IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH, NEW DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 3115/DEL/2009 [A.Y 2005-06)
ITA No. 2609/DEL/2011 [A.Y 2007-08)
ITA No. 654/DEL/2014 [A.Y 2010-11)
ITA No. 189/DEL/2015 [A.Y 2011-12)
ITA No. 4461/DEL/2016 [A.Y 2012-13)
ITA No. 869/DEL/2018[A.Y 2013-14)
ITA No. 411/DEL/2018 [A.Y 2014-15)
ITA No. 2975/DEL/2019 [A.Y 2015-16)
ITA No. 5223/DEL/2011 [A.Y 2004-05)
ITA No. 5224/DEL/2011 [A.Y 2008-09)
ITA No. 5633/DEL/2012 [A.Y 20095-10)

Super Brands Ltd [UK] C/o MM Mitra & Co. 234, Somdutt Chambers -II Bhikaji Cama Place New Delhi	Vs.	The A.D.I.T Circle – 1(1)(2) Inttl. Taxation New Delhi
PAN: AAICS 6497 G		
(Applicant)		(Respondent)

Assessee By : Shri Ajay Vohra, Sr. Adv
Ms. Shaily Gupta, CA

Department By : Ms. Anupama Anand, CIT- DR

Date of Hearing : 14.09.2022
Date of Pronouncement : 20.09.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This bunch of 11 appeals by the assessee are preferred against separate orders for captioned Assessment Years.

2. Since common issues are involved in all the captioned appeals, they were heard together and are disposed of by this common order for the sake convenience and brevity.

3. The common grievance on merits in the captioned appeals relates to the alleged constitution of dependent agent PE and taxability of royalty income under Article 7 of India – UK DTAA.

4. In ITA No. 2609/DEL/2020, 654/DEL/2020 and 869/DEL/2020 pertaining to Assessment Years 2007-08, 2010-11 and 203-14 respectively, there is a delay in filing the appeals by 145 days, 21 days and 46 days respectively.

5. The contents of the application for condonation of delay have been duly considered and since the ld. DR has not raised any strong objection against the condonation of delay and finding that the

assessee was prevented by reasonable and sufficient cause in not filing the appeals on or before the due date, the delay is condoned.

6. Except for appeal for Assessment Year 2005-06 in ITA No. 3115/DEL/2009, the assessee has raised additional ground which is common in all the Assessment Years and reads as under:

> "That on the facts and circumstances of the case and in law, the impugned order passed by the Assessing Officer is barred by limitation and void ab initio and, therefore, is liable to be quashed."

7. There is another additional ground raised in ITA Nos. 2601/DEL/2020, 654/DEL/2014, 189/DEL/2015, 4461/DEL/2016, 869/DEL/2018, 411/DEL/2018 and 2975/DEL/2019 and the same read as under:

> "That on the facts and circumstances of the case and in law, the Assessing Officer erred in passing a draft assessment order without appreciating that there was no variation in income returned by the appellant and, therefore the impugned order passed by the Assessing Officer is void ab initio and, therefore, is liable to be quashed."

8. In all the captioned Assessment Years, the assessee has also moved an application for admission of additional evidences except in Assessment Years 2013-14, 2014-15 and 2015-16.

9. The ld. DR strongly objected to the additional evidences furnished by the assessee stating that additional evidences should have been furnished by way of a separate Paper Book.

10. A perusal of our record shows that this contention of the ld. DR is factually incorrect because as per order sheet entry dated 24.10.2011, this Bench has noted that the assessee has filed additional evidences by way of a separate paper book alongwith application u/r 29 of the ITAT Rules.

11. We further find that the assessee has, for the convenience of the Bench and the ld. DR, rearranged additional evidences and merged them in a common Paper book, though filed separately as per Rules on 24.10.2011. Additional evidences are accordingly placed on record.

12. The ld. DR also strongly objected to the admission of additional grounds of appeal stating that these issues were never raised before the DRP and were also not raised before this Tribunal in Form No. 36B and are being raised now as an afterthought.

13. We do not find any merit in the submissions of the ld. DR. Firstly, there is no estoppel in law and secondly, the issue raised vide additional ground mentioned hereinabove do not require any verification of facts and are in consonance with the ratio laid down by the Hon'ble Supreme Court in the case of National Thermal Power Corporation 229 I TR 383 wherein the following ratio has been raised:

> "7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

14. Similar view has been taken in the case of Jute Corporation of India Ltd 187 ITR 688.

15. In light of the above ratio, we find that this Tribunal is not required to verify any new facts. Therefore, the additional grounds raised are admitted.

16. We will first address to the additional ground which reads as under:

> "That on the facts and circumstances of the case and in law, the Assessing Officer erred in passing a draft assessment order without appreciating that there was no variation in income returned by the appellant and, therefore the impugned order passed by the Assessing Officer is void ab initio and, therefore, is liable to be quashed."

17. The representatives of both the sides were heard at length, the case records carefully perused and relevant provisions of the Act have been duly considered.

18. Briefly stated, the facts of the case are that the Assessing Officer assumed jurisdiction over the assessee on filing of return by the assessee and accordingly, statutory notices were issued and served upon the assessee.

19. As per provisions of section 144C and 92B of the Act where the assessee had entered into international transactions or it is a foreign company being an eligible assessee as defined in Section 144C of the Act in respect of his income/loss, the Assessing Officer has made variation which is prejudicial to the interest of such assessee, the Assessing Officer is mandatorily required to pass proposed order of assessment, which is termed as 'Draft Assessment order'.

20. Provisions of section 144C as they stood at the relevant point of time of the captioned Assessment Years read as under:

> "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 in the income or loss returned which is prejudicial to the interest of such assessee.

(15) For the purposes of this section,—

(*a*) "Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income-tax constituted by the Board[54] 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 foreign company.]"

21. A perusal of the aforementioned section shows that it is applicable only in case the assessee is an eligible assessee as defined in Clause (b) of sub-section (15) and the Assessing Officer proposed to make any variation in income or loss returned by such assessee which is prejudicial to the interest of the assessee.

22. In Assessment Years 2007-08, 2010-11 to 2015-16 where this challenge is common, we find that the Assessing Officer has only re-characterized the income which was shown as royalty income by the assessee and was taxed as 'business income' by the Assessing Officer without there being any variation in income returned by the assessee.

In our understanding of the provisions of section 144C of the Act mentioned hereinabove, we are of the considered view that the Assessing Officer wrongly assumed jurisdiction u/s 144C of the Act when there is no variation in the income returned by the assessee.

23. Our view is supported by the decision of the co-ordinate Mumbai Bench in the case of Mousmi SA Investment LLC in ITA No. 7076/MUM/2018. Pertinent findings of the co-ordinate bench are given as under:

> "11. In the instant case, the assessee herein is an eligible assessee. However, there is no variation in the income or loss returned, which is prejudicial to the interests of the assessee. Hence the second condition prescribed in sec.144C(1) was not satisfied. Hence the approach of the AO in adopting the procedure prescribed in sec.144C of the Act is not in accordance with the mandate of law. We get support for our view from the decisions rendered by Chennai bench and Pune bench of Tribunal in the cases referred above. Hence the assessment order passed by the AO gets vitiated and the same is liable to be quashed. We order accordingly."

24. Similar view was taken by the Tribunal Mumbai Bench in IPF India Property Cyprus [No. 1] in ITA No. 6077/MUM/2018. Relevant observations of the co-ordinate bench in this case read as under:

"5. So far as the first issue is concerned, we find that, in the present case, there are no variations in the returned income and the assessee income. The controversy is thus confined to the question as to what will be the rate on which income returned by the assessee is to be taxed. While the assessee has claimed taxation @ 10% under article 11(2) of the India Cyprus DTAA, the Assessing Officer has declined the said treaty protection on the ground that the assessee was not beneficial owner of the said interest, and, accordingly, brought the income is to tax@ 40% thereof. There is, quite clearly, no variation in the quantum of income. The question whether it was a case in which the Assessing Officer could have issued the draft assessment order, on the facts of this case, needs to be examined in the light of provisions of Section 144C(1) which provides that, "The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward5 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 in the income or loss returned which is prejudicial to the interest of such assessee [Emphasis, by underlining, supplied by us]. The assessee before us is a non-resident company incorporated, and fiscally domiciled, in Cyprus. Accordingly, in terms of Section 144C(15)(b)(ii), the assessee is an eligible assessee but then there is no change in the figure of income returned by the assessee vis-a-vis the income assessed by the Assessing Officer. Clearly, there is no variation in the income returned by the assessee. There is, therefore, no question of a draft assessment order being issued in this case. It

is also important to note that the Finance Bill proposes to make the issuance of draft assessment orders in the case of eligible assessees mandatory even when there is no variation in the income or loss returned by the assessee but then this amendment seeks to amend the law with effect from 1st April 2020. Explaining this amendment, Memorandum Explaining Amendments in the Finance Bill 2020 states as follows:

……..

6. Once this amendment is being introduced with effect from 1st April 2020, it is beyond any doubt of controversy that so far as the period prior to 1st April 2020 is concerned, the cases in which no variations in the returned income or loss were proposed, the draft assessment orders were not required to be issued. We, therefore, uphold the plea of the assessee on this point.

7. Coming to the second point, we find that there is no dispute that if no draft assessment order was to be issued in this case, the assessment would have been time barred on 31stDecember 2017 but the present assessment order is passed on 17th August 2018. Once we hold that no draft assessment order could have been issued in this case, as the provisions of Section 144C(1) could not have been invoked in this case, the time limit of completion of assessment was available only upto 31st December 2017. The mere issuance of draft assessment order, when it was legally not required to be issued, cannot end up enhancing the time limit for completing the assessment under section 143(3). We, therefore, uphold the plea of the assessee on this point as well. The impugned

assessment order is indeed, in our considered view, time barred. We, accordingly, hold so.

8. As the impugned assessment order itself is held to be time barred, all other grievances raised in appeal, which deal with the merits of stand taken by the Assessing Officer in the assessment order, are rendered academic and infructuous. No adjudication, therefore, is required on these grievances at this stage."

25. This view also finds support from the Delhi Bench in the case of Silver Bells 189 ITD 678. The relevant findings read as under:

"8. Provision of section 144C(1) read 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 [84a Words " in the income or loss returned" omitted by the Finance Act, 2020, w.e.f. 1-4-2020] which is prejudicial to the interest of such assessee."

> 9. A perusal of the aforesaid provisions shows that the Assessing Officer shall forward the draft of the proposed order if he proposes to make any variation in the income or loss returned. The aforestated proposal in the draft assessment order clearly show that the Assessing Officer did not intend to make any variation in the income of the assessee, therefore, the assessment order should have been framed as per the provisions of section 153 r.w.s. 143(3) of the Act meaning thereby that the assessment order dated 7-9-2018 is barred by limitation.
>
> 10. In the light of the facts mentioned elsewhere when considered within the provisions of section 144C(1) *supra,* we have no hesitation to hold that the assessment order is barred by limitation."

26. In light of the above discussion, we hold that the Assessing Officer wrongly assumed jurisdiction u/s 144C of the Act, and therefore, the final assessment order framed in Assessment Years 2007-08 and 2010-11 to 2015-16 are barred by limitation and accordingly, the impugned assessment orders are liable to be quashed as void ab initio. This additional ground is, accordingly, allowed.

27. We will now address to the other additional ground raised by the assessee which reads as under :

"That on the facts and circumstances of the case and in law, the impugned order passed by the Assessing Officer is barred by limitation and void ab initio and, therefore, is liable to be quashed."

28. The above challenge in the respective Assessment Years can be understood from the following chart:

Assessment Year	Date of filing return of income	Date of passing Draft Assessment Order	Date of issuance of DRP Directions	Date of filing acceptance before assessing officer	Due date for passing Final Assessment Order under section	Date of final assessment order
2004-05	30-Mar-06	31-Dec-10	01-Sep-11		31-Mar-l 1	15-Sep-l 1
2007-08	24-Oct-07	24-Dec-09	21-Sep-10	-	31-Dec-09	04-Oct-10
2008-09	25-Sep-08	31-Dec-10	01-Sep-11	-	31-Dec-10	15-Sep-11
2009-10	30-Sep-09	23-Dec-11	25-Jul-12		31-Dec-l 1	31-Aug-12
2010-1i	12-May-11	07-Mar-13	14-Aug-13		31-Mar-l 3	30-Oct-13
2011-12	30-Sep-11	28-Jan-14	15-Oct-14	-	31-Mar-l 4	25-Nov-14
2012-13	12-Sep-12	19-Feb-15	-	29-Apr-15	31-Mar-l 5	30-Apr-15
2013-14	04-Sep-13	28-Mar-16		08-Apr-16	31-Mar-l 6	08-Apr-16
2014-15	15-Sep-14	07-Dec-16		27-Dec-16	31-Dec-16	06-Jan-17
2015-16	26-Aug-15	03-Nov-17	-	13-Dec-17	31-Dec-17	18-Dec-17

29. The Hon'ble High Court of Madras in the case of Roca Bathroom Products Pvt Ltd in Writ Appeal Nos. 1517, 1519, 1609, 1610 and 1854 of 2021 and CMP Nos. 9656, 9658, 10022, 10023 and 11720 of 2021 had the occasion to address an identical issue. It would be pertinent to refer to the relevant part of the judgment, which is directly on the challenge before us, which is as under:

"After an international transaction is noticed subject to satisfaction of section 92B, a reference is made to the TPO under sub-Section (1) of Section 92CA of the Act. Though the provision does not state as to when a reference is to be made, a reading of section 153 would explicit that the reference is to be made during the course of the assessment proceedings before the expiry of the period to pass an assessment order. The TPO after considering the documents submitted by the assessee is to pass an order under Section 92CA(3) of the Act. As per Section 92CA (3A), the order has to be passed before the expiry of 60 days prior to the date on which the period of limitation under Section 153 expires. As per Section 153, no order of assessment can be passed at any time after the expiry of 21 months. As per 92CA (4), the assessing officer has to pass an order in conformity with the order of the TPO. After the receipt of the order from the TPO determining ALP, the assessing officer is to forward a draft assessment order to the assessee, who has an option either to file his acceptance of the variation of the assessment or file his objection to any such variation with the Dispute Resolution Panel and also the Assessing Officer.

Sub-Section (5) of Section 144C of the Act provides that if any objections are raised by the assessee before the Dispute Resolution Panel, the Panel consisting of top and expert functionaries of the department, is empowered to issue such direction as it thinks fit for the guidance of the Assessing Officer after considering various details provided in Clauses (A) to (G) thereof. As per sub-section (12), the DRP has no authority to issue

any directions under sub- section (5) from the end of the month in which the draft order is forwarded to the eligible assessee and not from the date when the assessee submits the objections. Sub-section (13) of section 144C of the Act provides that upon receipt of directions issued under sub-section (5) of section 144C of the Act, the Assessing Officer shall in conformity with the directions complete the assessment proceedings within one month from the end of the month in which the directions are received. It goes without saying that if no objections are filed by the Assessee to the draft order, the assessing officer has to pass the final assessment order based on the draft order within one month from the end of the month in which the period for filing the objection had expired as per section 144C(4). As per the proviso to Section 92CA (3A), if the time limit for the TPO to pass an order is less than 60 days, then the remaining period shall be extended to 60 days. This implies that not only the time frame is mandatory but also the TPO has to pass an order within 60 days. Further, the extension in the proviso referred above also automatically extends the period of assessment to 60 days as per the second proviso to Section 153. That apart, but for the reference to the TPO, the time limit for completing the assessment would only be 21 months from the end of the assessment year. It is only if a reference has been made during the course of assessment and is pending, the department gets another 12 months as per second proviso to Section 153 (1) and under Section 153(4) after amendment. In Section 153(2A), a time limit is prescribed to the Assessing officer to complete the fresh assessment within one year prior to amendment and after amendment, as per section 153 (3), the time

limit has been reduced to 9 months. As per the proviso to section 153 (3) if the order is received after 1st April 2019, the time limit is one year. From the above provisions, it is very clear that various time limits have been prescribed to various mechanisms which form part of assessment proceedings, either original or on remand to expedite and bring a finality to the assessment proceedings, which can be taken to a logical end.

Discussion and Findings.

18. The main contentions of the Department, through their counsel are that Section 144C is a code in itself and hence on remand by the ITAT, the power of DRP to take up the dispute on additions by TPO, is not circumscribed by Section 153 and that in the absence of any express time limits contemplated under the Act, the time limits under Section 153 for reassessment cannot be read into Section 144C more particularly when the provisions of Section 153 are excluded by the non-obstante clause in section 144C(13) and hence the proceedings are not barred by limitation. Per contra, it has been contended by the learned senior counsels appearing for the respondent(s)/assessees that the outer time limit under Section 153 is applicable to every proceedings on remand and the department having slept over the issue for several years, cannot now redo the proceedings afresh, after certain rights have vested with the assessees. Even if specific provisions are not there to deal with this situation, the proceedings must be concluded within a reasonable time and hence the impugned proceedings are liable to be struck down and rightly done so by the learned Judge.

19. Admittedly, the facts including the dates are not under dispute. As regards the appeal in W.A.No.1854 of 2021, even though the remand was on 24.01.2013 and the assessee had received the order on 08.02.2013, the first notice by the DRP was issued on 19.02.2014 and the first hearing in the Chennai office was on 10.03.2014. Therefore, it is lucid that the DRP had the knowledge of the order before 19.02.2014. The matter was heard on various dates in Chennai office and written submissions were also filed. Thereafter, the files have been transferred to Bengaluru by the CBDT notification dated 31.12.2014. The Learned Judge relying upon the findings in the batch of cases which was decided first and rendered additional findings, which have been extracted in paragraphs 10 and 11 above, has allowed the writ petitions holding that the time limit under Section 153 (2A) was not adhered to and in any case, the proceedings have not been concluded within a reasonable time.

20. As rightly contended by the learned senior counsels and affirmed by the Learned Judge, the DRP proceedings is a continuation of assessment proceedings. To put it further, it is a part of assessment proceedings, once the objections are filed and under section 144C (12) a period of 9 months is prescribed, within which, directions are to be issued by the DRP, failing which any directions are to be treated as otiose. As seen from the timeline discussed in the earlier paragraphs, the original assessment proceedings are to be completed within 21 months and the additional time of 12 months is granted when proceedings before TPO is pending. The TPO has to pass orders before 60 days prior

to the last date. Then 30 days time is given to the assessee to file their objection before the DRP and the DRP is given 9 months time and thereafter, within one month from the end of the month of receipt of directions from DRP, the final order is to be passed. This court is not in consonance with the contention of the learned senior panel counsel for the appellants/ revenue that the time period of 33 months, provided initially is for the draft order and not for the final order. A careful perusal of the timeline would indicate that the time limit is for the final assessment and not for the draft order. The anomaly in the argument is that in the present cases, no fresh draft order was passed, but the DRP had issued the notices. If the contention of the appellants / revenue was to hold some water, they must have passed the draft assessment order immediately on receipt of the order from the Tribunal, but instead, notice was issued by the DRP. In any case, it is a far cry for the revenue as because no order has been passed for more than 5 years.

21. As held above, the assessment has to be concluded within 21 months when there is no reference and when there is a reference, it has to be concluded within 33 months. In the additional 12 months, the draft order is to be passed, the objections have to be filed, the DRP has to issue the directions and the final order is to be passed. The provisions under section 144C and section 153 are not mutually exclusive as both contain provisions relating to Section 92CA and are inter-dependant and overlapping. On remand, prior to amendment as per Section 153 (2A), the Assessing officer is given 12 months to pass a fresh assessment order.

Therefore, it is incumbent on him to do so, irrespective of the fact that DRP has completed the hearing and issued the directions or not. As rightly held by the learned judge, we are of the view that the DRP ought to have concluded the proceedings within 9 months from the date of receipt of the Tribunal's order, when it had issued a notice on 19.02.2014 and conducted the hearing as early as on 10.03.2014 and on several dates. The DRP at Chennai, in fact ought to have passed orders before 19.11.2014, even if the date of receipt of the notice is taken as 19.02.2014. In that event, the assessing officer ought to have passed the order before 31.12.2014 or at the latest before 31.03.2015 considering that the order was received during the Financial year 2013-14. The transfer of the files to Bengaluru, after the lapse of the time, will not indefinitely extend the time and can have no impact on the time lines. It is an inter-department arrangement and it cannot defeat the rights of the assessee.

22. Insofar as the non-obstante clause in Section 144C(13) is concerned, we concur with the view of the Learned Judge. The exclusion of applicability of Section 153 or Section 153 B is for a limited purpose to ensure that dehors larger time is available, an order based on the directions of the DRP has to be passed within 30 days from the end of the month of receipt of such directions. The section and the sub-section have to be read as a whole with connected provisions to decipher the meaning and intentions. At this juncture it would be useful to refer to the following decisions:

(i) Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373 at page 381:

"11. The statute has to be read as a whole to find out the real intention of the legislature.

12. In Canada Sugar Refining Co. v. R. [1898 AC 735 : 67 LJPC 126] , Lord Davy observed:

"Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter." …….

14. This rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute.

15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that,

if possible, effect should be given to both. This is the essence of the rule of "harmonious construction". (4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

(ii) CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57 : 2002 SCC OnLine SC 1226:

"16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 :

55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408]).

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be

interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006])."

(iii) Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg, (2021) 6 SCC 736 : 2021 SCC OnLine SC 88 at page 752:

"17. The concept of "absurdity" in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief [See Bennion on Statutory Interpretation, 5th Edn., p.969.] . Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense. [Bennion on Statutory Interpretation, 5th Edn., p. 986.] When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society [Id, p. 971, quoting Griffiths, L.J.] . Therefore, when there is choice between two interpretations, we would avoid a "construction" which would reduce the legislation to futility, and should rather accept the "construction" based on the view that draftsmen would legislate only for the purpose of bringing about an effective result. We must strive as far as

possible to give meaningful life to enactment or rule and avoid cadaveric consequences [See Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edn., p. 50.]"

23. Further, similar non-obstante clause is also used in section 144C(4) with a same limited purpose to imply, even though there might be a larger time limit under Section 153, once the order of TPO is accepted or not objected to, causing a deeming fiction of acceptance, the final order is to be passed immediately. The object is to conclude the proceedings as expeditiously as possible and the authority need not wait for the last date to pass the orders. The limitation prescribed under the statute is for the assessing officer and therefore, it is his duty to pass order in time irrespective of whether the directions are received from DRP or not. As held by us above, the DRP will have no authority to issue directions after nine months and a further period of one month as per section 144C (13) and three months under section 153 (2A) is available, within which period no orders have been passed in the present cases. The reference made by the learned senior counsels on the judgments in Nokia India Private Ltd (supra) and Vedanta Ltd (Supra) is well founded. The timeline given under the Act is to be strictly followed."

30. The Hon'ble High Court concluded as under:

"(a) The provisions of Sections 144C and 153 are not mutually exclusive, but are rather mutually inclusive. The period of limitation prescribed under Section 153 (2A) or 153 (3) is

applicable, when the matters are remanded back irrespective of whether it is to the Assessing Officer or TPO or the DRP, the duty is on the assessing officer to pass orders.

(b) Even in case of remand, the TPO or the DRP have to follow the time limits as provided under the Act. The entire proceedings including the hearing and directions have to be issued by the DRP within 9 months as contemplated under Section 144C (12) of the Income Tax Act,

(c) Irrespective of whether the DRP concludes the proceedings and issues directions or not, within 9 months, the Assessing officer is to pass orders within the stipulated time,

(d) In matter involving transfer pricing, upon remand to DRP, the Assessing officer is to pass a denova draft order and the entire proceedings as in the original assessment, would have to be completed within 12 months, as the very purpose of extension is to ensure that orders are passed within the extended period, as otherwise the extension becomes meaningless.

(e) The outer time limit of 33 months in case of reference to TPO under Section 153, would not refer to draft order, but only to final order and hence, the entire proceedings would have to be concluded within the time limits prescribed,

(f) The non-obstante clause would not exclude the operation of Section 153 as a whole. It only implies that irrespective of availability of larger time to conclude the proceedings, final orders

are to be passed within one month in line with the scheme of the Act,

(g) When no period of limitation is prescribed, orders are to be passed within a reasonable time, which in any case cannot be beyond 3 years. However, when the statute prescribes a particular period within which orders are to be passed, then such period, irrespective of whether it is short or long, shall be applicable."

31. As no distinguishing decision has been brought to our knowledge on this additional ground also, the impugned assessment orders are held to be barred by limitation and are, accordingly, quashed.

32. Now we are left with the appeal for Assessment Year 2005-06 in ITA No. 3115/DEL/2010.

33. The assessee has raised the following grounds of appeal:

"1. The learned CIT [A] has erred in confirming the order of the AO except giving directions for giving directions for proper credit for taxes paid.

2. Both the authorities below have erred in holding that the consideration for use of brand [ie for 'Royalties'] in India as liable td tax Tat 40%1 as Business Income under Article 7 instead of being liable to

tax as 'Royalties'[at 15%] under Article 13 of DTAA between UK and India.

3 The authorities below have erred holding that the assessee has a Permanent Establishment/ PE in India under Article 5 of DTAA between UK and India through the person responsible for paying the Royalty from India.

4. That the above grounds are independent and without prejudice to each other.

5. That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds at the time of heavy: of appeal."

34. The underlying facts in issues are that the assessee company is incorporated under the laws of England and Wales and is in the business of publishing and printing of books which contain the write up of selected different companies. Select Indian companies and their products get advertised through the said book. To bring out the book SuperBrand in respect of Indian companies and their products, the assessee has entered into an agreement with Shri Anmol Dar and as per the said agreement, Shri Anmol Dar is treated as an agent of the assessee.

35. After considering various clauses of the agreement, the Assessing Officer formed a belief that Shri Anmol Dar is not an independent agent acting on behalf of the assessee in normal course of his business but is economically dependent on the assessee as out of his total income, Shri Anmol Dar received 80% directly or indirectly from the assessee and the Assessing Officer came to the conclusion that Shri Anmol Dar constituted the dependent agent PE [DAPE] of the assessee in terms of Article 5(4) of the Indo-UK DTAA.

36. Taking a leaf out of the TDS certificate filed with the return of income, the Assessing Officer found that the assessee has received total payment of Rs. 1,75,42,082/- which is 50% of the amount receivable by it as per the terms of the agreement.

37. The Assessing Officer estimated 85% of the total receipts and treated balance 15% business income of the assessee as taxable @ 40%.

38. The assessee challenged the assessment before the ld. CIT(A) but without any success.

39. Before us, the ld. counsel for the assessee, as mentioned elsewhere, moved an application u/r 29 of the ITAT Rules requesting for admission of additional evidences.

40. The ld. counsel for the assessee vehemently stated that additional evidences sought to be filed are relevant for deciding the issue of existence of PE. The ld. counsel for the assessee brought to our notice trade mark licence agreement dated 04.04.2013 which is said to be effective from 09.08.2002.

41. Though the ld. DR strongly objected to the admission of additional evidences, but such objection has already been dealt with by us elsewhere. The additional evidences have been admitted.

42. Before us, the ld. counsel for the assessee vehemently stated that the assessee entered into a licence agreement dated 09.08.2002 with Shri Anmol Dar who is an advertisement veteran based in India and who was allowed to use the trade mark/logo of SuperBrand Limited for the purpose of carrying on the business of evaluation of brand contents, publishing and sale of SuperBrand publication in India for which Shri Anmol Dar incorporated a company SuperBrand India Pvt

Ltd in India undertaking business of evaluation of brands and publishing and sale of SuperBrand publication in India.

43. It is the say of the ld. counsel for the assessee that during the period the assessee received royalty from the said company which was offered for tax as such in the return of income. The ld. counsel for the assessee further stated that this royalty was treated as business income by the Assessing Officer holding that Shri Anmol Dar is a DAPE of the assessee in terms of Article 5(4) of DTAA. The ld. counsel for the assessee vehemently stated that the Assessing Officer has not correctly appreciated the operations/activities undertaken by SuperBrand Pvt Ltd in India.

44. The ld. counsel for the assessee explained that in order to post facto record activities undertaken by SuperBrand India Pvt Ltd, it entered into a fresh trade mark licence agreement dated 04.04.2013 and which was made effective from 09.08.2002, which agreement goes to the root of the matter and has been filed as an additional evidence.

45. To this, the ld. DR vehemently stated that this agreement is nothing but an afterthought as the same was entered into in April 2013 and given retrospective effect from August 2002 as the assessee was well aware of the fate of original agreement dated August 08, 2002.

46. We have given thoughtful consideration to the submissions of the ld. counsel for the assessee and have also considered the objections raised by the ld. DR. It is true that the entire assessment has been based on the reading of the trade mark license agreement dated August 08, 2002. It is equally true that supplementary trade mark licence agreement dated April 04, 2013 changes the color of the entire transaction.

47. Such an agreement which goes to the root of the matter cannot be brushed aside lightly. Therefore, in the interest of justice and fair play and as contended by the ld. DR, we deem it fit to restore the entire quarrel to the file of the Assessing Officer.

48. The Assessing Officer is directed to consider the agreement dated April 04, 2013 and decide the issue afresh after giving reasonable and adequate opportunity of being heard to the assessee. Thus, ITA No. 3115/DEL/2010 is allowed for statistical purposes.

49. In the result, the appeals of the Revenue are disposed of as under:

ITA No.	3115/DEL/2009 [A.Y 2005-06) -	Allowed for statistical purposes
ITA No.	2609/DEL/2011 [A.Y 2007-08) -	Allowed
ITA No.	654/DEL/2014 [A.Y 2010-11) -	Allowed
ITA No.	189/DEL/2015 [A.Y 2011-12) -	Allowed
ITA No.	4461/DEL/2016 [A.Y 2012-13) -	Allowed
ITA No.	869/DEL/2018[A.Y 2013-14) -	Allowed
ITA No.	411/DEL/2018 [A.Y 2014-15) -	Allowed
ITA No.	2975/DEL/2019 [A.Y 2015-16) -	Allowed
ITA No.	5223/DEL/2011 [A.Y 2004-05) -	Allowed
ITA No.	5224/DEL/2011 [A.Y 2008-09) -	Allowed
ITA No.	5633/DEL/2012 [A.Y 2009-10) -	Allowed

The order is pronounced in the open court on 20.09.2022.

Sd/- **Sd/-**

[SAKTIJIT DEY**]** **[N.K. BILLAIYA]**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Dated: 20th September, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	