IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI

BEFORE SH. VIKAS AWASTHY, JUDICIAL MEMBER
AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 4654/Del/2015
(Assessment Year : 2012-13)

DCIT Central Circle – 19 New Delhi	Vs.	**I Energizer Holdings Ltd.** C/o. Mr. Aseem Chawla, Adv. E-200, Greater Kailash-I New Delhi **PAN No. AACCI 0468 D**
(APPELLANT)		(RESPONDENT)

With
Cross Objection No. 397/Del/2015
(Arising out of ITA No. 4654/Del/2015)
(Assessment Year : 2012-13)

I Energizer Holdings Ltd. C/o. Mr. Aseem Chawla, Adv. E-200, Greater Kailash-I New Delhi **PAN No. AACCI 0468 D**	Vs.	**DCIT** Central Circle – 19 New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Amit Goel, C.A and Shri Pranav Yadav, Adv.
Revenue by	Dr. Shalini Verma, CIT-D.R.

Date of hearing:	16.07.2026
Date of Pronouncement:	07.09.2026

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER :

This matter instituted by the Revenue, alongside corresponding Cross Objection filed by the Assessee. These proceedings are preferred against the consolidated appellate order passed by the Learned Commissioner of Income Tax (Appeals)-XXVII, New Delhi on 09.04.2015, arising from the Assessment Order u/s 142(1)/144 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') dated 28.03.2014 passed by the DCIT, Central Circle-10, New Delhi for the A.Y 2012-13.

2. Revenue filed the following grounds of appeal as under:

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that assessee company is not resident in terms of provisions under section 6(3)(ii) of the I.T. Act for the purpose of tax liability whereas on the basis of seized documents/e-mails and various statements of Sh. Ajay Kalsi/Sh. Anil Aggarwal, it has been established that control and management of the assessee company is situated wholly in India.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring that underlying assets and sources of revenue of all the overseas companies are the Indian Companies.*
3. *The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the substantial evidence in form of seized material, E-mails, Share Holding pattern showing the ultimate control and management of Indian companies and overseas companies lies with Sh. Ajay Kalsi and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India.*
4. *The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the provisions of section 9(1) of the I.T. Act as the revenue has been earned because of underlying assets of the assessee wholly and totally situated in India.*
5. *The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 3,83,53,140/- made by Assessing Officer.*
6. *(a) The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts.*
   (b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

3. Assessee has also filed an application for admission of additional grounds of appeal in his cross objection appeal which reads as under :

"1) *On the facts and circumstances of the case and in law, the impugned assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of 144C of the Act.*

2) *On the facts and circumstances of the case and in law, the assessing officer erred in passing the final assessment order without a passing draft assessment order in terms of provisions of section 144C of the Act.*
3) *On the facts and circumstances of the case and in law, the assessment order passed by Assessing Officer lacked the jurisdiction in terms of the provisions of section 124 to 127 of the IT Act.*
4) *On the facts and circumstances of the case and in law, the appeal filed by the assessing officer is infructuous as there is no challenge to the finding of CIT(A) that the assessment order passed by the assessing officer is contrary to provisions of section 144C of the Act*
5) *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as no notice u/s 153C of the Income Tax Act, 1961 has been issued.*
6) *On the facts and circumstances of the case and in law, the appeal filed by the assessing officer is infructuous as there is no challenge to the finding of CIT(A) that the assessment order passed by the assessing officer is contrary to provisions of section 124 to 127 of the Act"*

4. The brief facts of the case is that the assessee is Mauritus based foreign company. There was a search and seizure operation under section 132 of the Act conducted on 22.03.2012 on Focus Energy Group. In the course of search operation, certain incriminating documents, pertaining to the assessee, were found and seized. The case was centralized with the Central Circle–10, New Delhi now restructured as Central Circle–19, New Delhi. Thereafter, a satisfaction note dated 18.11.2013 for invoking provisions under section 153C of the Act was recorded and a notice under section 142(1) was issued on 18.11.2013. The ld. AO, following the assessment order for 2006-07, held that the assessee has earned service income and assessed the income of the assessee at Rs.3,83,53,140/- on protective basis vide

order u/s 144 of the Act dated 23.03.2014. Being aggrieved, assessee was in appeal before the ld. CIT(A). The ld. CIT(A) gave relief to the assessee.

5. Aggrieved, Revenue is now in appeal before us.

6. At the outset, the ld. AR submitted that the ITAT's order dated 10.01.2024 in its own case for ITA Nos. 4650 to 4653/Del/2015 for A.Ys 2008-09 to 2011-12 wherein passing of final assessment order without passing a draft assessment order was held as not sustainable in the eyes of law and the appeal was allowed. The concluding part of the order reproduced herein below:

> *"Thus, on going through the provisions of Section 144C(1) of the Income Tax Act, 1961 mandating forwarding of a draft Assessment Order, Explanatory notes to the Finance (2) Act, 2009, Circular No. 05/2010 and Circular No. 09/2013 of the CBDT, judgments of Hon'ble High Court of Gujarat and the Hon'ble jurisdictional High Court, we hold that the Assessment Orders passed by the Assessing Officer are bad in law, hence, unsustainable for not passing the draft Assessment Order as per the provisions of Section 144C(1) of the Income Tax Act, 1961."*

7. The ld. Counsel for the assessee also relied on the following orders, are under:

i. *Delhi High Court decision in the case of CIT vs. Rolland Enterprises Ltd. ITA 556/2024 dated 02.12.2024*
ii. *ITAT decision in the case of DCIT vs. Granda Services Pvt. Ltd. ITA 5357/Del/2015 dated10.06.2024*
iii. *ITAT Decision in the case of the DCIT vs. I-services India Pvt. Ltd.ITA 5373/Del/2015 dated 21.01.2020*

8. On the other hand, ld. DR has relied on the order of the AO.

9. We have heard the rival submissions and perused the material available on record. We note that in the instant case, the AO has held the assessee status as 'resident in India' u/s 6(3) of the Act. We find however, that the Coordinate Bench of ITAT in its own case (supra) has held that the assessee is a foreign company and therefore an "eligible assessee" for the purposes of section 144C(15)(b) of the Act. We further note that it is an admitted fact that the AO has passed the Final order u/s 144 of the Act instead of passing orders under the provisions of section 144C of the Act. Further we note that the AO passed the order without passing a draft order u/s 144C(1) of the Act. The substantive issue therefore, before us for adjudication is the validity of the Final Assessment order passed by the AO without framing a draft assessment order u/s 144C(1). In such facts, we find it appropriate to reproduce the provisions of law on the subject u/s 144C during the relevant period, as under:

Reference to dispute resolution panel.

***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 which is prejudicial to the interest of such assessee.*

*(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 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) ******

(15) For the purposes of this section,—

*(a) *****

(b) "eligible assessee" means,—

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

(ii) any foreign company.

10. We find that the procedure prescribed under section 144C of the Act is that the AO firstly has to mandatorily forward a draft of the proposed assessment order to the eligible assessee if AO proposes a variation which is prejudicial to the interest of such assessee u/s 144C(1) of the Act. This is a mandatory and statutory requirement of law. Upon receipt of draft order, the assessee gets an opportunity to either accept the variation or file objection to the variation before the DRP. Thereafter, following the directions of the DRP, the AO shall pass the final assessment order u/s 144C(13) of the Act.

11. The mandatory and statutory requirement of issuance of draft order and thereafter, the final order, is no longer res-integra. The. Bombay High Court in the case of ***SHL India (P.) Ltd v. Dy. CIT*** [2021] 128 taxmann.com 426 (Bom.) held that the failure to follow the

procedure under section 144C(1) would be a jurisdictional error which is in a breach of a mandatory provision and not merely procedural error or a mere irregularity which can be cured u/s 292B of the IT Act.

12. The hon'ble Delhi High Court in the case of ***CIT-International Taxation-2 Vs. Rolland Enterprises Ltd.*** in ITA 556/2024 & CM No. 66848/2024 has also held that the assessee, being an eligible assessee, the AO has to follow the procedure prescribed under section 144C of the Act. The hon'ble Court referred to its decision in ***PCIT v. Sumitomo Corporation India (P) Ltd*** 2024 SCC OnLine Del 6125 as having covered the issue in favour of the assessee.

13. The Hon'ble jurisdictional High Court in the case of ***Turner International India Pvt. Ltd. Vs. DCIT*** 2017 (5) TMI 991 held that non-compliance with the mandatory provision contained in Section 144C(1) of the Act requiring the AO to first frame draft assessment orders, renders the final order vitiated. The hon'ble Delhi High Court in the case of ***ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of Indi*** [2016] 388 ITR 383 (Del.), following the decision of the Andhra Pradesh High Court in ***Zuari Cement Ltd. v. ACIT*** (decision dated 21st February, 2013 in WP(C) No.5557/2012, the Madras High Court in ***Vijay Television (P) Ltd. v. Dispute Resolution Panel, Chennai*** ([2014] 369 ITR 113 (Mad.) as well as the Bombay High Court

in ***International Air Transport Association v. DCIT*** (2016) 290 CTR (Bom) 46, came to the same conclusion.

14. In the facts and circumstances of the instant case, the assessee being "an eligible assessee", the assessment had to be made u/s 144C of the Act. The failure by the AO to adhere to the mandatory requirement of Section 144C(1) of the Act, to first pass a draft assessment order and thereafter the Final order u/s 144C(13), has resulted in vitiating the impugned final assessment order. Therefore, we find no error or infirmity in the order of the CIT(A) in setting aside the Final Assessment order. Accordingly, the additional grounds of the assessee are allowed.

15. Since we have decided the issue in favour of the assessee on legal ground, the appeal of Revenue, on merits has become infructuous and dismissed accordingly.

16. In the result, appeal filed by the Revenue in ITA No. 4654/Del/2015 is dismissed and the CO of the assessee in CO No.397/Del/2025 is allowed.

Order pronounced in the open court on 07.09.2026

Sd/- **(VIKAS AWASTHY)** **JUDICIAL MEMBER**	Sd/- **(NAVEEN CHANDRA)** **ACCOUNTANT MEMBER**

Date:- 07.09.2026

Priti Yadav, Sr. Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI