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# Tax Flash News

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# Split verdict by Supreme Court on interplay of various limitation periods prescribed for completion of assessment proceedings

## Executive summary

The Income-tax Act, 1961 (the Act) prescribes the time limit for the completion of the assessment proceedings. These time limits are subject to certain extensions and exclusions. However, there is no explicit provision to extent the limitation period by the time prescribed for the completion of the Dispute Resolution Panel (DRP) proceedings.

An issue arose whether or not the time limit prescribed for the completion of assessment should be extended by the DRP timelines, in view of the non-obstante clause in the DRP provisions.

In the case of *Shelf Drilling*[1], the Supreme Court delivered a split verdict on this issue.

Upholding the Bombay High Court decision, Justice B.V. Nagarathna held that the timeline prescribed for the DRP proceeding is subsumed within the limitation period prescribed under the Act for the completion of assessment proceedings. On the contrary, Justice S.C. Sharma opined that the DRP timeline is in addition to the overall limitation period.

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[1] *ACIT (International Taxation) & Others* v. *Shelf Drilling Ron Tappmeyer Ltd. Etc. (*SLP (Civil) Nos.20569-20572 of 2023)

In light of the divergent views, the matter has been placed before the Hon'ble Chief Justice of India for the constitution of an appropriate Bench to reconsider the issue afresh.

## Facts of the case

The taxpayer, a non-resident company, was eligible for presumptive basis of taxation under the Act[2]. However, for the year under consideration, the taxpayer opted to file its tax return under the normal provisions of the Act (declaring a loss) instead of presumptive taxation.

The Revenue rejected the taxpayer's claim and computed taxable income under the presumptive taxation provisions. The taxpayer filed objections before the DRP, which were rejected. Based on the directions issued by the DRP, the Revenue passed the final assessment order.

The taxpayer challenged the final assessment order before the Tribunal, which remanded the matter to the Revenue for fresh adjudication *vide* order dated 4 October 2019.

Considering the extended timeline notified under TOLA[3], due to the COVID-19 pandemic, the Revenue passed a draft assessment order on 28 September 2021.

The taxpayer filed its objections before the DRP on 27 October 2021 and simultaneously filed writ petition before the Bombay High Court, contending that final assessment order under DRP mechanism cannot be passed by the Revenue after 30 September 2021 as per the limitation period under the Act[4], read with TOLA.

The Bombay High Court, following the Madras High Court decision in the case of *Roca Bathroom Products*[5], decided the matter in favour of the taxpayer.

Aggrieved by the High Court 's decision, the Revenue filed a special leave petition before the Supreme Court.

## Relevant provisions under Act

**Section 153** prescribes time limit for completion of assessment proceedings under the Act[6] as under:

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[2] Section 44BB – 'Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils'

[3] Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

[4] Section 153(3)

[5] *CIT* v *Roca Bathroom Products (P.) Ltd*. [2022] 445 ITR 537 (Madras)

[6] Section 143 (Assessment) or Section 144 (Best judgement assessment)

- Time limit is thirty-three months from the end of the relevant financial year[7].

- In cases where the Tribunal remands back the matter to the Revenue for fresh adjudication[8], the time limit for passing fresh assessment order is 12-months from the end of the financial year in which the Tribunal order is received by the prescribed tax authority (the 12-months limitation period)[9].

**Section 143(3)** deals with the regular assessment proceedings.

**Section 144C** provides for a special assessment mechanism through DRP for certain taxpayers, including foreign companies (the eligible taxpayers)[10]. Notable are the overriding provisions in its sub-sections – non-obstante clause in sub-section (1) overrides the entire Act, whereas those in sub-sections (4) and (13) override section 153.

As per section 144C(1), *notwithstanding anything to the contrary contained in this Act*, the Revenue is required to forward a draft order of assessment to the eligible taxpayers. The taxpayer may accept or challenge it by filing objections before the DRP.

[7] Section 153(1)
[8] On or after 1 April 2019
[9] Section 153(3)
[10] Section 144C(15)

The relevant timelines (overall 11-months period) prescribed under the DRP mechanism are as under:

- Filing of objections before DRP - within 30 days of receiving the draft assessment order[11].

- Issue of directions by DRP - within nine months from the end of the month in which the draft assessment order is forwarded to the eligible taxpayers[12].

- Final Assessment Order - *notwithstanding anything to the contrary contained in section 153 of the Act*, within one month from the end of the month of receiving the DRP's directions [section 144C(13)].

However, where draft assessment order is accepted by the taxpayer, *notwithstanding anything contained in section 153 of the Act*, the Revenue passes the final assessment order within one month from the end of the month in which the prescribed period for filing the objections expires [section 144C(4)].

In the instant case, the Tribunal's order was passed on 4 October 2019 (i.e., in the financial year ending 31 March 2020) and the 12-months limitation period ended on 31 March 2021. Under the TOLA, the timelines for completion of assessment etc. under section 153 was extended till 30 September 2021.

[11] Section 144C(2)
[12] Section 144C(12)

The issue before the Supreme Court was whether the time period prescribed for completion of the DRP proceedings should be subsumed within the 12-months limitation period under the Act.

## Justice Nagarathna's judgment

The DRP proceedings must be concluded within the limitation period prescribed under section 153. Accordingly, in the instant case, no final assessment order can be passed by the Revenue after 30 September 2021 due to the expiry of the limitation period under the Act read with TOLA.

*Principles of statutory interpretation*

Though the courts may invoke the doctrine of purposive interpretation, a construction that renders a provision ineffective or futile should be avoided.

Where the language of a statute is clear, plain, and unambiguous, the courts are bound to uphold the expressed intent of the legislature, regardless of the consequences that may follow.

The statute should be read as a whole, and each provision must be construed in harmony with others to ensure a coherent legislative framework, avoiding any internal conflict.

Where a specific provision has to be read within the mandate of a general provision, it should be construed so as to give effect to the mandate of the general provision. However, if two provisions cannot be reconciled, as there is an absolute contradiction between them, the latter must prevail.

*Non-obstante Clause*

While interpreting a non-obstante clause, the courts must carefully assess the legislative intent and the context in which the non-obstante clause is used.

Only in the case of a conflict, a provision containing a non-obstante clause would be given its full effect. The non-obstante clause would not take away the effect of any other provision of the Act which follows the same.

*Interplay of limitation periods*

The non-obstante clause in section 144C(1) needs not be juxtaposed with section 153, as there is no inconsistency in these sections. Section 153 prescribes the limitation period for completing the assessment proceedings, whereas section 144C prescribes the assessment procedure for eligible taxpayers.

The limited purpose of section 144C(1) is to override sections like 143 (regular assessment proceedings) by introducing a special procedure for eligible taxpayers, without affecting the overall limitation period under section 153.

This is reinforced by the non-obstante clauses in sections 144C(4) and 144C(13), which specifically reference section 153 regarding limitation periods—not the manner of passing an order. The one-month limits in sections 144C(4) and 144C(13) operate within, and in juxtaposition to, the 12-month limit of section 153, ensuring compliance with the overall assessment completion period.

In cases where DRP mechanism applies, the maximum period stipulated for completion of a final assessment order would still be within the 12-months limitation period. This implies that a draft assessment order has to be forwarded by the Revenue to the eligible taxpayer within one month from the end of the financial year in which the Tribunal order is received by the prescribed tax authority.

*Meaning of "assessment order"*

Section 153 states that "an order of fresh assessment" has to be made within the 12-months limitation period. The term "assessment" is the process of determining the total income of a taxpayer and the sum payable by such taxpayer as income tax[13].

Section 144C(1) deals with the 'draft order' which is not appealable and thus, any provision relating to an order of assessment have no bearing on the interpretation of section 144C(1).

It is the final assessment order under section 144C(13) (and not draft order) which is envisaged by section 153. The DRP proceeding is nothing but a mere continuation of the assessment proceedings[14].

*Irrelevant considerations*

Whether or not the Revenue has adequate time to deliver on the statutory obligations under the DRP mechanism cannot have a bearing on the interpretation of the Act.

Similarly, if a statute grants a beneficial option to the taxpayer, exercising that option should not result in the taxpayer being placed at a disadvantage. Thus, the mere fact that eligible taxpayers choose to file objections before the DRP does not justify extending the prescribed limitation period of 12-months.

*Other points*

The time limit prescribed under section 153 gets extended in transfer pricing matters which is not the case in the instant situation.

[13] *CIT* v. *JK Commercial Corpn. Ltd*. [1976] 4 SCC 517 (Supreme Court)
[14] Manual of Office Procedure, 2019 of the Income Tax Department

Similarly, certain periods are excluded[15] while computing the 12-months limitation period. There is no explicit provision in section 153 which extends the limitation period by the time consumed in the DRP proceedings.

## Justice S.C. Sharma's judgment

In the case of DRP proceedings, the draft assessment order needs to be forwarded to the eligible taxpayers within the limitation period prescribed under section 153 of the Act while the final assessment order can be passed later in adherence with the DRP timelines.

*<u>Interplay of limitation periods</u>*

The 12-months limitation period is strictly applicable to section 144C(1) (for the draft assessment order). The non-obstante clauses in section 144C(4) and section 144C(13) remove the application of section 153 and the timelines prescribed thereunder. Accordingly, these non-obstante clauses extend the timeline for the passing of the final order.

Once the procedure under section 144C(1) gets triggered, the time available for DRP proceedings is prescribed in section 144C, and that time will be over and above the timelines prescribed under section 153.

[15] Explanation 1 to section 153

As section 153 does not specifically refer to section 144C, it cannot therefore be held that the timelines under section 153 also includes the DRP procedure.

Even if it is accepted that the non-obstante clause in section 144C(1) is limited to passing a final assessment order under section 143(3), the associated timelines for section 143(3) prescribed under section 153 should be covered within the scope of that non-obstante clause.

The proceedings before the DRP are initiated at the option of the taxpayer. Thus, the time spent in DRP proceedings cannot be considered as a delay at the end of the Revenue.

The argument of the taxpayer that unlike various situations, there is no explicit provision in section 153 to extend/exclude the timelines with respect to the DRP proceedings was rejected. The provision[16] excluding certain time while computing the limitation period deals with situations where the tax officer's quasi-judicial role is eclipsed for a certain period, and he is revested with the quasi-judicial power subsequently. The provision merely excludes the period of eclipse while computing the limitation period. As the tax officer, acting in an executory role, has to pass an order in conformity with the DRP directions, such provision has no relevance in the context of DRP proceedings.

[16] Explanation 1 to section 153

*Other points*

The balance must be maintained to ensure that the Revenue has sufficient time and opportunity to assess income, prevent any income from escaping taxation, and uphold the taxpayer's right to have their return scrutinised in a timely manner.

If the entire procedure prescribed under DRP mechanism gets subsumed within the 12-months limitation period, this would result in a complete catastrophe for recovering the lost tax. The time within which the Revenue would have to pass orders would be negligible.

There is a potential revenue loss of INR 1.3 lakh crore in tax disputes pending nationwide, which may be rendered time-barred if the interpretation adopted by the Bombay High Court is upheld..

## Our comments

The conflicting judicial views underscore the importance of interpreting the interplay between the limitation periods prescribed under section 144C and section 153 in determining the validity of final assessment orders issued pursuant to the DRP directions. Given the far-reaching implications for the taxpayers and the tax administration, the decision by the larger bench of the Supreme Court will be crucial in providing much-needed clarity and settling this important legal issue.

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