006-07)

Global Cricket Corporation Pte. Ltd. c/o. SRBC & Associates LLP, 14th Floor, The Ruby, 29, Senapati Bapat Marg, Dadar (W), Mumbai-400 028	Vs.	Additional Director of Income Tax (International Taxation), Range 3 1st Floor, Scindia House, NM Road, Ballard Pier, Mumbai-400 038
PAN/GIR No. AABCG 7951 L		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	Shri P. J. Pardiwala – Sr. Adv./ Shri Jeet Kamdar & Ms. Asavari Kadam
Respondent by	:	Ms. Arju Garodia – CIT DR a/w. Shri Krishna Kumar – Sr. DR

Date of Hearing	:	10.06.2026
Date of Pronouncement	:	30.06.2026

O R D E R

Per Saktijit Dey, Vice President:

Captioned appeals have been filed by the assessee, challenging the final assessment orders passed in the Assessment Years ('A.Y.' for short) 2005-06 and 2006-07, in pursuance to the directions of learned Dispute Resolution Panel ('ld. DRP' for short).

2. At the very outset, Shri P. J. Pardiwala, learned Senior Counsel appearing for the assessee drew our attention to certain additional grounds raised vide letters dated 25.08.2022 and 23.02.2023. He submitted, the grounds raised are on purely legal issues striking at the very root of the validity of the assessment orders due to serious jurisdictional error committed by the Assessing Officer ('A.O.' for short). Thus, he submitted, these

grounds may be taken up and decided as preliminary issues before going into other grounds.

3. Learned Departmental Representative ('ld. DR' for short) did not express any objection to the aforesaid submissions of the assessee.

4. Accordingly, we proceed to take up and decide the additional grounds referred to by ld. Sr. Counsel at the first instance. Before we advert to the issues raised in the additional grounds, we must observe that the issues raised in the additional grounds are purely legal and jurisdictional issues and can be decided based on facts and materials available on record without requiring fresh investigation into facts. Therefore, we are inclined to admit the additional grounds for adjudication. The additional grounds specifically referred to in course of hearing are as under:

> *Additional ground no.2 (letter dated 23.01.2023)*
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> *On the facts and in the circumstances of the case and in law, the learned A.O. has erred in passing the draft assessment order under section 147 read with section 144C(1) of the Act dated 28 March 2013 without issuing a notice under Section 143(2) of the Act.*
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> *Additional Ground No. 1 (letter dated 25.08.2022)*
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> *On the facts and circumstances of the case and in law, the assessment order dated 28 March 2013 issued by the learned Assessing Officer is bad in law and void ab initio as the same has been passed in violation of section 144C of the Income-tax Act, 1961.*

5. With reference to the first issue raised in additional ground no.2 noted above, it is the case of the assessee that not only the assessment proceedings are vitiated, but the assessment orders passed in pursuance thereof are invalid, as the A.O. has not issued any notice u/s. 143(2) of the Act for assumption of jurisdiction to complete the assessment u/s. 147 r.w.s 143(3) of the Act.

6. Before us, Shri P. J. Pardiwala, learned Senior Counsel appearing for the assessee submitted that in course of assessment proceeding, after the assessment was reopened u/s. 147 of the Act, the A.O. had not issued any notice u/s. 143(2) of the Act which is a mandatory requirement for completing the assessment u/s. 143(3) of the Act. In support, he relied upon the following decisions:

a) *CIT v. Hotel Blue Moon* [2010] 188 Taxman 113/321 ITR 362 (SC)

b) *Geno Pharmaceuticals Ltd* (2013) 32 taxmann.com 162 (Bombay)

c) *CWT v. HUF of H.H. Late J. M. Scindia* [2008] 174 Taxman 1

d) *DCIT vs. Board of Control for Cricket in India (BCCI)* (in ITA No. 2913/Mum/2017 vide order dated 02.08.2021)

7. In rebuttal, ld. DR, though, at the outset submitted that as per the report of the A.O, copy of notices u/s. 143(2) of the Act are not available in record, however, he submitted that irrespective of the fact whether notice u/s. 143(2) of the Act was issued or not, there is no requirement for issuance of such notice in reassessment proceedings u/s. 147 of the Act. Drawing our attention to section 143(3) of the Act, he submitted, though it refers to return furnished u/s. 139 of the Act or in response to notice u/s. 142(1) of the Act, however, it does not refer to a return furnished in response to notice issued u/s. 148 of the Act. Further, referring to various other provisions such as sections 153A, 158BC, 149 etc., ld. DR forcefully submitted that there is no requirement for issuance of notice u/s.143(2) of the Act while proceeding u/s.147 of the Act. He submitted, in case of proceeding u/s. 147 of the Act for reassessing the escaped income, the AO need not proceed either u/s.143(3) or section 144 of the Act as reassessment is a self-contained code. However, he submitted, as a practice, many AO's are referring to those provisions in case of reopening of assessment.

He submitted, since, this line of argument has not been made in the cases relied upon by the ld. counsel for the assessee, the bench can independently decide the issue even expressing a view contrary to the view expressed in the decisions relied upon.

8. We have patiently and carefully considered rival submissions and perused the materials available on record. We have also applied our mind to the decisions relied upon. At the outset, we must record the factual position relating to the issue in dispute. A reading of the respective draft assessment orders reveals that, though, the AO reopened the assessment u/s.147 of the Act, however, in the concluding part of the assessment orders, he has very clearly and categorically observed that the assessee is assessed u/s. 144C(1) r.w.s 143(3) of the Act. The assessment orders further reveal that though there is clear mention of issuance of notice u/s. 142(1) of the Act, however, the orders are silent on the issuance of notice u/s. 143(2) of the Act. In pursuance to the directions of the bench, ld. DR has furnished a report dated 27.05.2026, wherein the A.O. has observed as under:

> *5. With respect to issuance of notice u/s. 143(2) of the Act during the proceeding u/s. 147 of the Act in the case of the assessee for A.Y. 2005-06 & 2006-07, records have been duly verified and copy of notice issued u/s. 143(2) of the Act are not available in the records in the case of the assessee.*

9. Thus, based on the aforesaid observations of the A.O. in the report, a presumption can be drawn that the Department has failed to establish that the notices u/s.143(2) of the Act were before framing the draft assessment orders. In case of *CIT v. Hotel Blue Moon* (supra), proceeding u/s. 158BC of the Act, which provided for block assessment in case of a person searched u/s. 132 of the Act was initiated. However, before completing the assessment, the AO did not issue any notice u/s. 143(2) of the Act. The assessee challenging the validity of the assessment order on the ground that the issuance of notice u/s.143(2) of the Act is mandatory. After analyzing the relevant statutory provisions, the

Hon'ble Supreme Court ultimately concluded that issuance of notice u/s. 143(2) of the Act is a mandatory requirement for a valid assessment u/s.158BC of the Act. In case of *Geno Pharmaceuticals Ltd* (supra), while considering a case relating to the validity of the assessment order passed in case of an assessment reopened u/s.147 of the Act, the Hon'ble Jurisdictional High Court has held as under:

> *5. Apart from that, it is an admitted position that no notice under Section 143(2) had been issued while making assessment under Section 143(3) read with Section 147. The Apex Court in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 has held that the Tribunal has discretion to allow or not to allow a new ground to be raised. But in a case where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. The ITAT, after relying on the judgment of the Apex Court in R. Dalmia v. CIT [1999] 236 ITR 480/102 Taxman 702, came to the conclusion that issuance of notice under Section 143(2) was mandatory. The ITAT has taken into consideration the relevant provisions and has also taken into consideration the judgment of the Apex Court and relying on the said judgments, the ITAT has held that notice under Section 143(2) is mandatory and in the absence of such service, the Assessing Officer cannot proceed to make an inquiry on the return filed in the compliance with the notice issued under section 148.*

10. In case of *CWT v. HUF of H.H. Late J. M. Scindia* (supra), the Hon'ble Jurisdictional High Court, while considering somewhat similar arguments advanced by the Department, as is advanced in the present appeal, has held as under:

> *4. The question that we are called upon to answer is whether the view taken by the Tribunal flows from the provisions of section 17 read with sections 14 to 16 of the Wealth-tax Act. The relevant provisions, as they then stood, read as under:*
>
> > *"17. Wealth escaping assessment (1) If the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of which any person is assessable under this Act has escaped assessment for any assessment year (whether by reason of under assessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and section 17A, serve on such person a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, along with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereafter in this section referred to as the relevant assessment year) and the provisions of this Act shall, so far as may be apply as if the return were a return required to be furnished under section 14:*

Provided that where an assessment under sub-section (3) of section 16 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any net wealth chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 14 or section 15 or in response to a notice issued under sub-section (4) of section 16 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

5. The crucial words are "and the provisions of this Act shall so far as may be apply as if the return were a return required to be furnished under section 14".

Would these words "as far as may be" mean thereby that section 17 is the assessing section and for that purpose the provisions of sections 14 to 16 to the extent they are applicable only would apply. In other words, does section 17 confer power on the Assessing Officer in case where section 17 is invoked to independently make an order of assessment in a case where a return is filed under section 14 after notice and after the period of twelve months have expired from the date of filing the return. Section 16(2) reads as under:

"Where a return has been made under section 14 or section 15, or in response to a notice under clause (i) of sub-section (4) of this section, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the net wealth or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend at the office of the Assessing Officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished."

6. Section 16, therefore, requires that if a return has been made under section 14 or 15, if the Assessing Officer considers it necessary or expedient, to ensure that the assessee has not understated the net wealth or has not underpaid the tax in any manner, to serve on the assessee a notice requiring him, on a date to be specified therein either to attend the office of the Assessing Officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return. The proviso lays down a timeframe for serving the notice under section 16(2). In other words, if the period of twelve months have expired from the date of filing the return, the Assessing Officer is precluded from serving notice under section 16(2) and the return filed will have to be accepted.

7. We may now gainfully reproduce section 16(5) for the purpose of our discussion and it reads as under:-

"If any person,

(a) fails to make the return required under sub-section (1) of section 14 and has not made a return or a revised return under section 15, or

(b) fails to comply with all the terms of a notice issued under sub-section (2) or sub-section (4),

the Assessing Officer, after taking into account, all relevant material which he has gathered, shall, after giving such person an opportunity of being heard, estimate the net wealth to the best of his judgment and determine the sum payable by the person on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the person to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment."

8. This sub-section, therefore, will confer a power on the Assessing Officer in case of failure to file return under sub-section (1) of section 14 or revised return under section 15 or to comply with the terms of a notice under section 16(2) to make a best judgment assessment.

9. Section 17A provides a time-limit for making an order of assessment both under section 16 and section 17. The normal period for assessment under section 16 is two years from the end of the assessment year in which the net wealth was first assessable and for an assessment under section 17 within two years from the end of the financial year in which notice under sub-section (1) of section 17 was served.

10. Section 17 can be invoked when the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of an assessee has escaped assessment for any assessment vear for the reasons set out therein. The Assessing Officer may serve on such person a notice. If on the notice being served the assessee fails to file a return, there is no independent provision in section 17 to make a best judgment assessment like in section 16(5), The language used in fact is that the Assessing Officer may proceed to assess or reassess such net wealth. If the argument of the revenue has to be accepted, it must mean that once section 17 has been invoked and the notice served on the assessee and the assessee either does not furnish the return in the prescribed form, then the Assessing Officer is empowered to proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable irrespective of the requirement of section 16(2), under section 17 itself. This submission if accepted must lead which has escaped assessment. In that event, will not the expression "the provisions of the Act shall, so far as may be, apply as if the return were a return required to be fuerishurn under section 14", be defeated. The Assessing Officer may be satisfied with the return deemed to be filed under section 14 and choose not to proceed further. In such a case we shall have to read section 16(5) into a case of reassessment under section 17.

11. What would happen in the case where the Assessing Officer is not satisfied with the return and wants to proceed to reassess. Firstly, is there a power outside section 16 to pass an order of assessment and or reassessment. Secondly, in such cases, is there a limitation for issuing notice of assessment or reassessment if the Assessing Officer is not satisfied with the return filed or is there no such limitation as set out in the proviso to section 16(2) and it would wholly lie within the discretion of the Assessing Officer to proceed to reassess in a case where the Assessing Officer is of the belief that the income has accepted assessment except as to the time-limit as set out in section 17A. Section 17A applies to both assessment and reassessment under sections 16 and 17. In our opinion, this would defeat the scheme of the Chapter. Section 17 only use the expression "assess or reassess", however, the expression as contained in section 16(3), namely, "order in writing" is missing. Even if we assume considering the first proviso to section 17 that the assessment is under section 17, in issuing notice if dissatisfied with the return filed, the proviso to section 16(2) would be applicable.

12. The effect of accepting the argument of the revenue would be that insofar as the assessment under section 16, if the Assessing Officer in order that the assessee has not understated the net wealth or has underpaid tax in issuing notice, there is time-limit, insofar as section 17, there is no such limitation once jurisdiction is invoked under section 17. Further, the expression "as far as may be" in the context of the returns being treated as a return under section 17 would be rendered meaningless.

13. In our opinion, it will not be possible to construe the provisions as are sought to be contended on behalf of the revenue. All the provisions of Chapter IV will have to be read in tandem

so as to bring about an uniformity and certainty to an order of assessment. The proviso to section 16(2) may be procedural, the proviso is not merely procedural but is in the nature of a limitation on the power of the Assessing Officer not to proceed further in a case where return has been filed under section 14 or under section 15. That will have to read as applicable to a case of reassessment under section 17.

14. Let us now examine sections 143 and 148 of the provisions of the Income-tax Act. where similar language had been employed. Under section 143(2)(ii), there is a limitation on the Assessing Officer not to issue notice if the period of twelve months had expired. Section 148 of the Income-tax Act had come up for consideration before several High Courts. A learned Bench of the Madras High Court in CIT v. M. Chellappan [2006] 281 ITR 444 had occasion to consider the provision. The Assessing Officer proceeded to reassess under section 147 of the Income-tax Act and completed the assessment without issuing notice under section 143(2) within the time stipulated. The order was confirmed in appeal. The Tribunal had set aside the order on the ground that notice under section 143(2) was not served on the assessee within the stipulated period. The learned Bench of the Madras High Court held that as the notice under section 143(2) was not served within the stipulated period, the procedure under section 143 came to an end and the matter attained finality. Similarly is the judgment of the Gauhati High Court in Smt. Bandana Gogoi v. CIT [2007] 289 ITR 28 which also dealt with an issue of reassessment under section 147. That was a case of block assessment. It was found that notice under section 143(2) was not issued. The learned Bench came to the conclusion that requirement of section 143(2) cannot be dispensed with as it is mandatory. Parliament subsequently by the Finance Act, 2006, with effect from 1-10-1991, introduced the second proviso to section 148 saving proceedings where return had been filed pursuant to proceedings under section 147 and no notice had been served under section 143(2) within the period prescribed by the proviso to section 143(2).

15. The language used in section 143(2) is similar to the language used in section 16(2). Parliament in the case of the Income-tax Act under section 148 noting the omission in the section which was likely to affect assessments done, pursuant to powers conferred under section 147, inserted the proviso to section 148 to protect the assessments already done. It is true that merely because Parliament has as a matter of abundant caution intervened and amended the provisions of section 148 cannot be read to mean that there is a lacunae. Two High Courts, Madras and Gauhati, have taken a view that notice under section 143(2) is mandatory even in a case of reopening of assessment under section 148 of the Income-tax Act. In our opinion, the view taken by the two High Courts reflects the language of section 147. Therefore, even in a case of reopening of assessment under section 147, the Assessing Officer is bound to comply with the requirement of section 143(2) of the Income-tax Act.

16. Even independently, we have examined the scope and effect of sections 14 to 16 on the one hand and section 17 on the other. In our opinion, there is no escape from arriving at the conclusion that when the Assessing Officer invokes section 17, the provisions of sections 14 and 16 to the extent applicable, for the purpose of making an order of reassessment will have to be followed which will include the time-limit for notice under section 16(2). Once the language of section 17 itself requires that other provisions to the extent applicable would apply considering the return as filed under section 14, it contemplates that both procedural and substantive provisions will apply. In our opinion, therefore, while invoking the powers under section 17, the Assessing Officer is bound by the mandate of the provio to section 16(2) and on failure the order of reassessment will be without jurisdiction and consequently the order of reassessment will have to be set aside.

11. As could be seen from the observations of the Hon'ble Jurisdictional High Court in case of *CWT v. HUF of H.H. Late J. M. Scindia* (supra), after referring to *pari materia* provisions contained under the Wealth Tax Act and Income Tax Act in respect of reopening

of assessment, had concluded that the requirement of issuance of notice u/s. 16(2) of the Wealth Tax Act, which is akin to section 143(2) of the Act is mandatory in a case of reopening of assessment to assess escaped wealth. Thus, these decisions of Hon'ble Supreme Court and Hon'ble Jurisdictional High Court, which are binding on this bench, in no uncertain terms, hold that issuance of notice u/s.143(2) of the Act is mandatory in case of reopening of assessment u/s. 147 of the Act or for that matter, section 158BC of the Act or any other reassessment proceedings. Identical view has been expressed by the co-ordinate bench in case of *Board of Control for Cricket in India (BCCI)* (supra). Thus, in our humble opinion, the line of argument advanced by the ld. DR that in a case of reopening of assessment u/s. 147 of the Act, there is no requirement for issuance of notice u/s. 143(2) of the Act cannot be accepted. If we accept the contentions of ld. DR, we have to not only rewrite the well settled legal propositions expounded by Hon'ble Courts and ITAT, but may have to imply that the view expressed by the Hon'ble Courts in the decisions referred to above is *per incuriam*, which is against judicial discipline and decorum. In view of the aforesaid, we have no hesitation in holding that the draft assessment orders passed by the AO are invalid and without jurisdiction, as the AO has failed to fulfill the mandatory requirement of issuing a notice u/s. 143(2) of the Act before completing the assessment.

12. Having held so, we will deal with the issue raised in the second additional ground noted above. It is the case of the assessee before us that, though, the AO has referred to orders dated 28.03.2013 for A.Ys. 2005-06 and 2006-07 as draft assessment orders, however, incidentally, he has passed final assessment orders, as, along with the assessment orders, the AO has issued income computation sheets computing the tax liability, demand notice u/s.156 of the Act and even has not only initiated proceedings for imposition of

penalty u/s. 271(1)(c) of the Act, but, in fact, has issued show cause notices u/s. 274 r.w.s 271(1)(c) of the Act. Drawing our attention to the draft assessment orders, the income tax computation sheet, demand notice, and show-cause notices issued for imposition of penalty u/s. 271(1)(c) of the Act, ld. Sr. Counsel appearing for the assessee submitted that these facts clearly demonstrate that in the garb of draft assessment orders, the AO essentially has passed the final assessment orders. Thus, he submitted, such action of the AO is in clear violation of the mandatory provisions contained u/s.144C(1) r.w.s sub-section (8) of the Act and other provisions of the said section. Thus, he submitted, the so-called draft assessment orders have to be declared as invalid and without jurisdiction. In support of such contention, ld. Counsel relied upon the following decisions:

a) *PCIT v. Hyundai Motor India Engineering (P.) Ltd.* [2023] 156 taxmann.com 265 (Telangana) (HC)

b) *Marriott International Inc. v. DCIT* (in ITA Nos. 1622 and 1623/Mum/2021 vide order dated 08.06.2026)

13. In response, ld. DR submitted that the issuance of computation sheet, demand notice and show-cause notice u/s. 274 r.w.s 271(1)(c) of the Act, is through inadvertence and not because the AO has passed the final assessment orders as they do not contain demand and collection register (D2 CR no.). He submitted the defect, if any, in issuing the demand notice, computation sheet, and penalty show cause notice is a curable defect.

14. We have considered rival submissions and perused the materials available on record. We have also applied our mind to the judicial precedents cited before us. Factually, on 28.03.2013, the AO had framed the assessment orders for the impugned assessment year mentioning 'draft assessment order'. The cause title of the assessment orders further demonstrate that they have been passed u/s.147 r.w.s. 144C(1) of the Act. However, in the

concluding part of the draft assessment order in A.Y. 2005-06, the AO has observed as under:

> *"…….. Assessed u/s. 144C(1) r.w.s. 143(3) accordingly. Charge interest u/s. 234A, 234B and 234C, applicable as per the provisions of the IT Act. Give credit for taxes paid. Issue Penalty proceedings u/s. 271(1)(c) of the Act. Issue D N and Challan accordingly."*

15. In assessment year 2006-07, the AO has made verbatim identical observations in the concluding part of the draft assessment order. Further, along with the draft assessment orders, the AO has issued income tax computation form computing the aggregate demand including interest levied under various provisions of the Act. The demand notices issued u/s.156 of the Act not only mention the demand raised against the assessee, but directs the assessee to pay the demand within a period of 30 days. Even, the AO has issued notices u/s. 274 r.w.s 271(1)(c) of the Act, directing the assessee to show cause as to why penalty should not be imposed u/s. 271(1)(c) of the Act. The aforesaid facts clearly demonstrate that the AO, instead of framing draft assessment orders at the first instance proposing variation, if any, in terms with section 144C(1) of the Act, has essentially passed final assessment orders, not only computing the tax liability, but also issuing demand notices and has initiated penalty proceedings u/s.271(1)(c) of the Act, alleging concealment of or furnishings of inaccurate particulars of income. Thus, there is clear violation of the statutory mandate provided u/s.144C of the Act. While considering a dispute of identical nature, the Hon'ble Telangana High Court in case of *PCIT vs. Hyundai Motor India Engineering (P.) Ltd.* (supra) has held as under:

> *13. Having heard the contentions put forth on either side and on perusal of records, what is necessary to be taken note of at this juncture, is the requirement of law. The reference to dispute resolution panel is what is envisaged under section 144-C of the Act. The relevant provision of section 144-C is reproduced hereunder:*

"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 Ist 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,-

(1) 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 assesscc.

(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

(if) any foreign company..

A plain reading of sub-sections 1, 2, 6, 8 and 13 of Section 144-C would clearly spell out the requirement of law. Admittedly in the instant case, in addition to the draft assessment order, there was also a notice of demand and penalty which was enclosed. A plain reading of sub-Section 8 of Section 144-C would further make it amply clear that the demand has to be raised only after the final assessment order is passed, more particularly, for the reason that the dispute resolution panel has got the power to confirm, reduce or enhance the variations proposed in the draft.

14. In the given context, if the draft assessment order is accompanied by a notice of demand and penalty tha itself would force one to reach to the conclusion that though it is termed as draft

assessment order, in fact, it is the final assessment order and the notice of demand and penalty was accompanying the same. To further weaken the case of the appellant, the operative part of the draft assessment order reads as under:

> *"The assessment is completed under section 143(3) r.w.s. 92CA of the Income-tax Act, 1961. Credit fo prepaid taxes is given. Penalty proceedings u/s 271AA & 271BA are being initiated separately. A copy of th assessment order along with demand notice is issued to the assessee".*

A perusal of the aforesaid operative part of the so called draft assessment order would further establish that it was not a draft assessment order, but was a final assessment order after the assessment was concluded. The operative part also clearly mentioned about the raising notice of demand under section 271-AA and Section 271-BA of the Act.

15. The High Court of Judicature at Andhra Pradesh in the case of Zuari Cement Ltd. v. Asstt. CIT [Writ Petition No. 5557 of 2012, dated 21-2-2023] has held as under:

> *"As this has occurred after 1-10-2009, the cut off date prescribed in sub-section (1) of S. 144C, the Assessing Officer is mandated to first pass a draft assessment order, communicate it to the assessee, hear his objections and then complete assessment. Admittedly this has not been done and the respondent has passed a final assessment order dt.23-12-2011 straight away. Therefore, the impugned order of assessment is clearly contrary to S.144C of the Act and is without jurisdiction, null and void".*

The said judgement has also been affirmed by the Hon'ble Supreme Court of India Asstt. CIT v. Zuari Cement Ltd.vide its order dated 27-9-2013 in Special Leave to Appeal (Civil) C.C.No.16694 of 2013. Similarly, the Single Bench of the Madras High Court in the case of Vijay Television (P.) Ltd. v. Dispute Resolution Panel, Chennai [2014] 46 taxmann.com 100/225 Taxman 35/369 ITR 113 at paragraph Nos. 20 and 21 held as under:

> *"Under section 144 (C) of the Act, it is evident that the assessing officer is required to pass only a draft assessment order on the basis of the recommendations made by the TPO after giving an opportunity to the assessee to file their objections and then the assessing officer shall pass a final order. According to the learned senior counsel for the petitioners, this procedure has not been followed by the second respondent inasmuch as a final order has been straightaway passed without passing a draft assessment order.*
>
> *"As rightly pointed out by the learned senior counsel for the petitioners, in the order passed on 26-3-2013, the second respondent even raised a demand as also imposed penalty. Such demand has to be raised only after a final order has been passed determining the tax liability. The very fact that the taxable amount has been determined itself would show that it was passed as a final order. In fact, a notice for demand under section 156 of the Act was issued pursuant to such order dated 26-3-2013 of the second respondent. Both the order dated 26-3-2013 and the notice for demand thereof have been served simultaneously on the petitioner. Therefore, not only the assessment is complete, but also a notice dated 28-3-2013 was issued thereon calling upon the petitioner to pay the tax amount as also penalty under section 271 of the Act. Thereafter, the petitioner was given an opportunity of hearing on 12-4-2013. Subsequently, the second respondent realised the mistake in passing a final order instead of a draft assessment order which resulted in issuing a corrigendum on 15-4-2013. In the corrigendum it was only stated that the order passed on 26-3-2013 under section 143C of the Act has to be read and treated as a draft assessment order as per Section 143C read with Section 93CA (4) read with Section 143 (3) of the Act. In an by the order dated 15-4-2013, the second respondent granted thirty days time to enable the assessee to file their objections. On receipt of the corrigendum dated 15-4-2013, the petitioner company approached the first respondent, but the first respondent declined*

to issue any direction to the assessment officer on the ground that the first respondent has got jurisdiction only to entertain such an appeal if the order passed by the second respondent is a pre-assessment order. Therefore, it is evident that the first respondent declined to entertain the objections raised by the petitioner company on the ground that the order passed by the second respondent is not a draft assessment order, rather it is a final order. Thus, the first respondent had treated the order dated 26-3-2013 of the second respondent as a final order and therefore refused to entertain the objections filed on behalf of the petitioner company".

The said decision has been further affirmed by the Division Bench of the Madras High Court in the case of the Asstt. CIT. Media Circle-11. Chennal v. Vijay Television (P) Ltd. [2018] 95 taxmann.com 101/407 ITR 642 wherein, the Division Bench at paragraph Nos.31 to 34 and 39 held as under:

"A perusal of the materials available in the typed set of documents reveal that the order dated 26.3.13 not only has finalised the assessment, but goes one step ahead by making a demand for tax, thereby implying that the assessment is final and not provisions. Adding insult to injury, penalty has also been imposed in the very same order. A notice of demand has also been made under section 156 of the Act. Therefore, it is a conclusive order completing the assessment and making a consequential demand and by no stretch of imagination it can be construed as pre-assessment order.
It is further evident from the materials available on record that when the assessee approached the DRP against the above assessment order u/s 144-C (2), the DRP has categorically refused to entertain the appeal pointing out that no draft assessment order has been placed before it for taking up the matter. In essence, the DRP itself has confirmed that the order passed by the AO is a final order and not a draft assessment order.

Therefore, it is very clear that what has been issued is not a Draft Assessment Order, as contemplated u/s 144-C of the Income-tax Act, but a final order, as mandated u/s 143(3) of the Act. However, the contention now raised is that the mistake stood corrected by issuance of the corrigendum dated 15-4-2013 and. therefore, for all purposes the assessment order should be treated as final assessment order.

Will the corrigendum, which has been issued on 15-4-2013 cure the defect that has crept into the order and, thereby, rectify the mistake committed by the Revenue and enable treatment of the assessment order as a draft assessment order is the point, which requires the determination of this Court.

From the above it is unambiguously clear that the Assessing Officer is duty bound to adhere to the mandatory requirement mandated under section 144-C of the Act by first passing a drat assessment order, the failure of which would invalidate the final assessment order and the consequent demand notices and penalty proceedings".

16. Similar view has also been taken by the Division Bench of the High Court of Karnataka in the case of CIT (International Taxation) v. Cisco Systems Services B.V. [2023] 149 taxmann.com 486/293 Taxman 85/456 ITR 50 wherein at paragraph Nos. 13 to 16 it was held as under:

"Undisputed facts of the case are, in the draft assessment order, the ACIT has ordered issuance of demand notice and to initiate penalty proceeding under section 271(1)(c) of the Act. Both the draft assessment order and the demand notice are dated December 28, 2018.

Argument canvassed by the Revenue is, though demand notice has been issued, assessee had understood the order dated December 28, 2018 as a draft assessment order and filed its objections before the DRP. The defect if any is a curable one. On the other hand, Shri.

Nageshwar Rao's argument is that the ACIT had completed the assessment at the stage of passing the draft assessment order and issued the demand notice. Thus, the re-assessment proceeding was complete. This procedure followed by ACIT is contrary to law laid down in Vijay Television (P.) Ltd. case (supra) and other authorities.

Section 144C lays down a detailed procedure. Under section 144C(1), the AO is required to forward a draft of the proposed order of assessment to the assessee. Assessee may filed its acceptance or objection before the DRP and the AO. If assessee intimates its acceptance or no objections are received within 30 days, the AO shall complete the assessment. Where the DRP receives any objection from the assessee, it shall issue necessary directions to the AO to enable him to complete the assessment after considering the documents/material mentioned in Section 144C (6)(a) to (g) which includes the draft order. Before issuing the directions, the DRP may also make such further enquiry by any Income-tax Authority.

Upon receipt of the directions from DRP under sub-section 5, the AO shall, in conformity with the directions, complete the assessment within one month from the end of the month in which such direction is received. A notice of demand under section 156 may be issued after completion of the assessment under section 144C(13)".

17. The Bombay High Court also in somewhat similar circumstances in the case of SHL (India) (P.) Ltd. v. Dy. CIT [2021] 128 taxmann.com 426/282 Taxman 334/438 ITR 371 at paragraph Nos.25 and 26 held as under:

"In our view, the following principles emerge from the above discussion :-

(i) that the procedure prescribed under section 144C of the IT Act is a mandatory procedure and not directory

(ii) failure to follow the procedure under section 144C(1) would be a jurisdictional error and not merely procedural error or irregularity.
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(iii) Therefore, Section 292B of the IT Act cannot save an order passed in breach of the provisions of Section 144C(1), the same being an incurable illegality.

It is important to note that Section 144C(1) is a non-obstante provision, which requires its compliance irrespective of the other provisions that may be contained in the IT Act. There is no dispute that Petitioner is an eligible assessee and also there is no dispute as to the applicability of Section 144C. It is also not in dispute that the final Assessment Order has been passed without the draft Assessment Order as contemplated under section 144C(1) of the IT Act. The Assessing Officer ought to have in the first instance forwarded a draft of the proposed order of assessment to Petitioner, as there was a proposed variation prejudicial to the interest of the assessee. This important step has been completely omitted by the Respondent taking away a very necessary right of Petitioner to file objections to the proposed variation with the DRP and the Assessing Officer, which in our view, strikes to the root of the procedure contemplated by section 144C".

18. Given the aforesaid legal position as it stands, as is required under section 144-C of the Act and also taking note of the contents of the operative part of the so called assessment order, in the considered opinion of this Bench leads to the only conclusion of the order being a final assessment order, more particularly, when the authority concerned has also ordered and directed for initiation of penalty proceedings simultaneously along with the draft assessment order. Hence, this Bench has no hesitation in reaching to the conclusion that the findings arrived at by the Tribunal while allowing the appeal of the respondent/assessee was proper, legal and justified. That

the present appeal thus being devoid of merits, deserves to be and is accordingly, rejected. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

16. As could be seen from the aforesaid observations of Hon'ble High Court, after referring to the decisions of various other Hon'ble High Courts, including Hon'ble Jurisdictional High Court, the Hon'ble Court has held that the very fact that along with the draft assessment order, the AO has issued a notice of demand and penalty notice, indicates that the AO has passed the final assessment order. In case of *Marriott International Inc. v. DCIT* (supra), the co-ordinate bench while deciding identical nature of dispute has held as under:

9. We have considered rival submissions, in the light of judicial precedents cited before us and perused the materials on record. We have also carefully examined the purported draft assessment orders placed on record. We find, though the Assessing Officer has mentioned 'draft assessment order', however, while determining the total income of the assessee he has observed as under:

> *"16. Assessed under section 143(3) r.w.s. 144C(1) of the Income Tax Act, 1961. Charge tax on the same @ 15%. Give credit of prepaid taxes after due verification... Charge interest u/s 234 A, 234 B, 234 C as applicable, computation of tax is as per ITNS 150 which accompanies, and is a part of this order. Issue Demand notice & challans accordingly. Issue notice u/s 274 r.w.s. 271(1)(c) of I.T.Act, 1961 separately."*

10. The aforesaid observations of the Assessing Officer are common in both the assessment years. In fact, in pursuance to the aforesaid directions, not only demand notices under Section 156 of the Act have been issued, but even computation sheets have been attached to the demand notice computing the tax liability at NIL. In both the assessment years, after adjustment of the prepaid tax, which are otherwise claimed refund in the return of income filed by the assessee. In fact, the Assessing Officer had also issued notices under Section 271(1)(c) read with section 274 of the Act for initiation of penalty proceedings. Such action on the part of the Assessing Officer is suggestive of the fact in the garb draft assessment order, the Assessing Officer has essentially passed the final assessment orders. While framing draft assessment order, there is no question of computing the tax liability and issuing demand notice or initiating proceedings for imposition of penalty under section 271(1)(c) of the Act when the assessment has not become final. Thus, the Assessing Officer, in our considered opinion, has not complied with the mandatory provisions of section 144C(1) of the Act.

11. In assessee's own case, in Assessment Years 2006-07 to 2009-10, identical nature of dispute came up for consideration before the coordinate bench. While deciding the issue, the coordinate bench has held as under:

> *"10. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, in this case the draft assessment order is passed which is also accompanied by the notice of demand issued under section 156 of the income tax act on the same date along with the computation of tax payable by the assessee. We find that the issue is identical to the facts of the case of the Cisco Systems services BV decided by the honourable Karnataka High Court in 456 ITR 50 on 24/2/2023 wherein the facts were that the assessee received the notice of demand*

under section 156 of the income tax act 1961 along with the draft assessment order under section 143 (3) of the act passed by the learned AO. The honourable High Court held that provisions of section 144C lays down a detailed procedure wherein the assessing officer is required to forward a draft of the proposed order of assessment to the assessee. The assessee may file its acceptance/ objections before the dispute resolution panel and the AO. If the assessee intimates acceptance of no objections or are not received within 30 days, the AO shall complete the assessment. Where the DRP receives any objections from the assessee, it shall issue necessary directions to the assessing officer to enable him to complete the assessment after considering the documents/material mentioned in section 144C (6) which includes the draft order. Before issuing the directions, the DRP may also make such further enquiry by any income tax authority. Upon receipt of the direction from dispute resolution panel the AO shall in conformity with a direction complete the assessment within one month from the end of the month in which the direction is received. Notice of demand under section 156 may be issued after computation of the assessment under section 144C (13) of the act. In that case, it was also claimed by the revenue that the order dated December 28, 2018 was a draft assessment order but the honourable High Court held that the assessing Officer has directed the issuance of demand notice and also initiated penalty proceedings. The honourable High Court also held that a provision of section 292B of the act does not come to the rescue of the revenue.

011. In the present case before us in the draft, assessment order dated 22/3/2016 the assessing officer in the last paragraph has directed computation of total tax payable as per ITNS 150, which was part of the order. The penalty under section 271 (1) © is also initiated for the concealment of income in not reporting the receipts. In view of this we do not find any reason to not to follow the decision of the honourable Karnataka High Court wherein the draft assessment order so passed is quashed. Therefore, the additional ground filed by the assessee for assessment year 2006 – 07 in ITA number 3232/M/2018 is allowed and draft assessment order is quashed.

012. For assessment year 2007 – 08 the identical facts exist and assessment order was passed on February 29/02/2016 under section 143 (3) read with section 254 read with section 144C (1) of the income tax act 1961 determining total income of the assessee at ₹ 213,292,618/–. In the last paragraph of the assessment order, the learned assessing officer has held that computation of total tax payable is as per ITNS 150 accompanied and is a part of the order. Further the penalty under section 271 (1) © is initiated for furnishing of incorrect particulars of income. The draft assessment order was accompanied by the notice of demand under section 156 of the income tax act, 1961 dated 29/2/2016 computing the demand payable of ₹ 2,322,300/–. Along with that income tax computation form was also attached showing the demand payable of ₹ 2,322,300. Therefore the facts in the case of the assessee for assessment year 2007 – 08 is identical to the facts in case of the assessee for assessment year 2006 – 07 wherein we have following the decision of the honourable Karnataka High Court in case of Cisco (supra) has quashed the draft assessment order. Therefore, for the similar reasons appeal of the assessee is allowed by admission of the additional ground and allowing the ground. Accordingly, ITA number 3233/M/2018 for assessment year 2007 – 08 is allowed.

013. For assessment year 2008 – 09 identical facts exist where the assessment order passed on February 29, 2016 under section 143 (3) read with section 254 read with section 144C (1) of the income tax act dated 29/2/2016 assessing the total income of the assessee at ₹ 185,318,070 by the draft assessment order accompanied with the notice of demand under section 156 of the income tax act along with the income tax computation form computing the tax payable of Rs. 130,07,780/–.

14. Further for assessment year 2009 – 10, draft assessment order was passed on 29/2/2016 under section 143 (3) read with section 254 read with section 144C (1) of the income tax act 1961 on 29/2/2016 along with the notice of demand under section

156 of the income tax act computing the tax payable of ₹ 33,277,830/– along with the income tax computation form giving the breakup of the above tax demand.

015. For both the above assessment years on identical facts and circumstances, we have quashed the assessment order passed for the assessment year 2006 – 07 following the decision of the honourable Karnataka High Court in case of Cisco (supra). For similar reasons, following the same decision, we also quash the draft assessment orders for assessment year 2008 – 09 and 2009 – 10

16. In the result, by allowing the additional ground raised by the assessee for all these four years, the draft assessment orders for those years are quashed and appeal of the assessee are allowed."

12. In case of 'Marriott International Licensing Company BVV vs. DCIT, ITA No. 1621/Mum/2021, the Coordinate Bench in order dated 3-2-2023 has held as under:

"10. We have heard the rival submissions and perused the material available on record. It is evident that the A.O. had passed a draft assessment order dated 29.12.2016 and had proposed variation to the return filed by the assessee, thereby determining the assessee to be an eligible assessee. It is observed that the A.O. has issued the draft assessment order along with the notice of demand u/s. 156 and also notice u/s. 271(1)(c) of the Act dated 29.12.2016. The moot question here is whether the A.O.'s action in issuing the demand notice along with the draft assessment order is only a procedural defect or it makes the assessment order bad in law, thereby making it null and void. For this proposition, we would like to place our reliance on some of the decisions cited by the assessee which are as follows:

Sr. No.	*Case Law*	*Citation*
1	*Vijay Television (P.) Ltd. vs. DRP*	*[2014] 46 taxmann.com 100 (Madras)*
2	*Aker Powergas P. Ltd. vs. DCIT*	*ITA No. 7211/Mum/2017*
3	*Perfetti Van Melle (India) Pvt. Ltd. vs. ACIT*	*ITA No. 9116/Del/2019*
4	*DCIT vs. Atlas Copco (India) Limited*	*ITA No. 649/Mum/2013 & 1726/Pun/2014*

11. The assessee has relied on the decision of the Hon'ble Madras High Court in the case of Vijay Television (P.) Ltd. (supra), which has held that when there is an omission by the A.O. in following the mandatory procedure prescribed by the law, then the said omission cannot be considered as a mere procedural irregularity and the same cannot be cured. The ld. AR also placed reliance on the decision of the co-ordinate bench in the case of Aker Powergas P. Ltd. (supra), which has held that the issuing of draft assessment order along with the demand notice is said to be not following the mandatory provisions of the Act as per section 144C of the Act, wherein the assessment order was treated as void. The said decision by the Tribunal has considered various decisions of the Hon'ble Apex Court and the Hon'ble High Court decision in the case of Sun Engineering Works and various other decisions. The Tribunal has also held that the participation in subsequent proceedings does not prevent the assessee from challenging the validity of the order by relying on the decision of the Hon'ble Apex Court in the case of CIT vs. V. MR. P. Firm, Mura 56 ITR 67 (SC) and the assessment proceeding culminated on the issue of demand notice and the penalty notice u/s. 274 of the Act, thereby is making subsequent proceedings to be non-est in law. The said decision of the tribunal has also stated that section 156 of the Act does not state a draft demand notice thereby buttressing the contention of the ld.DR that the impugned demand notice was only a draft demand notice. We would also place our reliance on the decision of the co-ordinate bench in the case of Atlas Copco (India) Limited (supra), which held that the issuance of notice of demand at the stage of draft order has brought a finality to the assessment at the stage of the draft order itself and the resultant final assessment is vitiated in law and is unsustainable.

13. In case of 'Perfetti Van Melle (India) Pvt. Ltd. vs. ACIT', ITA No. 9116/DEL/2019, the coordinate bench in order dated 11-8-2020 has held as under:

> *"10. Representatives of both the sides were heard at length. Case records carefully perused and judicial decisions relied upon by both the sides have been carefully considered.*
> *11. Provisions of section 144C read as under:*
> *"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."*
> *12. Most relevant clauses pertinent for adjudication of the quarrel reads as under:*
> *12. Most relevant clauses pertinent for adjudication of the quarrel reads as under:*
> *"(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).*
> *(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 51a [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."*
> *13. In the light of the afore stated provisions of section 144C of the Act and relevant sub-sections, the ld. counsel for the assessee vehemently argued that the assessment proceedings concluded on 27.12.2018, and therefore, any orders passed thereafter are non est, to which the ld. DR rebutted by stating that the assessee itself has participated in the subsequent proceedings. Therefore, it cannot be said that the proceedings culminated on 27.12.2018.*
> *14. It is the say of the ld. DR that on 27.12.2018, the Assessing Officer has only framed a draft assessment order and final assessment order was framed after receiving order of the Dispute Resolution Panel [DRP].*
> *15. In our considered view, provisions of section 144C of the Act triggers a series of steps prescribed in sub-section (2) to section 12 and as can be seen from the most relevant sub-sections (3) and (13) extracted hereinabove, the assessment is complete either under subsection (3) or sub section (13).*
> *16. Facts on record show that on 27.12.2018, the Assessing Officer quantified the taxable income and determined tax payable by issuing and serving demand notice u/s 156 of the Act. In our considered opinion, this action of the Assessing Officer has brought the proceedings to an end and the proceedings initiated u/s 144C of the Act stand concluded.*
> *17. A perusal of Section 144C of the Act shows that the Assessing Officer shall, at the first instance, forward a draft of the proposed order of assessment and on receiving such order, the assessee may approach the DRP by raising objections. If the assessee accepts the variation, then the Assessing Officer shall proceed by framing the final assessment order and if the objections are raised before the DRP, then, upon receipt of directions issued by the DRP, the assessee shall complete the assessment. However, we find that while framing the said draft assessment order, the Assessing Officer not only issued and served demand notice, but has also initiated the penalty proceedings.*
> *18. The question whether demand notice is an integral part of the assessment order has been answered by the Hon'ble High Court of Gujarat in the case of CIT Vs. Purshottam Das T Patel 209 ITR 52 wherein the Hon'ble High Court has relied on the decision of the Hon'ble Supreme Court in the case of Kalyan Kumar Ray Vs. CIT 191 ITR 634. The relevant findings of Hon'ble High Court read as under:*

" 'Assessment' is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial as the former. The Incometax Officer has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and the demand notice has to be issued under section 156 of the Incometax Act, 1961, in consequence of such an order. The statute does not, Page No : 55 however, require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is superscribed 'assessment order'. It does not prescribe any form for the purpose. Once the assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time-consuming. If, therefore, the Income-tax Officer first draws up an order assessing the total income and, indicating the adjustments to be made, directs the office to compute © Company Law Institute of India Pvt. Ltd. - 4 - the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income-tax Officer that the process described in section 143(3) will be complete." In our opinion, this decision, far from helping the Revenue, goes against it. The Supreme Court has in terms stated that assessment is one integrated process involving not only the assessment of the total income but also the determination of the tax. It has further observed that the latter is as crucial as the former. Therefore, unless the total income is determined and the determination of tax is also done, it cannot be said that the process of assessment is complete. What section 153 requires is that the assessment should be completed within the prescribed time-limit. The words "order of assessment" cannot be construed to mean assessment of total income only. Those words would mean an order in writing whereby the total income of the assessee is assessed and the tax payable by him is determined. When an order in writing in respect of both these things is passed, it can be said that there is a complete order of assessment. These two steps may be taken simultaneously or separately, but it cannot be gainsaid that both of them will have to be taken within the time prescribed by the Act. Admittedly, in this case the second step was not taken within the prescribed time. After determining the total income, the Income-tax Officer possibly left the matter to his subordinates for the purpose of calculating the tax payable by the assessee on the basis of the assessed total income. Even if we assume in favour of the Assessing Officer that he approved the said calculation when the papers were put before him for signing the demand notice, and that he signed the same, the fact remains that that step was taken by him after the prescribed period was over. The Tribunal was, therefore, right in holding that the assessment in this respect was time-barred. Page No : 56 We, therefore, answer the question in the affirmative, i.e., against the Revenue and in favour of the assessee. No order as to costs"

19. Through his written submissions dated 07.08.2020, the ld. DR strongly stated that there should be no confusion in relation to the order dated 27.12.2019 in as much as it was a draft of proposed order of assessment. The ld. DR further stated that notice of demand mentions proposed\draft notice of demand and referring to the communication with the DCIT, Circle 3(1), Gurgaon, the ld. DR pointed out that even the Assessing Officer has mentioned that no entry has been made in the Demand and Collection Register and order was not uploaded on ITD.

20. Referring to the decision of the Hon'ble High Court of Gujarat in the case of Purshottam Das [supra], the ld. DR stated that the same has to be considered in the light of the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works Pvt Ltd 198 ITR 297 wherein the Hon'ble Supreme Court has held as under:

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read

as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. v. Union of India this Court cautioned:

It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

21. We fail to persuade ourselves to agree with the submissions of the ld. DR. In our understanding of the law, there is no provision in the I.T> Act which provides for proposed/draft notice of demand and secondly, whether the demand has been entered in Demand and Collection Register or the order uploaded in the ITD is and internal matter/procedure of the Revenue and cannot be taken into consideration to decide whether the demand notice issued alongwith order dated 27.12.2018 complete the proceedings.

22. In so far as the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works is concerned, the decision of the Hon'ble High Court of Gujarat has been in the context of whether notice of demand is an integral part of assessment or not and while deciding the issue, the Hon'ble High Court has considered the decision of the Hon'ble Supreme Court in the case of Kalyan Kumar Ray [supra] and, therefore, the decisions referred to hereinabove are in the same context in which the facts of the case in hand are considered.

23. In light of the aforesaid decision, we are of the considered opinion that the Assessing Officer has by-passed the relevant subsections i.e. sub-section (3) and (13) to section 144C of the Act mentioned elsewhere.

24. Whether by by-passing mandatory provisions of the Act can assessment survive? The answer has been given by the Hon'ble Supreme Court in the case of Dipak Babaria 3SCC 502 wherein the Hon'ble Supreme Court has held as under:

"If the law requires that a particular thing should be done in a particular manner, it must be done in that way and none other. State cannot ignore the policy intent and procedure contemplated by the statute.

25. In light of the above ratio laid down by the Hon'ble Supreme Court, we are of the considered opinion that by issuing the demand notice on 27.12.2018 itself the Assessing Officer has by passed all the mandatory sub-sections of section 144C of the Act.

26. The ld. DR has placed reliance on the decision of the Co-ordinate Bench in the case of Price Water House Company 117 Taxmann.com 276 in ITA No. 2298/KOL/2016. It is the say of the ld. DR that under similar circumstances, the Tribunal has upheld the assessment order. The ld. DR vehemently stated that by participating in subsequent proceedings, the assessee was well aware that the order dated 27.12.2018 is merely a draft assessment order and not a final assessment order. The ld. DR concluded by saying that the assessee cannot approbate and reprobate.

27. The question whether participation in subsequent proceedings would estop the assessee from challenging the validity of the order dated 27.12.2018 has been answered by the Hon'ble Supreme Court in the case of V Mr. T.P. Firm MUAR in 56 ITR 67 wherein the Hon'ble Supreme Court has laid down the ratio

"Approbate and Reprobate" is only species of estoppel. It applies only to conduct of parties as in the case of estoppel, it cannot operate against the provisions of a statute. IF particular income is taxable under the I.T. Act, it cannot be taxed on the basis of estoppel or any other equal document. Equity is out of placed in tax place. A

particular income is either exigible under the Income tax under taxing statute or not. If it is not, the ITO Has no power to tax the said income."

28. With our utmost respect to the co-ordinate bench [Kolkatta], we fail to persuade ourselves to follow the same as the said decision of the Tribunal has not considered the decision of the Hon'ble Supreme Court discussed hereinabove and the decision is per incurium.

29. The ld. DR has tried to distinguish the decisions relied upon by the ld. counsel for the assessee in his written submissions.

30. We have carefully perused the written submissions of the ld. DR. We are of the considered view that the decisions relied upon by us extracted hereinabove are directly related to the underlying facts in issue before us.

31. Another argument of the ld. DR that merely issue of notice of demand and penalty notice will not convert draft assessment order into final assessment order, does not hold any water, in as much as the mandatory provisions of the Act have to be followed and the Assessing Officer does not get any leverage for bypassing the mandatory provisions of the Act.

32. We find that there are series of decisions of the Tribunal wherein in the set aside proceedings, if the Assessing Officer has not followed the mandatory steps mentioned in section 144C of the Act, assessment order has been treated as void. To name a few such decisions, Nikon India Pvt Ltd ITA Nos. 8752 & 8753/DE/2019. The principles laid down by the co-ordinate bench in this decision were approved by decisions by various High Courts like the Hon'ble High Court of Delhi in the case of Turner International Pvt Ltd 398 ITR 177 and JCB India Ltd WPC 3399/2016.

33. The ld. DR has also drawn strong support from the provisions of section 292B of the Act stating that the subsequent participation of the assessee would debar the assessee to raise this issue before the appellate authority. The answer to this has been given by the Hon'ble High Court of Delhi in the case of JCB India Ltd [supra]. The relevant findings read as under:

"14. The short question that arises for consideration is whether, after the remand proceedings, the AO could have, without issuing a draft assessment order under Section 144 C of the Act, straightway issued the final assessment order. 15. Mr Syali, learned Senior Counsel for the Assessee, referred to the decision of this Court dated 17th May 2017 passed in W.P. (C) No. 4260/2015 (Turner International India Pvt. Ltd. v. Deputy Commissioner of Income Tax, Circle 25(2), New Delhi) to urge that the AO could not have passed the final assessment order without complying with the mandatory requirement under Section 144C of the Act whereby first a draft order had to be issued in respect of which an objection can be filed by the Assessee before the DRP. The failure to do so, according to Mr. Syali, was not a mere irregularity. He further referred to a decision of the Gujarat High Court dated 31st July 2017 in Tax Appeal No. 542 of 2017 (Commissioner of Income Tax, Vadodara-2 v. C-Sam (India) Pvt. Ltd.) W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 7 of 12 16. In response, Mr. Sanjay Jain, learned Additional Solicitor General of India appearing for the Revenue, submitted that there was an efficacious alternative remedy available to the Petitioner to file appeals against the impugned final assessment orders passed by the AO. It is denied that it was mandatory on the part of the AO to pass a draft assessment order since this was a second round before the TPO pursuant to remand by the ITAT. Moreover, it was not as if the ITAT had set aside the entire assessment order of the AO. The setting aside was only in respect of the transfer pricing adjustment and that too with a specific direction to the AO for determining the arms length price "after considering fresh comparables." Since the assessment itself was not cancelled by the ITAT or completely set aside, it is the provisions of Section 153 (3) (ii) of the Act which would apply. Mr Jain submitted that the requirement of passing a draft assessment order under Section 144C was only in the first instance and not after the remand by the ITAT. 17. The Court is unable to agree with the submissions made on behalf of the Revenue by Mr. Jain. Section 144C (1) of the Act

is unambiguous. It requires the AO to pass a draft assessment order after receipt of the report from the TPO. There is nothing in the wording of Section 144C (1) which would indicate that this requirement of passing a draft assessment order does not arise where the exercise had been undertaken by the TPO on remand to it, of the said issue, by the ITAT. 18. It was then contended by Mr. Jain that the assessment order passed by the AO should not be declared to be invalid because of the failure to first W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 8 of 12 pass a draft assessment order under Section 144C of the Act. In this regard, reference is made to Section 292B of the Act. 19. As already noted, the final assessment order of the AO stood vitiated not on account of mere irregularity but since it was an incurable illegality. Section 292B of the Act would not protect such an order. This has been explained by this Court in its decision dated 17th July 2015 passed in ITA No. 275/2015 (Pr. Commissioner of Income Tax, Delhi-2, New Delhi v. Citi Financial Consumer Finance India Pvt. Ltd.) where it was held: "Section 292B of the Act cannot be read to confer jurisdiction on the AO where none exists. The said Section only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income, assessment notices, summons or other proceedings, provided the same are in substance and in effect in conformity with the intent of purposes of the Act." 20. The Court further observed that Section 292B of the Act cannot save an order not passed in accordance with the provisions of the Act. As the Court explained, "the issue involved is not about a mistake in the said order but the power of the AO to pass the order." 21. In almost identical facts, in Turner International (supra), this Court held in favour of the Assessee on the ground that it was mandatory for the AO to have passed a draft assessment order under Section 144C of the Act prior to issuing the final assessment order. The following passages from said decision are relevant for the present purposes: "11. The question whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of first passing draft assessment order in terms of Section 144C(1) W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 9 of 12 of the Act is no longer res intregra. There is a long series of decisions to which reference would be made presently. 12. In Zuari Cement Ltd. v. ACIT (decision dated 21st February, 2013 in WP(C) No.5557/2012), the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of the Act would result in rendering the final assessment order "without jurisdiction, null and void and unenforceable." In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013. 13. In Vijay Television (P) Ltd. v. Dispute Resolution Panel [2014] 369 ITR 113 (Mad.), a similar question arose. There, the Revenue sought to rectify a mistake by issuing a corrigendum after the final assessment order was passed. Consequently, not only the final assessment order but also the corrigendum issued thereafter was challenged. Following the decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra) and a number of other decisions, the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel (supra) quashed the final order of the AO and the demand notice. Interestingly, even as regards the corrigendum issued, the Madras High Court held that it was beyond the time permissible for issuance of such corrigendum and, therefore, it could not be sustained in law. 14. Recently, this Court in ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of India [2016] 388 ITR 383 (Del.), following the decision of the Andhra Pradesh High Court in Zuari Cement Ltd. v. ACIT (supra), the Madras High Court in Vijay Television (P) Ltd. v. Dispute Resolution Panel, Chennai (supra) as well as the Bombay High Court in International Air Transport Association v. DCIT (2016) 290 CTR (Bom) 46, came to the same conclusion." W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 10 of 12 22. In the decision of the Gujarat High Court in C-Sam (India) (supra), the Court negated

the plea that noncompliance with the terms of Section 144C of the Act is merely an 'irregularity'. The Gujarat High Court held that it was of 'great importance and mandatory'. The following passages of the said decision of Gujarat High Court are relevant for the present purposes: "6. These statutory provisions make it abundantly clear that the procedure laid down under Section 144C of the Act is of great importance and is mandatory. Before the Assessing Officer can make variations in the returned income of an eligible assessee, as noted, sub-section (1) of Section 144C lays down the procedure to be followed notwithstanding anything to the contrary contained in the Act. This non-obstante clause thus gives an overriding effect to the procedure 'notwithstanding anything to the contrary contained in the Act'. Sub-section (5) of Section 144C empowers the DRP to issue directions to the Assessing Officer to enable him to complete the assessment. Sub-section (10) of Section 144C makes, such directions binding on the Assessing Officer. As per SubSection 144C, the Assessing Officer is required to pass the order of assessment in terms of such directions without any further hearing being granted to the assessee. 7. The procedure laid down under Section 144C of the Act is thus of great importance. When an Assessing Officer proposes to make variations to the returned income declared by an eligible assesses he has to first pass a draft order, provide a copy thereof to the assessee and only thereupon the assessee could exercise his valuable right to raise objections before the DRP on any of the proposed variations. In addition to giving such opportunity to an assessee, decision of the DRP is made binding on the Assessing Officer. It is therefore not possible to uphold the Revenue's contention that such requirement is merely a procedural. The requirement is mandatory and gives substantive rights to the assessee to object to any additions before they are made and such objections have to be considered W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 11 of 12 not by the Assessing Officer but by the DRP. Interestingly, once the DRP gives directions under sub-section (5) of Section 144C, the Assessing Officer is expected to pass the order of assessment in terms of such directions without giving any further hearing to the assessee. Thus, at the level of the Assessing Officer, the directions of the DRP under subsection (5) of Section 144C would bind even the assessee. He may of course challenge the order of the Assessing Officer before the Tribunal and take up all contentions. Nevertheless at the stage of assessment, he has no remedy against the directions issued by the DRP under sub-section (5). All these provisions amply demonstrate that the legislature desired to give an important opportunity to an assessee who is likely to be subjected to upward revision of income on the basis of, transfer pricing mechanism. Such opportunity cannot be taken away by treating it as purely procedural in nature." 23. In the present case, just as in Turner International (supra), it is submitted that, at the most, failure to pass a draft assessment order under Section 144C of the Act is a curable defect and that the Court should now delegate the parties to a stage as it was when the TPO issued a fresh order after the remand by the ITAT. 24. This very argument of the Revenue has been negated by the Court in Turner International (supra) where it was observed in paras 15 and 16 as under: "15. Mr. Dileep Shivpuri, learned counsel for the Revenue sought to contend that the failure to adhere to the mandatory requirement of issuing a draft assessment order under Section 144C (1) of the Act would, at best, be a curable defect. According to him the matter must be restored to the AO to pass a draft assessment order and for the Petitioner, thereafter, to pursue the matter before the DRP. W.P.(C) Nos. 3399/2016, 3429/2016 & 3431/2016 Page 12 of 12 16. The Court is unable to accept the above submission. The legal position as explained in the above decisions in unambiguous. The failure by the AO to adhere to the mandatory requirement of Section 144C (1) of the Act and first pass a draft assessment order would result in invalidation of the final assessment order and the consequent demand notices and penalty proceedings." 25. For all of the aforementioned reasons, the Court finds no difficulty in holding that the impugned final assessment orders dated 30th March 2016 passed by the AO for AYs 2006-07, 2007-08 and 2008 -09 are without jurisdiction on

> *account of the failure, by the AO, to first pass a draft assessment order and thereafter, subject to the objections filed before the DRP and the orders of the DRP, to pass the final assessment order. The Court also sets aside the orders of the TPO dated 30th March 2016 issued pursuant to the remand by the ITAT."*
> *34. Considering the facts of the case in totality, in the light of the decisions discussed hereinabove, we have no hesitation to hold that the proceedings culminated on 27.12.2018 when the demand notice was issued and served upon the assessee along with penalty notice u/s 274 of the Act and, therefore, all the subsequent proceedings and orders become non est. The additional ground is, accordingly, allowed."*

> *14. Though, there are many other decisions cited before us by learned counsel of the assessee expressing similar view, however, to avoid multiplicity, we refrain from referring to all those decisions. Thus, keeping in view the factual position discussed above and applying the ratio laid down in the decisions cited before us, we have no hesitation in holding that the Assessing Officer has exceeded his jurisdiction by not following the mandate of Section 144C(1) of the Act as he failed to frame draft assessment order at the first instance. As for all practical purposes, the Assessing Officer at the first instance has passed the final assessment orders in the garb of draft assessment orders. Accordingly, we quash the impugned assessment orders being wholly without jurisdiction.*

17. Factually, there is no distinction between the cases discussed above and the present assessee's case. Thus, respectfully following the judicial precedents referred to above, we hold that the so-called draft assessment orders passed by the AO are invalid and without jurisdiction. Accordingly, we have no hesitation in quashing the same. As a result, all subsequent proceedings in consequence thereof including the final assessment orders, will be invalid. Hence, these grounds are allowed.

18. In view of our decision on the preliminary issues discussed above, the rest of the grounds raised by the assessee have become academic, hence kept open.

19. In the result, the appeals are partly allowed as indicated above.

Order pronounced in the open court on 30.06.2026

Sd/-	Sd/-
(Bijayananda Pruseth)	(Saktijit Dey)
Accountant Member	Vice President

Mumbai; Dated : 30.06.2026
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai