

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 77/2019

THE PR. COMMISSIONER OF INCOME TAX -4 ..... Appellant  
Through: Mr. Deepak Anand, Advocate.

versus

HEADSTRONG SERVICES INDIA PVT. LTD. .... Respondent  
Through:

Reserved on : 03<sup>rd</sup> December ,2020

% Date of Decision: 24<sup>th</sup> December, 2020

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**MANMOHAN, J:**

1. „Elementary My Dear Watson“ is a popular phrase often attributed to Sherlock Homes, the English detective in the works of Sir Arthur Conan Doyle. However, it seems, like the present case highlights, nothing is elementary to the appellant, even when the statute uses clear and explicit language, till the superior courts like the High Court and the Supreme Court repeatedly interpret a section.
2. It is pertinent to mention that the present appeal has been filed challenging the order dated 9<sup>th</sup> November, 2017 passed by the Income Tax Appellate Tribunal (ITAT), whereby the Revenue“s appeal, being No.6117/Del/2014 for assessment year 2007-08, has been dismissed.

### BRIEF FACTS OF THE CASE

3. The respondent-assessee, a wholly owned subsidiary of Headstrong Services LLC, USA, had filed its return of income declaring income of Rs.30,64,480/- for the relevant assessment year. Thereafter, revised return of income was filed on 30<sup>th</sup> January, 2009 that was processed under Section 143(1) of the Income Tax Act, 1961 (for short „the Act“) and subsequently, case of the respondent-assessee was selected for scrutiny assessment and notice under Section 143(2) of the Act was issued.

4. During scrutiny assessment, the Assessing Officer made a reference to the office of Transfer Pricing officer (TPO) in relation to the international transaction between the respondent-assessee and its Associated Enterprise (AE). Draft assessment order under Section 144C(1) of the Act was passed on 31<sup>st</sup> December, 2010 and the respondent-assessee filed objections before the Dispute Resolution Panel (DRP). Thereafter, assessment under Section 143(3)/144C of the Act was completed in pursuance to directions issued by the DRP, wherein addition was made on account of excess claim of deduction under Section 10A of the Act and transfer pricing adjustment made by the TPO.

5. Being aggrieved, the respondent-assessee filed an appeal before the ITAT, where the additions on account transfer pricing and deduction under Section 10A of the Act were set aside and the Assessing Officer was directed to frame the assessment afresh. The matter was restored to the Assessing Officer vide para 4.2.1 of ITAT order dated 17<sup>th</sup> July, 2012, which reads as under:

*"4.2.1 As a view has already been taken by the Tribunal in the aforesaid case and in the case of Ameriprise India Pvt.*

*Ltd. in ITA no. 5694/Del/2011 for assessment year 2007-08 dated 26.3.2012, we are bound to follow the view. Therefore, it is held that it was incumbent on the AO to supply the information to the assessee, obtain its objections, if any, and pass order after taking into account the information and the objections of the assessee. This has not been done in respect of 20 comparables.*

*Therefore, the matter of transfer pricing adjustment is restored to the file of the AO for following proper procedure as mentioned above and decide the matter denovo."*

(emphasis supplied)

6. Pursuant to the aforesaid remand, the Assessing Officer passed the assessment order dated 31<sup>st</sup> March, 2014 and the same was challenged by the respondent-assessee before the IT(A), which partly allowed the appeal. Being aggrieved by the order passed by the CIT(A), respondent-assessee as well as Revenue filed appeals before the ITAT, being ITA No. 5409/DEL/2014 and ITA No. 6117/DEL/2014 respectively.

7. In its appeal, respondent-assessee raised the ground with regard to validity of the remand assessment as the Assessing Officer had not followed the procedure contemplated under Section 144C of the Act, while framing remand assessment. The ITAT vide order dated 30<sup>th</sup> September, 2015 allowed the appeal of the respondent-assessee on the said ground without going into the merits of the case. The relevant portion of the said order is reproduced hereinbelow:-

*10. .... it is crystal clear that, a direction was given to the AO for following proper procedure while deciding the issue relating to transfer pricing adjustment denovo. It is not in dispute that for the international transactions a procedure for computation of arms length price has been prescribed in Section 92C of the Act and the*

*AO is required to make a reference to the Transfer Pricing Officer (TPO) u/s 92CA(1) of the Act, provisions of the said section read as under:*

*—92CA (1) Where any person, being the assessee, has entered into an international transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Commissioner, refer the computation of the arms length price in relation to the said international transaction under Section 92C to the Transfer Pricing Officer.*

*11. From the above provisions it is crystal clear that the TPO after getting the reference from the AO is required to give an opportunity of being heard to the assessee who can furnish evidences including any information or document and after considering those the TPO shall by order in writing determine the arms length price in relation to the international transaction and send copy of his order to the AO as well as to the assessee. In this regard a specific provision has been made in sub section 3 of section 92CA of the Act which read as under:*

*"92CA .....*

*(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction [or specified domestic transaction] in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer [(3A) Where a reference was made under subsection (1) before the 1st day of June, 2007 but the order under subsection (3) has not*

*been made by the Transfer Pricing Officer before the said date, or a reference under subsection (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires.]]*

*12. After receiving the order from the TPO, the AO is required to pass a draft assessment order u/s 144C(1) of the Act and the same is to be forwarded to the eligible assessee who after receiving the draft assessment order may file his objection, if there is any variation in the income or loss returned, to the Dispute Resolution Panel within 30 days of the receipt of the draft order and the DRP after considering the objections of the assessee shall issue the directions as per the provisions of section 144C(6) of the Act which read as under:*

*"144C .....*

*(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.*



13. In our opinion, in such type of cases, the DRP before issuing any direction may make such an inquiry as it thinks fit or choose any further inquiry to be made by any income tax authority, and report the result of the same to it, the DRP may confirm, reduce or enhance the variation proposed in the draft order, however, it shall not set aside any proposed variation or issue any direction under sub section 5 of section 144C of the Act for further inquiry and passing of the assessment order. Every direction issued by the DRP shall be binding on the AO but no direction shall be issued unless an opportunity of being heard is given to the assessee. Thereafter the AO shall in conformity with the directions of the DRP complete the assessment order within one month from the end of the month in which such direction is received. However, in the instant case, the AO did not pass any draft order and also not asked the assessee to file the objection before the DRP, he framed the assessment on the basis of comment of the TPO to whom a reference was made by him vide letter dated 07.02.2014. The TPO also passed the order u/s 92CA(5) r.w.s 254 of the Act on 28.03.2014 and not u/s 92CA(3) of the Act. Therefore, it can be said that in the present case, the AO had not followed the procedure in accordance with law as was directed by the ITAT vide order dated 17.07.2012, so, the assessment order dated 31.3.2014 passed by the AO was not in accordance with law and was void ab-initio. For the aforesaid view, we are fortified by the judgment of the Hon'ble Madras High Court in the case of Vijay Television Pvt. Ltd. vs. TRP and Ors reported at (2014) 369 ITR 130 wherein it has been held as under:

*"In terms of section 144C(1), the Assessing Officer has no right to pass a final order pursuant to the recommendations made by the Transfer Pricing Officer. "*

*It has further been held that:*

*—The assessing Officer accepted the variation submitted by the Transfer Pricing Officer without giving the assessee any opportunity to object to it and passed the assessment order. As this had occurred after October 1, 2009, the cut-off date prescribed in sub-section (1) of section 144C, the*

*Assessing Officer was mandated to first pass a draft assessment order, communicate it to the assessee, hear his objections and then complete the assessment. Admittedly, this had not been done and the Assessing Officer had passed a final assessment order dated December 22, 2011, straightaway. Therefore, the order of assessment was clearly contrary to section 144C and was without jurisdiction, null and void."*

*14. In view of the aforesaid discussion and the judicial pronouncement, we set aside the impugned order of the Id. CIT(A) on this issue. In the present case, the procedure contemplated u/s 144C of the Act is violated by the AO, therefore, we are of the confirmed view that the assessment vide order dated 31.03.2014 framed by the AO was null and void ab initio. Since we have decided the legal issue in favour of the assessee therefore, no separate findings are being given for the other issues raised by the assessee on merit.*

*15. In the result appeal of the assessee is partly allowed.*

8. In view of the aforesaid order dated 30<sup>th</sup> September, 2015, ITAT dismissed the Revenue's appeal holding that since the assessment had been annulled in the appeal filed by the respondent-assessee, nothing survived for consideration in the Revenue's appeal. This order has been impugned before this Court. The relevant portion of the impugned order is reproduced hereinbelow: -

*—3. At the outset, Ld. AR brought to our notice that the appeal preferred by the assessee in ITA No.5409/Del/2014 was heard and disposed of by a Co-ordinate Bench of this Tribunal vide order dated 30.09.2015 set aside the impugned order of the Ld. CIT (A) and held that the procedure contemplated under Section 144 of the Act was violated by the AO as such the assessment order dated 31.03.2014 framed by the AO was null & void ab initio. A copy of the said order is produced before us for perusal. Ld. DR does not*

*dispute the fact of disposal of the appeal of the assessee by way of this order.*

*4. We have perused the order and operative portion of the order is as follows:-*

*14. "In view of the aforesaid discussion and the judicial pronouncement, we set aside the impugned order of the Ld. CIT(A) on this issue. In the present case, the procedure contemplated u/ s 144C of the Act is violated by the AO, therefore, we are of the confirmed view that the assessment vide order dated 31.03.2014 framed by the AO was null and void ab initio. Since we have decided the legal issue in favour of the assessee therefore, no separate findings are being given for the other issues raised by the assessee on merit. "*

*5. In view of the annulment of the assessment and setting aside of the impugned order of the Ld. CIT(A), nothing survives for consideration in this appeal as such while respectfully following the same, we dismiss this appeal of the Revenue.*

*6. In the result, the appeal of the Revenue is dismissed.*

#### **ARGUMENTS ON BEHALF OF THE APPELLANT**

9. Mr. Deepak Anand, learned standing counsel for the appellant submitted that the ITAT had erred in holding that the assessment was null and void, inasmuch as it had not considered the fact that the present matter was a case of remand assessment on a limited point and not the original assessment and that Section 144C of the Act provides for reference to DRP only „in the first instance“.

10. He emphasized that there was no infirmity with the remand assessment as the case had already gone through the due process of DRP as provided in Section 144C of the Act when the original assessment was framed. According to him, Section 144C of the Act mandates the procedure

to be followed only „in the first instance“ and not in the course of remand assessment.

11. He stated that the ITAT had erroneously dismissed the appeal on the aforesaid ground without adjudicating and deciding the grounds of appeal raised by the Revenue on merits.

12. He lastly stated, without prejudice to other grounds, that this was not a case of an order passed without jurisdiction and at the highest, assuming without admitting, it was a procedural irregularity and not an illegality.

#### COURT'S REASONING

ONCE THE ITAT DIRECTED THE ASSESSING OFFICER TO DECIDE THE MATTER DE NOVO, IT MEANT THAT A NEW HEARING OF THE MATTER HAD TO BE CONDUCTED, AS IF THE ORIGINAL HEARING HAD NOT TAKEN PLACE. CONSEQUENTLY, THE ASSESSING OFFICER HAD TO DECIDE THE MATTER IN ACCORDANCE WITH THE ELABORATE PROCEDURE MENTIONED IN SECTION 144 C AND NOT DEHORS IT.

13. The ITAT while remanding the matter of transfer pricing adjustment to the Assessing Officer vide order dated 17<sup>th</sup> July, 2012 had not only „restored“ the matter “to the file of the Assessing Officer —for following proper procedure” but also to “decide the matter de novo”.

14. This Court is of the view that once the ITAT directed the Assessing Officer to decide the matter *de novo*, it meant that a new hearing of the matter had to be conducted, as if the original hearing had not taken place (See: meaning of “*De novo* hearing” in Black’s Law Dictionary).

15. Consequently, the Assessing Officer had to decide the matter in accordance with the elaborate procedure mentioned in Section 144C and not *dehors it*.

SECTION 144C ENVISAGES A CHANGE OF FORUM AND IT LEADS TO COMPLETE CESSATION OF THE JURISDICTION OF THE ASSESSING OFFICER ON PASSING OF THE DRAFT ORDER. THEREAFTER THE ASSESSING OFFICER IS TO GIVE EFFECT TO EITHER THE DIRECTION OF THE DISPUTE RESOLUTION PANEL OR PASS AN ORDER ON ACCEPTANCE BY THE ASSESSEE.

16. This Court is of the opinion that it is essential to analyse Section 144C. The said Section reads 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 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.]*

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

*(a) "Dispute Resolution Panel" means a collegium comprising of three Principal Commissioners 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.]*

17. In the opinion of this Court, Section 144C is a self contained provision which carves out a separate class of assesses i.e. „eligible assessee“ i.e. any person in whose case the variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of Section 92CA. For this class of assesses, it prescribes a collegium of three commissioners, once objections are preferred. Dispute Resolution Panel’s powers are co-terminous with the CIT(A), including the power to confirm, reduce or enhance the variation proposed and to consider the issues not agitated by the Assessee in the objections. In fact, under Section 144C, the Dispute Resolution Panel can issue directions as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and the Dispute Resolution Panel can confirm, reduce or enhance the variations proposed in the draft order. It is specifically stipulated in Section 144C that every direction issued by the Dispute Resolution Panel shall be binding on

the Assessing Officer. This is akin to the Assessing Officer giving effect to an order passed by the Appellate Authority or the Courts.

18. Consequently, Section 144C envisages a change of forum and it leads to complete cessation of the jurisdiction of the Assessing officer on passing of the draft order. Thereafter the Assessing officer is to give effect to either the direction of the Dispute Resolution Panel or pass an order on acceptance by the Assessee.

THE EXPRESSION 'IN THE FIRST INSTANCE' HAS BEEN USED IN SECTION 144C TO SIGNIFY THE FIRST STEP TO BE TAKEN BY THE ASSESSING OFFICER IN A SERIES OF ACTS CONTEMPLATED BY THE SAID SECTION. TO ACCEPT THE APPELLANT'S ARGUMENT WOULD BE TO PERMIT THE ASSESSING OFFICER TO DECIDE THE OBJECTIONS FILED BY THE ASSESSEE – WHICH POWER HAS BEEN SPECIFICALLY DENIED BY THE STATUTE.

19. The expression „in the first instance“ has been used in Section 144C to signify the first step to be taken by the Assessing Officer in a series of acts contemplated by the said Section while dealing with the case of an eligible assessee. This Court is further of the view that if the Assessing Officer under Section 144C can prepare a draft assessment order only, then by virtue of a remand order which directs the Assessing Officer to decide the matter *de novo*, the Assessing Officer cannot get the power to pass an assessment order, when there is an objection by the Assessee like in the present case, without reference of the Dispute Resolution Panel which comprises of three Principal Commissioners or Commissioners of Income Tax constituted by the Board.

20. Now to accept the appellant's argument would be to permit the Assessing Officer to decide the objections filed by the Assessee – which power has been specifically denied by the statute.

**IT IS SETTLED LAW THAT WHEN A POWER IS GIVEN TO DO CERTAIN THING IN A CERTAIN WAY, THE THING MUST BE DONE IN THAT WAY OR NOT AT ALL AND OTHER METHODS OF PERFORMANCE ARE FORBIDDEN**

21. It is further settled law that when a power is given to do certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are forbidden. [See: *Taylor Vs. Taylor*, 1875) 1 Ch.D.426; *Nazir Vs. King Emperor*, AIR 1936 PC 253, AIR 1975 SC 985; *Babu Verghese Vs. Bar Council of Kerala*, (1999) 3 SCC 422].

**FAILURE TO ADHERE TO THE MANDATORY PROCEDURE PRESCRIBED UNDER SECTION 144C OF THE ACT WOULD VITIATE THE ENTIRE PROCEEDINGS AND THE SAME CANNOT BE TREATED AS AN IRREGULARITY/ CURABLE DEFECT.**

22. The appellant has also contended that the failure to follow the procedure under Section 144C of the Act, at the highest, was a procedural irregularity and not an illegality. This issue is no longer *res integra*. It is now settled law that failure to adhere to the mandatory procedure prescribed under Section 144C of the Act would vitiate the entire proceedings and the same cannot be treated as an irregularity/ curable defect.

23. In *ESPN Star Sports Mauritius S.N.C. ET Companies vs. Union of India*, (2016) 388 ITR 383 (Delhi) this Court, after discussing the judgments of the Andhra Pradesh High Court, High Court of Bombay as well as Madras High Court in *Vijay Television Pvt. Ltd. vs. TRP and Ors.*

(2014) 369 ITR 130 has held that failure to pass a draft assessment order under Section 144C(1) of the Act would render the final assessment order without jurisdiction, null and void and unenforceable. The said view was reiterated by this Court in *Turner International India Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Circle-25(2), New Delhi, WP(C) 4260-4261/2015* as well *Nokia India Pvt. Ltd. vs. Additional Commissioner of Income Tax, WP(C)3629/2017*. The relevant portion of the judgment in *Turner International India Pvt. Ltd.* (supra) is reproduced hereinbelow:-

—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) of the Act is no longer *res integra*. 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 27<sup>th</sup> 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 Indi [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.*

*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.*

*16. The Court is unable to accept the above submission. The legal position as explained in the above decisions is 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.¶*

### CONCLUSION

24. Consequently, in the present case, in complete contravention of Section 144C, the Assessing Officer wrongfully assumed the jurisdiction and passed the final assessment order without passing a draft assessment order and without giving the respondent/assessee an opportunity to raise objections before the Dispute Resolution Panel.

25. Keeping in view the aforesaid, this Court is of the opinion that no question of law, let alone a substantial question of law, arises in the present appeal.

26. This Court is of the view that till the Income Tax Department ensures that the Assessing Officers follow the mandate of law, in particular, binding provisions like Section 144C and eschew filing of unnecessary appeals rather than in nearly all matters where the Assessing Officer has taken a view against the Assessee, the assessments will not achieve finality for a number of years like in the present case where the case of assessment year 2007-08 stands remanded and restored to the file of the Assessing Officer.

27. Consequently, we dismiss the present appeal and confirm the impugned order of the ITAT with costs of Rs.11,000/- to be paid to Delhi High Court Legal Services Committee.

**MANMOHAN, J**

**SANJEEV NARULA, J**

**DECEMBER 24, 2020**

KA/rn