

# Tax Flash News

12 August 2023

## The time limit for completion of assessment under Section 153 is applicable to assessments routed through DRP mechanism

### Executive summary

Section 144C of the Income-tax Act, 1961 (the Act) provides for a special assessment mechanism for certain class of taxpayers. Under such mechanism, the Assessing Officer (AO) issues a draft order of assessment to the taxpayer. Such order can be challenged before the Dispute Resolution Panel (DRP). The AO later finalises the assessment by passing a final order based on the directions of DRP.

If the taxpayer is not agreed with the final order, it challenges such order before the Income-tax Appellate Tribunal (the Tribunal). In such cases, the Tribunal may remand back the case to the AO for fresh consideration<sup>1</sup>. In such cases, Section 153(3) provides a time limit to complete the assessment procedure including the process of fresh draft assessment order, objection with DRP and final assessment order. Generally, the tax department contend that Section 144C is a self-contained code of assessment and therefore time limit to complete the assessment under Section 153 is not applicable to assessment under DRP route.

Recently, the Bombay High Court in the case of Shelf Drilling Ron Tappmeyer Limited<sup>2</sup> (the taxpayer) held that the time limit prescribed under Section 153 will prevail over and above the time limit prescribed under Section 144C. The AO may follow the procedure prescribed under Section 144C, but the entire procedure has to be commenced and concluded within the time period provided under Section 153(3).

### Facts of the case

- The taxpayer is a company incorporated in Cayman Island and headquartered in United Arab Emirates. The taxpayer is engaged in the business of shallow water drilling for clients engaged in the oil and gas industry. The taxpayer filed its return of income declaring a total loss under normal provisions instead of Section 44BB as was regularly filed by the taxpayer<sup>3</sup>. Subsequently, the return was selected for scrutiny by the AO.
- The AO passed a draft assessment order rejecting books of accounts. The AO computed taxpayer's income under Section 44BB as against the loss claimed by the taxpayer under the normal provisions. The taxpayer filed its objections before the DRP against draft assessment order under Section 144C. The DRP did not accept the objections of the taxpayer. On the basis of the DRP's direction, the AO passed the final assessment order.
- The Tribunal held in favour of the taxpayer and remanded the matter to the AO for fresh adjudication under Section 254.
- Thereafter, the AO passed a draft assessment order on 28 September 2021 considering the extended period under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) and treated it as a final assessment order.

<sup>1</sup> Under Section 254 - Orders of Appellate Tribunal

<sup>2</sup> Shelf Drilling Ron Tappmeyer Limited v. ACIT (Writ Petition No. 2340 of 2021, 2661 of 2021, 3059 of 2021) – Taxsutra.com

<sup>3</sup> Section 44BB(3) provides an option to the taxpayer to opt out from the provisions of Section 44BB subject to specified conditions

- The taxpayer to safeguard against the disability of the objections being treated as delayed, filed its objections on 27 October 2021 before the DRP.
- In the meanwhile, the taxpayer also filed this writ petition challenging the draft order dated 28 September 2021 on the following grounds:
  - The preliminary ground was that the due date for making the final assessment was 30 September 2021 under Section 153(3) read with TOLA. The AO could not pass the final assessment order before such date. The matter was time barred on 30 September 2021.
  - Therefore, the return of income filed by the taxpayer should be accepted.
- The issue before the High Court was whether the time limit prescribed under Section 153 will prevail over and above the time limit prescribed under Section 144C. The taxpayer contended that after the Tribunal's order, the time limit for passing the draft assessment order, objection with DRP and the final assessment order ought to have been passed within the time limit prescribed under Section 153 and as extended by the TOLA i.e. 30 September 2021. However, the tax department's contention was that there is no time limit prescribed to pass the draft assessment order under Section 144C, therefore, there was no question of the assessment being barred under Section 153(3).
- The time limit prescribed under Section 153 will prevail over and above the assessment time limit prescribed under Section 144C. The AO may follow the procedure prescribed under Section 144C, but the entire procedure has to be commenced and concluded within the period provided under Section 153(3).
- The assessment has to be concluded within twelve months as provided in Section 153(3) when the matter has been remanded to the AO by the Tribunal under Section 254. Thus, in the instant case, the AO had to ensure that the entire procedure prescribed under Section 144C is completed with a final order.
- The exclusion of applicability of Section 153, in so far as non-obstante clause in Section 144C(13) is concerned, it is for limited purpose to ensure that *dehors* larger time available, an order based on the directions of the DRP has to be passed within 30 days.
- Accordingly, in the instant case, after 30 September 2021, the AO was not having authority to pass any final assessment order. Consequently, passing of only a draft assessment order before 30 September 2021 was not sufficient. The Tribunal relied on decisions in the case of Roca Bathroom Products (P) Ltd<sup>4</sup>.
- Accordingly, since no final assessment order could be passed in the present case as the same was time barred, the return of income as filed by the taxpayer was to be accepted.

## High Court's decision

- Section 144C is a self-contained code of assessment and time limits are inbuilt at each stage of the procedure of assessment. The purpose is to fast-track a special type of assessment. Thus, it cannot be considered to mean that overall time limits prescribed have been given a go by in the process.
- Wherever the legislature intended extra time to be provided, it is expressly provided it in Section 153. Further, Explanation 1 to Section 153 provides for cases where time taken for certain activities have to be excluded while computing the time period of limitation. The Explanation does not cover Section 144C.
- If the tax department's contention is accepted that when there is a remand as in this case, the AO is unfettered by limitation, it would run counter to the object of the provisions of Section 144C. Considering the language of Section 144C and 153, it cannot be accepted that the provisions of Section 153 are excluded to the operation of Section 144C.

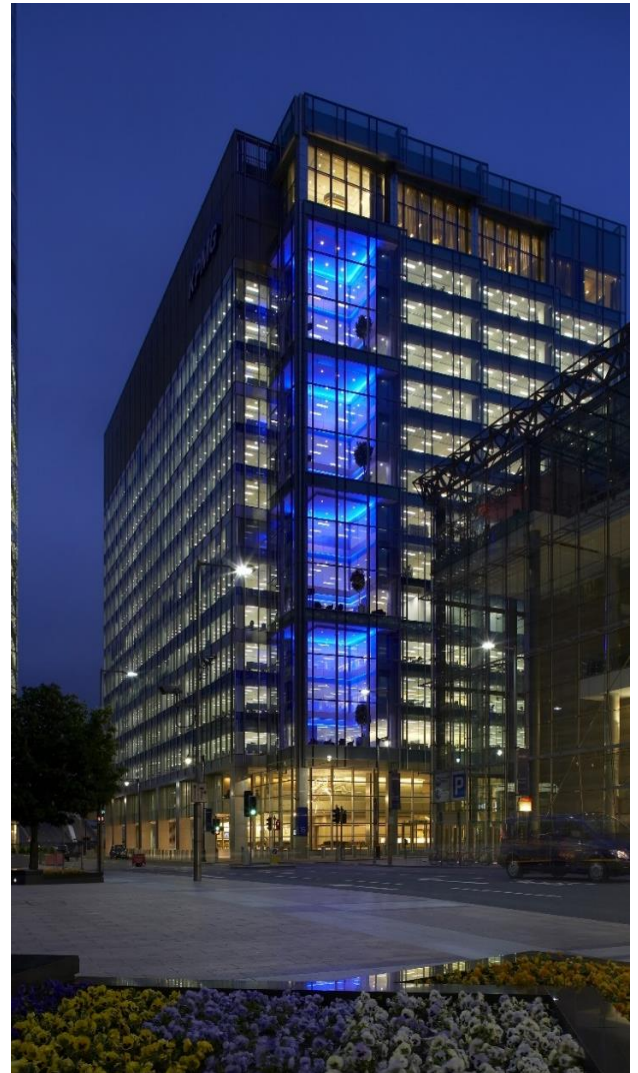
- This ratio is applicable in similar type of cases where the original order of assessment was required to be passed within the period of limitation set out in Section 153.

## Our comments

The Bombay High court has laid down an important principle which will help taxpayers to argue their cases where the tax department takes more than the prescribed time limit to complete the assessment in DRP cases. This High Court has interpreted the DRP mechanism as a fast-track special mechanism and intent of such mechanism would be achieved only when the assessment is completed within the prescribed time limit.

<sup>4</sup> Roca Bathroom Products (P) Ltd. v. DRP [2021] 127 taxmann.com 332 (Mad), CIT v. Roca Bathroom Products (P) Ltd. [2022] 140 taxmann.com 304 (Mad)

This decision of the Bombay High Court which is in line with the decision of the Madras High Court in the case of Roca Bathroom Products (P) Ltd. will have far reaching implications, having the impact of all final assessment orders passed pursuant to DRP directions after the due date, as being time barred. The tax department has challenged the decision in the case of Roca Bathroom Products (P) Ltd. before the Supreme Court. It would be interesting to see how the Supreme Court will deal with this issue.



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