IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No. 210 Civil Writ Petition No. 4329 of 2024

UCWeb Mobile Private Ltd. ….. Petitioner

Versus

Assessment Unit, Income Tax Department,
National Faceless Assessment Centre,
New Delhi and others ..... Respondents

1.	The date when the judgment is reserved	07.07.2026
2.	The date when the judgment is pronounced	07.08.2026
3.	The date when the judgment is uploaded	10.08.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present : Mr. Nageshwar Rao, Advocate (through V. C.) and
Mr. Ashim Aggarwal, Advocate for the petitioner.

Mr. Varun Issar, Senior Standing Counsel and
Ms. Nikita Garg, Standing Counsel,
for the respondent(s)-Income Tax Department.

* * * * *

DEEPAK SIBAL, J.

1. Through the instant petition the petitioner challenges final assessment order dated 15.12.2023, pertaining to the assessment year 2021-22, passed under Section 143(3) read with Sections 144C(3) of the Income-tax Act, 1961 (for short, the Act). Also under challenge is the notice of demand dated 15.12.2023, issued under Section 156 of the Act and the notice dated 15.12.2023, issued under Section 274 read with Section 270A of the Act, initiating penalty

proceedings against the petitioner.

BRIEF FACTS

2. The petitioner is a company registered under the Companies Act, 1956 and is a wholly owned subsidiary of UC Mobile New World Limited, British Virgin Islands. It is engaged in the distribution and re-selling of designated services of UCWeb Singapore Pte Ltd. in India.

On 15.03.2022, for the assessment year 2021-22, the petitioner filed its income tax return. The petitioner's case came under scrutiny resulting in the issuance of a notice to it dated 28.06.2022, under Section 143(2) of the Act, to which notice the petitioner filed a written response dated 13.07.2022. Since the petitioner's scrutiny assessment involved international transactions with associate enterprises, the Assessing Officer (for short, the AO) made a reference under Section 92CA(1) of the Act to the Transfer Pricing Officer (for short-TPO) to determine the arm's length price. Thereafter, an order dated 29.10.2023, under Section 92CA(3) of the Act was passed by the TPO which order was received by the AO on 31.10.2023. Through order dated 29.10.2023, the TPO ordered addition of Rs. 60,09,84,289/- to the petitioner's declared income. Accepting the order of the TPO dated 29.10.2023, the AO passed a draft assessment order dated 06.11.2023 under Section 144C(1) of the Act and got the same served upon the petitioner. Since in terms of Section 144C(15)(b) of the Act, the petitioner was an "eligible assessee" on account of there being variance in the filing of its income tax return and the order of the TPO, the petitioner availed of its remedy available to it under Section 144C(2) of the Act by filing objections to the draft assessment order dated 06.11.2023 before the Dispute Resolution Panel (for short, DRP). Such objections were filed on 06.12.2023 i.e. within the 30 days allocated for filing of such objections under Section 144C(2) of the Act. However, the petitioner failed to intimate the AO with regard to filing of objections by it and therefore, while such objections were pending to be decided by the DRP, the AO, in terms of Section 144C(3) of the Act, went on to pass the final assessment order dated 15.12.2023 under Section 143(3) read with Sections 144B and 144C(3) of the Act. Alongwith the final assessment order, a notice of demand under Section 156 of the Act and a notice for imposition of penalty in terms of Section 274 read with Section 270A of the Act, both dated 15.12.2023, were also served upon the petitioner. At that stage, the petitioner knocked the doors of this Court through the instant petition seeking quashing of not only the final assessment order but also the notice of demand and notice for imposition of penalty, all dated 15.12.2023, primarily on the ground that such final assessment order was premature as the same had been passed during the pendency of proceedings before the DRP.

The instant petition came up for preliminary hearing on 26.02.2024 on which date this Court issued notice and as an interim measure, stayed the operation of the final assessment order dated 15.12.2023. During pendency of the present petition before this Court, on 27.08.2024, the DRP issued directions under Section 144C(5) of the Act requiring the TPO to modify its order dated 29.10.2023 and resultantly, in line with the directions given by the DRP, the TPO revised its earlier order dated 29.10.2023 through passing of a subsequent order dated 17.09.2024. The petitioner brought both the directions of the DRP dated 27.08.2024 and the order of the TPO dated 17.09.2024 to the AO's notice requesting for the passing of a fresh final assessment order in terms of the directions issued by the DRP through its order dated 27.08.2024 and the order of the TPO dated 17.09.2024, but to no avail.

SUBMISSIONS

3. Mr. Nageshwar Rao, learned counsel appearing for the petitioner, submits that the petitioner was an "eligible assessee" in terms of Section 144C(15)(b) of the Act because there was variation in the petitioner's income tax return and the original order of the TPO dated 29.10.2023 as also the TPO's subsequent order dated 17.09.2024; being an "eligible assessee", within 30 days of receipt of the draft assessment order dated 06.11.2023, the petitioner had availed of its remedy under Section 144C(2) of the Act through filing of objections before the DRP; as per Section 144C(10) of the Act directions issued by the DRP are binding on the AO and therefore, the final assessment order dated 15.12.2023, alongwith the consequent notice of demand and notice of initiation of penalty proceedings, are required to be set aside being at variance with the directions issued by the DRP dated 27.08.2024; there was a *bonafide* lapse on the petitioner's part with regard to not informing the AO with regard to filing of objections to the draft assessment order for which the petitioner cannot be put to prejudice especially keeping in view the binding nature of Section 144C(10) of the Act and that even otherwise, once the basis of the draft and final assessment order i.e. the directions of the TPO dated 06.11.2023, stood modified by the subsequent order of the TPO dated 17.09.2024, the final assessment order dated 15.12.2023 would have no legs to stand.

4. Mr. Varun Issar, representing the respondent(s)-revenue fairly admits to the status of the petitioner being that of an "eligible assessee" but opposes the petition on the ground that no wrong had been committed by the AO in passing of the final assessment order dated 15.12.2023 because he was legally obliged to do

so in terms of Sections 144C (3) and (4) of the Act especially when the petitioner also admits that it did not inform the AO with regard to the filing of its objections to the draft assessment order before the DRP.

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

ANALYSIS AND DISCUSSION

6. The petitioner is a company registered under the Companies Act, 1956 and is a wholly owned subsidiary of UC Mobile New World Limited, British Virgin Islands. It is engaged in the distribution and re-selling of designated services of UCWeb Singapore Pte Ltd. in India. For the assessment year 2021-22, the petitioner had filed its income tax return on 15.03.2022. The petitioner's case came under scrutiny, resulting in the issuance of a notice to it dated 28.06.2022, under Section 143(2) of the Act, to which the petitioner filed a written response dated 13.07.2022. Since the petitioner's scrutiny assessment involved international transactions with associate entities, the AO, under Section 92CA(1) of the Act, referred the matter to the TPO. The TPO through order dated 29.10.2023, passed under Section 92CA(3) of the Act, ordered addition of Rs. 60,09,84,289/- to the petitioner's declared total income solely on the basis whereof a draft assessment order dated 06.11.2023, under Section 144C(1) of the Act, was passed by the AO and served upon the petitioner. In terms of Section 144C(15)(b) of the Act, the petitioner being an "eligible assessee", filed objections to the draft assessment order before the DRP which objections were filed within the thirty days allocated under Section 144C(2) of the Act. However, the petitioner failed to inform the AO with regard to the filing of its objections and accordingly, as obliged under Sections 144C(3) and (4) of the Act, the AO

passed the final assessment order dated 15.12.2023, under Section 143(3) read with Sections 144C(3) and 144B of the Act. Consequent notice of demand under Section 156 of the Act as also notice regarding initiation of penalty proceedings under Section 274 read with Section 270A of the Act, both dated 15.12.2023, were also issued by the AO. It is at that stage that the petitioner knocked the doors of this Court through filing of the instant petition challenging therein the aforesaid final assessment order and the consequent demand notice as also the notice with regard to initiation of penalty proceedings, all dated 15.12.2023. The present petition came up for preliminary hearing before this Court on 26.02.2024, on which date this Court issued notice and stayed the operation of the final assessment order dated 15.12.2023. In the meanwhile, in terms of Section 144C(5) of the Act, the DRP, through its order dated 27.08.2024, partially accepted the petitioner's objections. Such order, passed by the DRP, was served upon the TPO, in compliance whereof, the TPO through his order dated 17.09.2024, revised his earlier order dated 29.10.2023. The directions of the DRP dated 27.08.2024 and the order of the TPO dated 17.09.2024 were then brought to the notice of the AO by the petitioner, requesting the AO to pass a fresh assessment order in terms thereof, but he refused to do so.

7. The issue which arises for determination is as to whether in the light of the afore facts, the final assessment order and the consequent notices of demand and initiation of penalty, all dated 15.12.2023, are sustainable in law?

8. Section 144C of the Act, which is relevant, is reproduced below for ready reference: -

> ***"144C. Reference to dispute resolution panel.***
> *(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 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,—
(i) 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 [or section 153B], 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.
[Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.]

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

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

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

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

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

(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.

(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the [Principal Commissioner or] Commissioner as provided in sub-section (12) of section 144BA].

(14B) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—

- *(a) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;*
- *(b) optimising utilisation of the resources through economies of scale and functional specialisation;*
- *(c) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.*

(14C) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (14B), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

(14D) Every notification issued under sub-section (14B) and sub-section (14C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

(15) For the purposes of this section,—

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

(b) "eligible assessee" means,—

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

(ii) any non-resident not being a company, or any foreign company:]]

*[**Provided** that such eligible assessee shall not include person referred to in sub-section (1) of section 158BA or other person referred to in section 158BD.]*

[(16) The provisions of this section shall not apply to any proceedings under Chapter XIV-B.]"

9. As per Section 144C(1) of the Act, in the case of an "eligible assessee", in the first instance, the AO is required to pass and serve upon the "eligible assessee", a draft assessment order to which, under Section 144C(2) of the Act, the "eligible assessee" can file his acceptance or objections to the DRP. If the assessee accepts the draft assessment order and the AO does not receive any objections filed by the eligible assessee within a period of thirty days from the date of passing of the draft assessment order, sub Sections (3) and (4) of Section 144C of the Act require the AO to pass the final assessment order. Such final assessment order is to be passed within one month from the end of the month in which the acceptance to the draft assessment order by the eligible assessee is received by the AO or from the date when the period of filing of objections under Section 144C(2) has expired. However, in case, against the draft assessment order, the "eligible assessee" chooses to file objections before the DRP, then, as per Section 144C(5), the DRP, after considering such objections, is required to issue such directions as it considers fit for the guidance of the AO to enable him to complete the assessment and that under Section 144C(10) every such direction issued by the DRP is binding on the AO. Section 144C(13) further provides that

on receipt of directions by the DRP, issued under Section 144C(5), the AO shall, in conformity with such directions, complete the assessment without providing any further opportunity of being heard to the assessee within a month from the end of the month in which such directions are received.

10. Thus, the spirit behind Section 144C of the Act is that where an "eligible assessee" has chosen to file objections, before the DRP, under Section 144C(2) of the Act, against the AO's draft assessment order passed under Section 144C(1) of the Act, the final assessment order should be passed by the AO in terms of the directions to be issued by the DRP after consideration of the assessee's objections and in this regard particular reference can be made to Sections 144C(10) and 144C(13) of the Act.

11. In the facts of the case in hand, the impugned final assessment order dated 15.12.2023 is found to be at variance with the directions of the DRP dated 27.08.2024, which directions were issued after consideration of the petitioner's objections filed under Section 144C(2) of the Act to the draft assessment order dated 06.11.2023. Therefore, the impugned final assessment order violates Sections 144C(10) and 144C(13) of the Act. It also goes against the spirit behind Section 144C of the Act.

12. Even otherwise, through the impugned final assessment order, the AO made an addition of Rs. 60,09,84,289/- to the petitioner's total income. Such addition is based solely on the order of the TPO dated 29.10.2023. In terms of the directions issued by the DRP dated 27.08.2024, partially accepting the petitioner's objections, filed by the petitioner under Sections 144C(2) of the Act, through order dated 17.09.2024, the TPO revised his earlier order dated 29.10.2023. Thus, the TPO's earlier order dated 29.10.2023, which virtually was the soul of the

impugned final assessment order, stands substituted by the subsequent order of the TPO dated 17.09.2024. In the light of these facts to uphold the impugned final assessment order dated 15.12.2023 would be absurd.

13. It is true that the impugned final assessment order dated 15.12.2023 was passed by the AO because the petitioner did not inform the AO that under Section 144C(2) of the Act the petitioner had filed its objections to the draft assessment order but since for such lapse the petitioner does not stand to gain anything, such inaction on the petitioner's part can only to be termed as a *bonafide* lapse for which the petitioner should not be put to prejudice.

14. The afore view of ours finds support from the following observations made by a Division Bench of the Delhi High Court in *Pepsico India Holdings Pvt. Ltd. vs. Assessment Unit, Income Tax Department, National Faceless Assessment Center and others*-(2023) SCC OnLine Del 7661: -

> *"6. He submits that under Section 144C(2)(b)(ii), the Petitioner on receipt of the draft assessment order was statutorily required to file its objections before the Assessing Officer in addition to the DRP. He further submits that under Section 144C(3)(b) the Assessing Officer was obligated to complete the assessment on the basis of the draft assessment order if no objections were received within the time period specified under Section 144C(2) i.e. within thirty days of the receipt of the draft order. He states that the Assessing Officer was well within his right to pass the impugned assessment order dated 21st November, 2023 and he cannot be faulted for finalising the assessment in accordance with the prescribed procedure.*
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> *7. Having heard learned counsel for the parties, this Court is of the view that the issue at hand is no longer res integra as it has been decided by the Bombay High Court in Sulzer Pumps (supra) wherein it has been held as under:-*
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> > *"6. In our view since petitioner had already filed a reference raising his objections to the DRP and Section 144C (4) of the Act requires the Assessing Officer to pass the final order including the view expressed by the DRP, we will be justified in setting aside the order of the Assessing Officer dated 28th June, 2021 which is*

impugned in this petition. We would also observe that the Assessing Officer cannot be faulted for passing the impugned order. At the same time, the Assessing Officer will also have benefit of considering the views of DRP while passing a fresh Assessment Order."

8. This Court is in agreement with the view expressed by the Bombay High Court in the aforesaid decision. Once the objections have been filed by the assessee against a draft assessment order within the time limit prescribed under Section 144C(2)(b), the rest of the procedure should be followed as prescribed and the final assessment order ought to be passed by the Assessing Officer in accordance with the directions issued by the DRP.

9. This Court is further of the view that no prejudice will be caused to the Respondent-Department if the present petition is allowed and the impugned assessment order is set aside as Respondent-Department would be well within its rights to pass a fresh assessment order post the receipt of direction from the Respondent No. 3-DRP."

15. To the same effect are the following observations by a learned Single Judge of the Karnataka High Court in *Open Silicon Research Pvt. Ltd. vs. Assessment Unit, National Faceless Assessment Centre, Income-Tax Department-* (2023) SCC OnLine Kar 80: -

"7. It is not in dispute that the petitioner is an eligible assessee in terms of Section 144C (15)(b)(i) of the Act. It is also not in dispute that the draft order was issued and communicated to the petitioner. It is also not in dispute that the petitioner has filed its objections before the DRP as is evident from the Acknowledgment at Annexure-H which is within the time stipulated, which is also not controverted.

8. No doubt, there has been lapse in not filing the objections under Section 144C (2)(b)(ii) of the Act before the assessing officer. It is clear from the facts that the DRP has issued directions as per Annexure-N. Though the said direction is dated 15.05.2023 after passing of the assessment order on 26.10.2022, question as to whether non-filing of objections before the assessing officer will have the effect of assessing officer being empowered to go ahead and conclude the proceedings when in fact the petitioner had filed objections before the DRP and had not intimated the same to the *assessing officer, requires consideration.*

9. The scheme at Section 144C is clear and would envisage the procedure as follows:

(a) On receipt of the draft order, the assessee within thirty days may file his acceptance of the variations to the Assessing Officer; or

(b) In the event he disagrees with such variations, he has to file his objections to such variations with the Dispute Resolution Panel and the Assessing Officer.

10. Once such objections have been filed, the DRP in terms of Section 144C (5) may issue directions for guidance of the assessing officer to enable him to complete the assessment. The power of the DRP is provided for under Sections 144C (6) to 144C (10) of the Act. After the DRP exercises power vested under Section 144C as noticed above and directions are issued, the assessing officer has no discretion except to act in conformity with the directions.

11. It is not in dispute that if no directions are issued, the assessing officer need not wait under Section 144C (13). However, the fact remains that once objections are filed before the DRP and till directions are issued, the assessing officer cannot proceed further. This is in light of mandate under Section 144C (13). Accordingly, non-intimation to the assessing officer under Section 144C (2)(b)(ii) though is a lapse on the part of the petitioner, the only way of meaningfully and harmoniously interpreting the obligation of filing objections under Section 144C (2)(b)(ii) is to construe the procedure that once such objections are filed before the DRP and till the decision is taken by the DRP regarding directions to be passed, the assessing officer ought not to proceed further. This is the procedure to be followed. In the present case where objections no doubt have been filed before the DRP and directions passed though at a later point of time, in light of the manner of construing the procedure the assessing officer ought not to have proceeded and ought to have waited till directions were passed by the DRP, as the directions have though been subsequently passed on 15.05.2023. Accordingly, the assessment order is required to be set aside. In light of the above, the assessment order at Annexure-A1 is set aside. Consequently, the computation sheet at Annexure-A2 and the demand notice at Annexure-A3 are set aside."

16. In view of the above discussion, the impugned final assessment order passed under Sections 143(3) read with Sections 144C(3) and 144B of the Act; notice of demand issued under Section 156 of the Act and the notice initiating penalty proceedings, issued under Section 274 read with Section 270A of the Act, all dated 15.12.2023, are set aside. The matter is restored at the stage of Section 144C(13) of the Act. The petitioner's AO shall now pass a fresh final assessment order in line with the directions of the DRP dated 27.08.2024 and the order of the TPO dated 17.09.2024.

17. The petition is allowed in the above terms.

[DEEPAK SIBAL]
JUDGE

07.08.2026
shamsher

[RUPINDERJIT CHAHAL]
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No