

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 4708 OF 2023

(For Final Hearing and Disposal) (Under Article 136 of the Constitution of India, 1950)

PETITIONER (APPELLANT BEFORE SC)

ASSISTANT COMM. OF INCOME TAX, INTL. TAXATION & Others ... Appellant

VERSUS

RESPONDENT (RESPONDENT BEFORE SC)

VULCANTECH OILS LTD. ... Respondent

SUBJECT MATTER OF APPEAL

Whether the Hon'ble High Court of Madras grossly erred in law by holding that the time taken by the Dispute Resolution Panel (DRP) to issue directions under Section 144C(5) of the Income Tax Act, 1961, must be subsumed within the overall limitation period prescribed under Section 153(3) of the Act?

Note: All procedural facts - including the initial assessment round, the specific terms of the ITAT on remand, the AO order on remand are settled and not in dispute **and the dispute is strictly confined to the S. 153 vs. S. 144C timeline conflict.**

IN THE HIGH COURT OF JUDICATURE AT MADRAS
APPELLATE JURISDICTION
WRIT APPEAL NO. 2340 OF 2022

Asst. Commr. (International Tax) & Ors. ... Appellant (Revenue)

VERSUS

VulcanTech Oils Ltd. ... Respondent (Assessee)

Pronounced on: 04.08.2023

JUDGMENT AND ORDER

1. Background of the Dispute:

This Writ Appeal is preferred by the Revenue, challenging the judgment and order dated 28.12.2021 passed by a Learned Single Judge of this Court in Writ Petition No. 123 of 2021, whereby the Learned Single Judge allowed the Writ of the Petitioner company noting that the draft order under Section 144C was passed on 28.09.2021 and **upheld that no final assessment order could forthwith be passed due to the expiry of due date of final assessment order to be passed on 30.09.2021 as contended by the computation of timelines u/s 153(3) r.w. S.144C by the Petitioner company.**

The Respondent in this Writ Appeal is a non-resident assessee, which is engaged, inter alia, in the business of providing services or facilities in connection with prospecting for or extraction or production of mineral oils, had the option to compute their income on presumptive basis under Section 44BB of the Act; however, for A.Y. 2014-15, the respondent opted out of the option to compute their income on presumptive basis and declared a total loss of Rs.123,54,67,908/- in their Return of Income filed on 29.11.2014. Vide Notice issued under Section 143(2) dated 28.08.2015, respondents' Return of Income was selected for scrutiny. Subsequently, the Draft assessment order was issued on 26.12.2016 computing the respondent's total income at Rs.4,34,79,980/-. Undisputedly, Respondent is an eligible assessee as per Section 144C(15) of the Act. In accordance with Section 144C, respondent filed its objections before the Dispute Resolution Panel (for short, 'DRP') against the draft assessment order, which eventually did not accept respondent's case and by an order dated 28.09.2017 gave directions to the Assessing Officer. Upon receipt of the directions of the DRP, the Assessing Officer passed the final assessment order on 30.10.2017 under Section 143(3) read with Section 144C(13) of the Act.

Aggrieved by the said Order dated 30.10.2017, the respondent filed an appeal before the Income Tax Appellate Tribunal ('Tribunal', for short) which by way of its order dated

04.10.2019 allowed the appeal and remanded the matter to the Assessing Officer for fresh adjudication.

Pursuant to such remand, on 05.02.2020, the respondent, informed the Assessing Officer about the order and requested for an early disposal of the same. More than a year thereafter, on 22.02.2021, the respondent was called upon to produce certain contractual details and supply reasons for incurring a loss during A.Y. 2014-15. Further information was requested vide notice dated 10.09.2021 issued under Section 142(1) of the Act. Subsequently, several notices were issued under Section 142(1) of the Act calling upon the respondent to provide documents and details. Finally, on 23.09.2021 at 09:00 AM, the respondent was issued a show cause notice allowing it time to respond till 03:30 PM on the next day i.e. 24.09.2021. As required, the respondent filed its response on 24.09.2021. Thereafter, an assessment order came to be passed in remand on 28.09.2021, which was clarified on 29.09.2021 to be a draft assessment order.

In compliance with Section 144C(2), the respondent filed its objections before the DRP on 27.10.2021 and also filed a Writ petition before this High Court impugning the draft assessment order dated 28.09.2021 by contending that no final assessment order could be passed now as the **period of limitation expired on 30.09.2021 under Section 153(3) of the Act read with the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short, 'TOLA')** and the Notification issued thereunder. (This was calculated by 153(3) base limit of 31.3.2021, being 12 months from end of FY 31.3.2020 in which the Tribunal order was passed, and then add TOLA's effect of pushing all deadlines between 20-3-2020 and 30-06-2021 to 30.9.2021)

- 2. Respondent's Contention (VulcanTech):** The Respondent company in this Writ Appeal had successfully argued before the Single Bench that any Final Assessment Order would be *invalid* because it would be passed after the non-derogable outer limit of **30.09.2021, because timelines under Section 144C of the Act have to be subsumed within the overall time period prescribed under Section 153(3) of the Act.** This we note is the crux of this entire case.
- 3. Appellant's Contention (ACIT):** The Appellant in this Writ Appeal (Revenue) reiterates its stand – it asserts that S. 144C is a self-contained code, and the final order passed under S. 144C(13) is governed by its own limitation, which operates independently of and subsequent to the S. 153 limits.
- 4. Analysis and Findings of the Division Bench:** We concur with the analysis and findings of the Learned Single Judge. The scheme of S. 153 meticulously lists out the

circumstances under which periods are excluded from the time limit. **Crucially, the time consumed by the DRP process under S. 144C is not included in this list of exclusions.** Thus, Section 144C must necessarily conclude within the timeframe prescribed under Section 153(3) of the Act.

The non-obstante clause in S. 144C(13) governs the relationship between the DRP directions and the AO's final order but it does not override the general, overall limitation provided by S. 153(3). To hold otherwise would allow the Revenue to initiate a process late (close to the extended deadline) and effectively extend the overall statutory limitation indefinitely, which is against the legislative intent of bringing finality to assessments.

5. Conclusion: We find no infirmity in the reasoning of the Learned Single Judge. Thus, we find the procedure under Section 144C has to be concluded within the time frame envisaged under Section 153(3) as in the instant case (and in our view even under Section 153(1)). If the above interpretation is made, then, there would be a harmonious interpretation of Sections 144C and 153. Therefore, the non obstante clauses in sub-sections of Section 144C have been accordingly interpreted.

The Writ Appeal is accordingly **DISMISSED**, and the order of the Learned Single Judge in Writ Petition No. 123 of 2021 is **AFFIRMED**.

Sd/-

By the Court