HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 19212 OF 2021 (T-RES)

BETWEEN:

M/S. DOVER INDIA PRIVATE LIMITED,
BAGMANE LAUREL, 1ST FLOOR
BLOCK C, BAGMANE TECH PARK
C.V. RAMAN NAGAR
BANGALORE, KARNATAKA - 560 093
REPRESENTED BY ITS MANAGING DIRECTOR
MR. PRASHANTH SANTHANAM
AGED ABOUT 44 YEARS

…PETITIONER

(BY SRI. NAGESHWARA RAO, ADVOCATE FOR
SRI. MOHAN MAIYA G.L, ADVOCATE)

AND:

Digitally signed by SHARADAVANI B
Location: High Court of Karnataka

1. DEPUTY COMMISSIONER OF INCOME TAX
CIRLE 2(1) (1), 2ND FLOOR,
BMTC BUILDING, 80 FEET ROAD,
6TH BLOCK, NEAR KHB GAMES VILLAGE,
KORAMANGALA, BENGALURU - 560 095.

2. PRINCIPAL COMMISSIONER OF INCOME TAX-2
BMTC BUILDING, 80 FEET ROAD,
6TH BLOCK, NEAR KHB GAMES VILLAGE,
KORAMANGALA, BENGALURU - 560 095.

3. NATIONAL FACELESS ASSESSMENT CENTRE
C BLOCK, 4TH FLOOR
S.P.M CIVIL CENTER
NEW DELHI - 110 001

REPRESENTED BY ADDITIONAL/JOINT/
DEPUTY/ASST. COMMISSIONER OF INCOME TAX/
INCOME TAX OFFICER.

4. UNION OF INDIA
MINISTRY OF FINANCE
THROUGH THE SECRETARY,
DEPARTMENT OF REVENUE
ROOM NO.46, NORTH BLOCK
NEW DELHI - 110 001.

…RESPONDENTS

(BY SRI. Y.V. RAVI RAJ, ADVOCATE AND
SRI. N. DILIP, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED FINAL ASSESSMENT (IMPUGNED ORDER DATED 21.9.2021 VIDE ANNEXURE-C AND NOTICE OF DEMAND DATED 21.9.2021 ISSUED BY THE R-3 VIDE ANNEXURE-D BEING ASSESSMENT ORDER AND DEMAND NOTICE DTD.21.9.2021 RELATING TO ASSESSMENT YEAR 2018-2019 AS NULL AND VOID TIME BARRED AND INVALID IN LAW AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following reliefs:

a) issue writ in the nature of Certiorari or Mandamus or any other appropriate writ, order or direction quashing impugned final assessment order ('impugned order') dated 21.09.2021 bearing ITBA/AST/S/143(3)/2021-22/1035771312(1) DIN: vide Annexures "C" & notice of demand having DIN: dated ITBA/AST/S/156/2021-22/1035771433(1) 21.09.2021 issued by Respondent No.3 vide Annexure-"D" being Assessment order and demand

notice dated 21.09.2021 relating to Assessment year 2018-2019 as null and void, time barred and invalid in law.

b) issue writ in the nature of Prohibition or any other appropriate writ, order or direction staying further proceedings pursuant to Assessment order bearing DIN: ITBA/AST/S/143(3)/2021-22/1035771312(1) dated 21.9.2021 being Annexure "C" & notice in DIN: ITBA/AST/S/156/2021-22/1035771433(1) dated 21.09.2021 issued under section 156 of the Act being Annexure "D" and/or any other proceedings initiated thereunder for assessment year 2018-19.

c) issue writ in the nature of Mandamus or any other writ, order or direction restraining the Respondents, their superiors, subordinates, servants and/or agents from giving any effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the Assessment order bearing DIN: ITBA/AST/S/143(3)/2021-22/1035771312(1) dated 21.9.2021 passed under section 143(3) read with section 144B of the Act and as also the impugned notice in DIN: ITBA/AST/S/156/2021-22/1035771433(1) dated 21.09.2021 issued under section 156 of the Act and/or in furtherance of the said notice and/or in any proceedings initiated thereunder for Aducate for the this petition. the assessment year 2018-19, pending the disposal of this petition.

d) For ad-interim relief in terms prayer (b) and (c) above,

e) Such further and/or other orders be made and/or directions be given as would afford complete relief to the Petitioner.

2. Learned counsel for the petitioner submits that the issue in controversy involved in the present petition is directly and squarely covered by the following judgments of this Court which are as under:

i) ITA No. 128/2021 between Pr. Commissioner OF Income Tax-2 and Another v. M/s. Cisco Systems Capital (India) Pvt. Ltd., disposed on 20.09.2021.

ii) ITA No.174/2021 between Pr. Commissioner OF Income Tax-2 and Another v. M/s. Cisco Systems Capital (India) Pvt. Ltd., disposed on 20.09.2021.

3. Per contra, learned counsel for the respondent submits that there is no merit in the petition and the same is liable to be dismissed.

4. As rightly contended by the learned counsel for the petitioner, the issue in controversy involved in the present petition is directly and squarely covered by the judgment of this Court in ITA No. 128/2021 and ITA No.174/2021 *supra*, wherein it is held as under:

IN ITA No.128/2021:

> *"This appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act' for short)*

against the order of the Income Tax Appellate Tribunal, 'A' Bench, Bengaluru (for short 'Tribunal') in ITA No.900/BANG/2019 and ITA No.1009/BANG/2019 relating to the Assessment Year 2009-2010 raising the following substantial questions of law:

> *(1) "Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse in nature as the Tribunal has held that assessing authority has not followed the due procedure laid down in section 144C of the Act in passing assessment order without appreciating that the assessing authority has passed order in pursuance to remand order passed by Tribunal and it is order giving effect passed under section 143(3) & 144C read with section 254 of the Act and as such passing of draft assessment order3 does not arise as per section 144C and 254 of the Act?"*
>
> *(2) "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in quashing the order dated 30.03.2016 passed by assessing authority on the ground that this is in violation of the mandate of section 144C of the Act without appreciating that order passed by the assessing authority in question is not the order in first instance?"*
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> *(3) "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in dismissing Revenue's appeal by holding that assessment order itself has been quashed and as such order passed under section 263 of the Act does not arise?"*

2. The assessee is a company engaged in the business of leasing and finance. The assessee has filed its return for the year under consideration declaring the income. The assessment order under Section 143(3) read with Section 144C of the Act was passed. Subsequently, Principal Commissioner of Income Tax initiated suo-motu revision proceedings under Section 263 of the Act which was challenged before the Tribunal. The same came to be quashed by the Tribunal remanding the matter pertaining to the original assessment order passed by the Assessing Authority for re-adjudication. Subsequently, transfer Pricing Officer (TPO for short) passed an order under SEction92VAread with Section 254 of the Act relating to the Assessment year 2008-09 and 2009-10. On receipt of the said order from TPO, Assessing Authority passed an order under Section 143(3) of the Act against which the assessee preferred an appal before the CIT(A), primarily on the ground that the Assessing Authority has failed to pass draft assessment order, which came to be dismissed. Being aggrieved, the assessee preferred an appeal before the Tribunal. The Tribunal has allowed the assessee's appeal for the Assessment year in question dismissing the Revenue's appeal. Being aggrieved by the same, the Revenue has preferred this appeal.

3. Learned counsel Sri. E I Sanmathi, appearing for the appellant/Revenue submitted that the order of the Tribunal is not in conformity with the procedure laid down under Section 144C of the Act in passing the assessment order. The Tribunal has failed to appreciate the mandate of Section 144C of the Act that the assessing authority shall, in the first instance, forward a draft of the proposed order of assessment to the eligible assessee for acceptance or filing of objections. In the present case, draft order was issued in the first instance, but after remand from the Tribunal, it was not mandatory for the Assessing Officer to pass the draft order. The Tribunal failed to appreciate this vital aspect of the

matter in allowing the assessee's appeal. Further the Tribunal grossly erred in holding that the assessment order itself has been passed under Section 263 of the Act. Placing reliance on the CBDT Circular No.9/2013 dated 19.11.2013, the learned counsel argued that in terms of the said circular, it is clear that Section 144C is applicable to any order which supposed to make any variation income or loss returned by an eligible assessee and there being no such variation returned by the eligible assessee in the second round of re-adjudication, it is not mandatory on the Assessing Officer to pass draft assessment order. Reliance was placed on section 292B and 292BB of the Act in support of his contention that such mistake if any, is curable. Thus, it was argued that the order of the Tribunal is wholly perverse and suffers from infirmity. Accordingly, seeks to answer the Substantial Questions of Law raised, in favour of the Revenue and against the assessee.

4. Learned counsel Sri. Nageswara Rao, appearing through video conferencing for the respondent/assessee justifying the impugned order of the Tribunal, has placed reliance on the judgment of the Hon'ble High Court of Delhi, in the case of DCIT Vs. JCB India Ltd., [(2017) 85 taxmann.com 155 (Delhi)] and argued that the very same arguments now canvassed by the revenue were advanced by the learned Additional Solicitor General of India before the Hon'ble High Court of Delhi. On considering the identical arguments, the Hon'ble High Court of Delhi has negated the contentions of the Revenue and has held that passing of the draft of the proposed order under Section 144C of the Act is mandatory even after the remand from the Tribunal and it cannot be held to be the requirement of Section 144C of the Act only in the first instance and not after remand from the ITAT, such draft assessment order requires to be passed.

5. It was further argued that similar orders were passed by the Hon'ble High Court of Andhra Pradesh and Hon'ble High Court of Madras. The Special Leave Petitions Additional commissioner of Income Tax Vs. Nokia India Pvt., Ltd., (Special Leave Petition (Civil) Diary No(s).7302/2018) and The Deputy Commissioner of Income Tax Delhi Vs. Control Risks India Pvt., Ltd.,(Special Leave Petition (Civil) Diary No.7090/2018) filed by the Revenue have been dismissed. Hence, the Substantial Question of Law raised herein being fully covered by the judgment of the Hon'ble High Courts referred to supra, confirmed by the Hon'ble Apex Court, appeal of Revenue deserves to be dismissed answering substantial questions of law in favour of the assessee and against the Revenue

6. We have considered the rival submissions of the learned counsel appearing for both the parties and perused the material on record.

Regarding Substantial Questions of law No.1 and 2:

7. Section 144C of the Act reads thus:

"144C. (1) The Assessing Officer shall, notwithstanding anything to the contrary ontained 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."

8. Learned counsel for the Revenue has emphasized on the words 'first instance' to contend that after remand from the Tribunal there was no mandate on the part of the Assessing Officer to pass draft assessment order and reliance was placed on Section 292B of the Act to contend that the such mistake is curable. This issue is no more res-

integra. The Hon'ble High Court of Delhi in the case of JCB India Ltd., (supra) has observed thus:

> *"In almost identical facts, in Turner International (supra), this Court held in favour of the Assessee on the ground that it was mandatory for the AO to have passed a draft assessment order under Section 144C of the Act prior to issuing the final assessment order. The following passages from said decision are relevant for the present purposes:*
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> > *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.*
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> > *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 27th September, 2013.10*
> >
> > *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 India [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."

9. The arguments advanced by the learned Additional Solicitor General of India has also been recorded in para -16, which is quoted hereunder for ready reference:

> *"16. In response, Mr. Sanjay Jain, learned Additional Solicitor General of India appearing for the Revenue, submitted that there was an efficacious alternative remedy available to the Petitioner to file appeals against the impugned final assessment orders passed by the AO. It is denied that it was mandatory on the part of the AO to pass a draft assessment order since this was a second round before the TPO pursuant to remand by the ITAT. Moreover, it was not as if the ITAT had set aside the entire assessment order of the AO. The setting aside was only in respect of the transfer pricing adjustment and that too with a specific direction to the AO for determining the arms length price "after considering fresh comparables." Since the assessment itself was not cancelled by the ITAT or completely set aside, it is the provisions of Section 153 (3) (ii) of the Act which would apply. Mr. Jain submitted that the requirement of passing a draft assessment order under Section 144C was only in the first instance and not after the remand by the ITAT."*

10. Considering the similar arguments advanced by the Revenue even the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax, Vadodara-2 Vs. C-Sam12 taxmann.com 261 (Gujarat) has categorically observed that even in remand proceedings it was mandatory for the Assessing Officer to have passed draft assessment order under Section 144C of the Act prior to issuing of the final assessment order, issuance of final assessment order sans the draft order is bad in law. In the light of these judgments and perusing the circular instructions, which has been relied upon by the learned counsel for the Revenue that the provisions of Section 144C of the Act would be applicable to any order which proposed to be variation in income or loss returned by the eligible assessee, irrespective of the Assessment Year to

which it pertains, it is mandatory that the draft of the proposed order of assessment has to be passed by the Assessing Officer even after remand from the Tribunal. The interpretation of the Revenue inasmuch as the phrase 'at the first instance', is wholly misconceived. The mandatory requirement of passing draft order has to be strictly adhered to, irrespective of the remand order passed by the Tribunal. Having regard to the language employed by the legislature under Section 144C of the Act, it is mandatory to the Assessing Officer to pass draft assessment order before issuing the final order, breach of the same would result in violation of the principles of natural justice making the order itself void ab-initio. It is well settled law, if the order of the assessment itself is not valid then the further action of the Commissioner in initiating revision proceedings under Section 263 is not valid in the eye of law.

11. For the reasons aforesaid, substantial questions of law No.1 and 2 are answered in favour of the assessee and against the Revenue.

Regarding substantial question of law No.3:

12. Learned counsel for the assessee brought to our notice that ITA No.27/2019 filed by the Revenue challenging the order of the Tribunal relating to the order passed by the Commissioner under Section 263 of the Act relating to the Assessment Year 2008-09 has been dismissed by this Court on 18.06.2021. We have perused the copy of the order of this Court in ITA No.27/2019,Court has dismissed the appeal filed by the Revenue answering the Substantial Question of Law in favour of the assessee and against the Revenue. The Substantial Question of Law considered therein reads thus:

> *"Whether on the facts and in the circumstances of the case, the Tribunal*

is right in law in setting aside the order passed by the Pr. Commissioner of Income Tax under Section 263 of the Act by Tribunal relying on the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd., v/s. CIT even when the said authority passed the 263 order in terms of parameters of said section and as the order of assessment passed by assessing authority was erroneous and prejudicial to the interests of the Revenue as the assessing authority ignored the issue of ownership of assets to ascertain that whether assessee is eligible to claim depreciation or not?"

In view of the aforesaid ruling of this Court, answering question of law No.3 does not arise.

In the result, appeal stands dismissed.

IN ITA No.174/2021:

This appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act' for short) against the order of the Income Tax Appellate Tribunal, 'A' Bench, Bengaluru (for short 'Tribunal') in ITA No.900/BANG/2019 and ITA No.1010/BANG/2019 relating to the Assessment Year 2009-2010 raising the following substantial questions of law:

(1) "Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse in nature as the Tribunal has held that assessing authority has not followed the due procedure laid down in section 144C of the Act in passing assessment order without appreciating that the assessing authority has passed order in pursuance to remand order passed by Tribunal and

it is order giving effect passed under section 143(3) & 144C read with section 254 of the Act and as such passing of draft assessment order3 does not arise as per section 144C and 254 of the Act?"

(2) "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in quashing the order dated 30.03.2016 passed by assessing authority on the ground that this is in violation of the mandate of section 144C of the Act without appreciating that order passed by the assessing authority in question is not the order in first instance?"

(3) "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in dismissing Revenue's appeal by holding that assessment order itself has been quashed and as such order passed under section 263 of the Act does not arise?"

2. For the reasons stated in ITA No.128/2021, in the assessee's own case, the substantial questions of law No.1 and 2 are answered in favour of the assessee and against the Revenue. Substantial question of law No.3 does not arise for consideration since, the same would render academic in view of the substantial questions of law No.1 and 2 having been answered in favour of the assessee.

In the result, appeal stands dismissed.

In view of the dismissal of the main appeal, all the pending I.A.s are disposed of accordingly."

5. In the result, I pass the following:

ORDER

i) Writ Petition is ***allowed***.

ii) The Annexures- C, D and E all dated 21.09.2021, are hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BSV
List No.: 2 Sl No.: 1