



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 5973 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 6130 of 2025**

**FOR APPROVAL AND SIGNATURE:  
HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and  
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No

SUN PHARMACEUTICAL INDUSTRIES LIMITED

Versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 2(1)(1), VADODARA  
& ANR.

Appearance:

MR SAURABH SOPARKAR SENIOR ADVOCATE MR B S

SOPARKAR(6851) for the Petitioner(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 2

MR RUTVIJ R PATEL(10615) for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Date : 06/01/2026

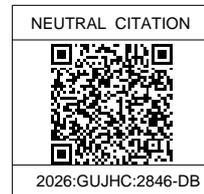
**COMMON ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. With consent of learned advocates for the respective parties, the matters are taken up for final hearing.

**RULE.** Learned Senior Standing Counsel Mr. Rutvij R. Patel waives service of notice of rule on behalf of the respondent no.1.

2. Since common issue is involved in both the writ petitions, having common parties, the same are decided by this common judgment and order. The captioned writ petition being Special Civil Application No.5973 of 2025 is taken as a lead matter and the facts are borrowed from it.

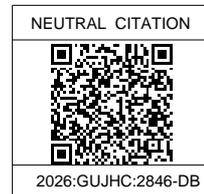


### **BRIEF FACTS :**

3. By way of present writ petitions, the petitioner – Company has assailed the impugned Assessment Order dated 26.03.2025 and 27.03.2025 passed by the respondent no.2 under Section 143(3) read with Sections 263 and 144 B of the Income Tax, 1961 (for short ‘ the IT Act’) for the Assessment Years 2017-18 and 2018-19.

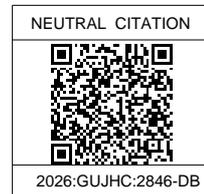
4. The facts of the case is that the petitioner is a pharmaceutical Company engaged in the business of marketing, trading and exporting of pharmaceutical products. The petitioner filed its original return of income on 30.11.2018 declaring loss of Rs.2248,16,32,703/- and thereafter revised return of income for Assessment Year 2018-19 on 31.03.2019 declaring a loss of Rs.1506,40,88,610/-. The case of the petitioner-company was selected for scrutiny under Computer Assisted Scrutiny Selection (for short “CASS”) and notice under Section 143(2) of the Income-tax Act, 1961 came to be issued on 23.09.2019. The case of the petitioner-company was thereafter transferred to the Faceless Assessing Officer on 15.10.2020. Since the reasons for scrutiny included international transactions arising out of business restructuring and high-risk international transactions (transfer pricing risk parameters), the case was referred to the Transfer Pricing Officer (for short “TPO”) by respondent No.1 on 29.01.2021. The TPO, after considering the submissions of the petitioner, passed an order under Section 92CA(3) of the IT Act on 26.07.2021 making an upward adjustment of Rs.94,88,151/-.

4.1 Thereafter, the respondent No.2 continued the assessment proceedings and issued a draft assessment order under Section 144C of



the IT Act on 20.09.2021. The petitioner did not approach the Dispute Resolution Panel and consequently, a final assessment order came to be passed under Section 143(3) read with Sections 144C(3) and 144B of the IT Act on 29.10.2021, assessing the total income of the petitioner at a loss of Rs.532,43,67,584/- and book loss of Rs.303,73,10,617/-. Subsequently, the Principal Commissioner of Income-tax, Vadodara (for short "PCIT") had issued a notice under Section 263 of the IT Act on 18.01.2024, holding that the assessment order for A.Y. 2018-19 was erroneous and prejudicial to the interest of the revenue within the meaning of Section 263 read with Explanation-2 thereof. The petitioner filed a detailed reply on 12.02.2024 objecting to the proceedings under Section 263 of the IT Act. However, disregarding the objections, the PCIT passed an order dated 24.03.2024 setting aside the assessment order dated 29.10.2021 and directing the Assessing Officer to frame a fresh assessment *de novo*. Pursuant thereto, the respondent No.2 initiated fresh assessment proceedings and issued various notices, which were duly responded to by the petitioner. Eventually, a show-cause notice was issued and upon request of the petitioner, a video-conference hearing was conducted on 18.03.2025.

4.2 Thereafter, a draft Assessment Order under Section 144C of the IT Act, was passed on 20.09.2021. At the time of original assessment proceedings, the respondent no.2 passed the impugned final Assessment Order. The final Assessment Order passed by the respondent no.2 includes variation in the income of the petitioner-Company which arose from the order of Transfer Pricing Officer (for short 'TPO') passed under sub-Section(3) of Section 92CA of the IT Act.

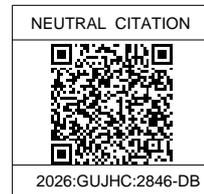


### **SUBMISSIONS ON BEHALF OF THE PETITIONER:**

5. Learned senior advocate Mr. Soparkar has submitted that the final assessment order dated 26.03.2025 is illegal, inasmuch as the same has been passed without issuing draft assessment order as prescribed under Section 144 C of the IT Act.

5.1 It is submitted that once the Commissioner of Income Tax (for short “ CIT”) has passed the order dated 24.03.2024 setting aside the original Assessment Order dated 29.10.2021 and the Assessing Officer was directed to pass fresh assessment order *de novo*. It was incumbent upon the Assessing Officer to issue a draft assessment order as per the provisions of Section 144C (1) of the IT Act.

5.2 Learned senior advocate Mr. Soparkar has also referred to the provisions of sub-section 15 to Section 144C of the IT Act and has submitted that the TPO has admitted that the petitioner is an eligible assessee within the meaning of Clause (b) to sub-section 15 to Section 144C of the IT Act. It is thus submitted that the impugned assessment order becomes vulnerable as it is void ab initio, having being passed without issuing draft assessment order. In support of his submissions learned senior advocate Mr. Soparkar has placed reliance on various decisions of this Court as well as other High Courts. He has referred to the decisions of High Court of Delhi in the case of Principal Commissioner of Income Tax vs. Sumitomo Corporation India Pvt. Ltd. [2024] 166 taxmann.com 55 (Delhi). It is contended that the Delhi High Court after considering the array of decisions including the decision of this Court dated 31.07.2017 passed in Tax Appeal No.542 of 2017 has set aside the Assessment order which is bereft of the draft Assessment Order



as required under Section 144C (1) of the IT Act. It is further submitted that various High Courts including the Delhi High Court has also refused the request made by the revenue to remand the matter and hence it is urged that the impugned order may be quashed and set aside.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS :**

6. Responding to the foregoing submissions, learned Senior Standing Counsel Mr.Patel appearing for the respondents has contended that the impugned Assessment Order dated 26.03.2025 is precisely passed by the Assessing Officer in view of the specific directions issued vide order dated 24.03.2024 passed under Section 263 of the IT Act by the CIT while directing the Assessing Officer to pass fresh assessment order *de novo*. It is submitted that in view of the aforesaid order the provisions of Section 144C of the IT Act, have been precisely not resorted by the Assessing Officer and the only course available to the respondent was to pass a Final Assessment Order dated 26.03.2025 under Section 274 read with Section 270(A) of the IT Act. Learned Senior Standing Counsel Mr. Patel has further submitted that in wake of the fact that the CIT had remanded the matter and directed the Assessing Officer to pass a fresh order *de novo*, then, the respondents authorized to pass order under two eventualities namely: first, at the stage of issuance of Notice under Section 143 (2) of the IT Act and secondly, as has been precisely done in the present case, i.e. by passing the Final Assessment Order. Since, the petitioner in the first place did not chose to file any application before Dispute Resolution Pannel (for short' the DRP') after the Draft Assessment Order under Section 144C of the IT Act dated 20.09.2021 was passed.



7. It is submitted that since the Divisional Appellate Authority under Section 263 of the IT Act did not interfere with the adjustment done by the TPO, it was not necessary to issue draft order. It is submitted that TPO adjustments were already accepted by the assessee and since no objections were filed by the assessee, no fresh reference is required to be made to the TPO and the Assessing Officer can proceed to pass final order without issuing a draft order under Section 144C of the IT Act. It is submitted that in the proceedings under Section 143(3) read with Section 263 of the IT Act, the issue of transfer pricing was not referred to the TPO by the Faceless Assessing Officer so there was no need to pass draft assessment Order. Finally, it is urged that in case, this Court is inclined to set aside the impugned order, then the matter may be remanded to the Assessing Officer for reassessment.

8. With regard to the case law cited by the learned advocate for the petitioner, learned Senior Standing Counsel Mr. Patel, has submitted that the ratio of the aforesaid judgments would not come to the rescue of the petitioner since they do not deal with the issue which has been raised with the present writ petition, more particularly, in wake of the fact that vide order dated 24.03.2024 passed under Section 263 of the IT Act the CIT, the AO was directed to pass fresh Assessment Order *de novo*.

#### **ANALYSIS AND OPINION:**

9. We have heard the learned advocates appearing for the respective parties, at length.

10. The following facts are established from the pleadings :-

10.1 The petitioner-company filed the revised return of income on 31.03.2019 at a loss of Rs.1506.40 crores. A Notice under Section 143(2)



of the IT Act was issued on 23.09.2019 and thereafter reference is made to the TPO on 29.01.2021. On 26.07.2021, the TPO passed an order making upward adjustment of Rs.94.88 lakhs. It is not in dispute and in fact admitted by the respondent, that the TPO has considered the petitioner-company as an eligible assessee within the meaning of sub-Section 15(b) to Section 144 C of the IT Act. Relevant extract of Section 144C is as under:

*"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 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,—*
  - (i) the Dispute Resolution Panel; and*
  - (ii) the Assessing Officer.*

*x x x x x x*

*(15) For the purposes of this section,—*

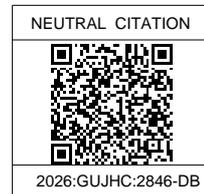
*(a) "Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;*

*(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*

*(ii) any foreign company. '.*

10.2 Since, the TPO had passed the order dated 26.07.2021 under section 92CA of the IT Act by making upward adjustment/varation in relation to transfer pricing, the petitioner will fall within the definition of

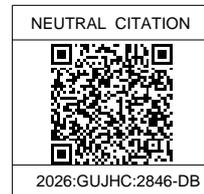


eligible assessee as per the provisions of the Section 144 C (1). Accordingly, the Assessing Officer issued a draft Assessment Order on 20.09.2021 as mandated by the provisions of Section 144C of the IT Act. The provisions of sub-Section (2) of Section 144 C of the IT Act, gives an opportunity to the assessee to file its objections to such variation before (I) the Dispute Resolution Panel, and (II) before the Assessing Officer.

10.3 The petitioner did not choose to file any application before the DRP under Clause (b) of sub-Section 2 of Section 144 C of the IT Act. Interestingly, on 18.01.2024, the PCIT in exercise of revisional powers, issued a Notice under Section 263 of the IT Act questioning the assessment order. Subsequently, the petitioner-company filed a detailed response on 12.02.2024 objecting to the proceedings under Section 263 of the IT Act, however, the PCIT passed an order dated 24.03.2024 setting aside the order dated 29.10.2021. The final observations made in the order dated 24.03.2024, has given rise to the issue raised in the present writ petition.

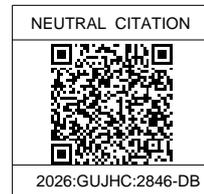
11. The necessary observations of the PCIT vide order dated 24.03.2024, is as under: -

*“15. In view of the above and in exercise of the powers conferred by the provisions of Section 263 of the Income Tax Act, 1961, the assessment order passed under Section 143(3) read with Section 144C(3) and 144B of the Income Tax Act, 1961 dated 29.10.2021 for the Assessment Year 2018-19 in the case of the above mentioned assessee is set aside with a direction to the Assessing Officer to pass fresh assessment order, de novo after taking into consideration the issue as may have been already considered together with the issue discussed hereinabove also. Needless to mention that while passing the fresh assessment order, consequent to this order under Section 263 of the Income Tax Act 1961, the Assessing Officer shall grant reasonable and sufficient opportunity of being heard to the assessee.”*



12. Thus, while exercising the power of revision under Section 263 of the IT Act, the PCIT has set aside the final Assessment Order dated 29.10.2021 which was passed under Section 143(3) read with Section 144C read with Section 144 B of the IT Act, by making specific observations by issuing a direction to the assessing Officer “ *to pass fresh assessment order, de novo, after taking into consideration the issue as may have been already considered together with the issue discussed hereinabove*”. The PCIT, did not clarify as to from which stage the *de novo* proceedings should commence. The reading of the order is self explanatory as it appears that the PCIT, Vadodara (I) had directed the Assessing Officer to pass a fresh Assessment Order after taking into consideration the issues which were already considered together with the issues discussed therein, which also mentions about the upward adjustment of Rs. 94.88 lakhs as per the order passed by the TPO.

12.1 Interestingly, the Assessing Officer issued a Show Cause Notice dated 14.03.2025, to the petitioner-company and a final Assessment Order dated 26.03.2025 is passed under the provisions of 143 read with Section 263 read with Section 144 B of the IT Act without passing draft order. If the facts which have emerged in the present writ petition are reconciled, it is noticed that from the stage of issuance of Notice on 23.09.2019 under Section 143(2) of the IT Act till the passing of Final Assessment Order on 26.03.2025, they exposit that after the reference was made by the TPO on 29.01.2021 and the TPO passed an order on 26.07.2021 making upward adjustment of Rs.94.88 lakhs, a draft Assessment order dated 20.09.2021 was passed under Section 144 C of the IT Act. Accordingly, when the petitioner-company did not chose to file application with DRP a final Assessment Order was passed on 29.10.2021.Hence, the assessment which got crystalised on 29.10.2021,



was resurrected in revisional proceedings under the provisions of Section 263. Thus, the Final Assessment Order dated 29.10.2021, which emerged from the reference made by the TPO and passing of the draft Assessment Order under Section 144 C of the IT Act, gets encompassed in the order dated 24.03.2024 passed under the provisions of Section 263 of the IT Act, in view of the specific directions issued by the PCIT, to pass a fresh Assessment Order *de novo*, while taking into consideration all the issues which already considered earlier with the issues discussed in the said order.

12.2 Thus, in our considered opinion the appropriate course which ought to have been adopted by the Assessing Officer was to fall back to the stage of the order dated 26.07.2021 passed by the TPO suggesting upward adjustment of Rs.94,88,151/-. The draft Assessment Order dated 20.09.2021 culminated into final Assessment Order passed on 29.10.2021, which was subject matter of revision. Hence, it was not open for the Assessing Officer to directly pass an order on 26.03.2025 under the provisions of Section 143, read with Section 263 read with Section 144 B of the IT Act, while ignoring the provisions of Section 144 C of the IT Act, more particularly, in wake of the draft assessment order on 20.09.2021 and final assessment order dated 29.10.2021.

13. At this stage, we may refer to the decision of the Delhi High Court in the case of **Sumitomo Corporation India (P) Ltd. (supra)**, wherein after considering the array of judgments, including the judgment of this Court dated 31.07.2017 passed in Tax Appeal No. 542 of 2017 in the case of *Commissioner of Income Tax, Vadodara – 2 & Ors Vs. C-SAM(India) Pvt. Ltd.*, the Delhi High Court has held as under:-

*“51. We on an independent analysis, find ourselves equally unable to view or accept Section 144C when mandating a draft assessment order being framed as being a mere procedural equally is fastest from a reading of that section, it not only adopts remedies that may be pursued to assail an*



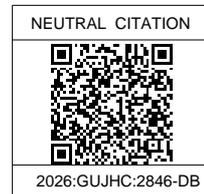
*order rendered on adjudication, but the decision is itself made subject to internal review at more than one level and a hierarchy of authorities. It creates a right to challenge a decision at multiple levels be it before the DRP, CIT(A) or the Tribunal. It is in that sense a self-contained code for assessment in respect of eligible assesseees.*

*52. A failure to frame a draft order of assessment not only curtails the right of the assessee to adopt corrective measures, it also deprives it of a salutary right to challenge the draft in terms of the statutory mechanism laid in place. We thus find that the imperative of framing an order in draft was correctly propounded by JCB India Ltd., Nokia India, C-Sam as well as the host of precedents noticed above as being mandatory, a legal imperative and not merely a procedural irregularity as was contended at the behest of the respondents.*

*53. It would thus be wholly incorrect to accept the contention of Section 144C being similar or akin to the statutory provision which Sarbjit Singh, fails to cast a cloud or shadow of doubt on the decisions rendered in the context of Section 144C. formed the subject matter of consideration in Sarabjit Singh. Thus, we have no hesitation in holding that the decision in Sarabjit Singh, fails to cast a cloud or shadow of doubt on the decisions rendered in the context of Section 144C.*

*54. That then takes us to evaluate the validity of the submission of the respondents that the Court would be justified in framing a direction remanding the matter to the AO so as to enable it to draw proceedings afresh and from the stage of infraction. The acceptance of that submission, however, hits a serious and perhaps insurmountable roadblock in light of the statutory prescriptions of limitation created by Section 153. Undisputedly, the assessment consequent to remand would be regulated by sub-sections (3) and (4) of Section 153. When read together and bearing in mind the admitted fact of the Tribunal having remitted the matter to the desk of the TPO, the assessment was liable to be concluded within nine months coupled with the additional period of twelve months as provided. Learned counsels for the respondents fairly conceded that the said period is no longer available today and has come to an end by efflux of time. It was in the aforesaid light that Mr. Aggarwal sought to draw sustenance from sub-section (6) of Section 153 to contend that the same would enable the AO to carry out an assessment by virtue of the "finding or direction contained in..... an order or direction of any court...".*

*55. We find ourselves unable to sustain that submission since Section 153(6) essentially seeks to override and overcome the statutory prescription of limitation created by sub-sections (1), (1A) and (2) thereof. This is evident from the section itself proclaiming that nothing contained in those sub-sections would apply to the classes of assessments specified therein. That power is further cabined with sub-section (6) stipulating that the invocation of that provision would be subject to the provisions of sub-sections (3), (5) and (SA). The provision on a plain reading thus neither lifts the period of limitation prescribed by sub-Sections (3) and (4) nor*

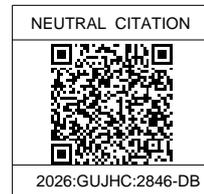


*does it extend the period which would otherwise be available to the AO to conclude the assessment.*

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*60. We thus find ourselves unable to acceded to the submission addressed by the respondents on this score. Once it is conceded that the period for completion of the assessment exercise in terms of sub-sections (3) and (4) of Section 153 has expired, it would be wholly impermissible for us to expand or enlarge the period prescribed for completion of assessment. Concededly, these are also not cases where the Explanation to Section 153 was asserted to be applicable.”*

14. Thus, it is the settled legal precedence, that Section 144C mandates a draft assessment Order and failure to frame a draft order of assessment, curtails the right of the assessee to adopt the corrective measures. In the present case, the reason assigned by the respondents for justifying the impugned Final Assessment Order 26.03.25, and having not passed the draft order, is the action or choice of the petitioner-company in not filing an application before the DRP after the draft assessment Order dated 20.09.2021. We do not subscribe to the submission advanced by the respondent-revenue since, filing of the application before the DRP would a stage subsequent to passing of draft Assessment Order under Section 144C(1) of the IT Act, which stems out from the order dated 26.07.2021 passed by the TPO. Thus, when the order was passed by the TPO on 26.07.2021, which culminated into the passing of the draft Assessment Order on 20.09.2021 and also a Final Assessment Order passed on 29.10.2021, the setting aside of the said Assessment Order dated 29.10.2021, by the PCIT cannot dilute the provisions of Section 144C(1) of the IT Act, only for the reason that the petitioner-company in the first instance did not choose to file an objection/application before DRP under Section 144C(2)(b)(i) of the IT Act. The revenue cannot take shelter under the act of the petitioner of not filing the objection with DRP after draft assessment order dated 20.09.2021, since the occasion to file the objection to variation under Section 144C(2)(b)(i) of the IT Act will only arise if there is a draft order under section 144C(1) of the IT Act.



15. The remand order dated 18.01.2024, passed by the PCIT under Section 263 of the IT Act for passing de novo order cannot be construed to such an extent of allowing a detour to the provisions of Section 144 (C) (1) of the IT Act, hence it was not open for the Assessing Officer to directly pass the Assessment Order dated 26.03.2025 without resorting to the provisions of Section 144C of the IT Act, predominately, when in the first instance a draft Assessment Order was passed by the Assessing Officer on 20.09.2021.

16. The request made by learned Senior Standing Counsel Mr. Patel to remand the matter back to the Assessing Officer is also unreasonable as the remand proceedings would be barred by the limitation as prescribed under Section 153(6) of the IT Act as held by the Delhi High Court in case of *Sumitomo Corporation India(P)Ltd. (supra)*.

### FINAL ORDER

17.1 Hence, in view of the violation of the provisions of Section 144(C) of the IT Act of failure to pass the draft assessment order, we quash and set aside the impugned Assessment Orders dated 26.03.2025 and 27.03.2025. However, necessary consequences shall follow. The respondent-revenue shall act accordingly.

18. Accordingly, the present writ petitions stand allowed. Rule is made absolute. No orders as to costs.

**(A. S. SUPEHIA, J)**

**(PRANAV TRIVEDI, J)**