IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 424 OF 2026

Orpak Systems India Private Limited .. Petitioner
V/s.
The Assessment Unit (NFAC) & Ors. .. Respondents

Adv. S. P. Chidambaram (through VC) a/w Adv. Paras Savla for Petitioner.
Adv. Vikas Khanchandani for Respondents – Revenue.

CORAM : B. P. COLABAWALLA AND
FARHAN P. DUBASH, JJ.

DATE : 30th OCTOBER 2026

P.C.:

1. Rule. Respondents waive service. With the consent of the parties, Rule is made returnable forthwith and heard finally.

2. The above Writ Petition challenges the Final Assessment Order dated 24th March 2025 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 **("IT Act")**, as well as the impugned notices dated 24th March 2025 issued under Section 156 and 274 read with Section 270A of the IT Act. The Assessment Year in question is A.Y. 2022-23.

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3. The Petitioner in the present case is a company incorporated in India under the Companies Act, 1956. The Petitioner filed its Return of Income for AY 2022-23 on 25th November 2022 declaring a business loss of Rs 27,19,53,542/-.

4. The case of the Petitioner was selected for complete scrutiny. Since Petitioner had entered into certain international transactions with its Associated Enterprises, a reference was made on 6th September 2023 by Respondent No. 1 to the Transfer Pricing Officer **("TPO")** for determination of the Arm's Length Price. The TPO passed an order under Section 92CA(3) of the IT Act on 10th January 2025, making an upward transfer pricing adjustment of Rs.2,41,67,387/-. Based on the said TPO order, Respondent No. 1 passed the Final Assessment Order under Section 143(3) read with Section 144B of the Act on 24th March 2025, restricting the Petitioner's assessed loss to Rs. 24,77,86,155/- by incorporating the aforesaid transfer pricing adjustment of Rs.2,41,67,387/-

5. The short grievance in the above Petition is that in the facts of the present case, the Petitioner is an "eligible assessee" as contemplated under Section 144C(15)(b)(i), and therefore, before any Final Assessment Order could have been passed which was prejudicial to the interest of the assessee, the

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Assessing Officer ought to have passed a Draft Assessment Order and served it on the Petitioner so as to enable it to file its objections (to the Draft Assessment Order) before the Dispute Resolution Panel **("DRP")** as contemplated under the provisions of Section 144C. This is for the simple reason that variation referred to in sub-section (1) of Section 144C arises as a consequence of the order of the TPO passed under sub-section (3) of Section 92CA. If no Draft Assessment Order is passed and served on the Petitioner, the Final Assessment Order cannot stand, is the contention of the Petitioner.

6. The learned Advocate appearing for the Respondents, *vide* his email dated 27th January 2024, had sought instructions from the Revenue. He has obtained written instructions dated 16th February 2026 (wrongly mentioned as 16.02.2025) from the Jurisdictional Assessing Officer, which was produced before the Court. The said instructions were received by the learned Advocate for the Revenue under cover of a letter dated 17th February 2026 from the Principal Commissioner of Income Tax-2, Pune. The said instructions fairly mention that upon perusal of the order sheet, it was revealed that no Draft Assessment Order had been passed before passing the Final Assessment Order and that the grounds raised by the Petitioner in respect of non-passing of the Draft Assessment Order under

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Section 144C of the Act were found to be correct. In the said instructions, it was submitted that non-issuance of the Draft Assessment Order was an inadvertent procedural lapse. It was further submitted that the defect was procedural and curable in nature, and therefore, the impugned Final Assessment Order may be set aside and the matter restored to the stage of issuance of the Draft Assessment Order under Section 144C(1) of the Act, thereby enabling the Petitioner to avail of the statutory remedy provided under the said provision. The said instructions alongwith the covering letter tendered to the Court are taken on record and marked "X" for identification.

7. The learned Advocate for the Petitioner, in response to these submissions, contended that non-issuance of the Draft Assessment Order in violation of Section 144C of the Act was not merely a procedural defect, but a substantive violation of the statutory procedure prescribed under the Act. It was submitted that the failure to pass a Draft Assessment Order had deprived the Petitioner of its valuable statutory right to approach the DRP and avail of the specific remedy provided under Section 144C of the Act. The learned Advocate for the Petitioner, therefore, contended that such non-compliance could not be treated as a mere procedural lapse capable of being cured by restoring the proceedings to the stage of issuance of a Draft Assessment Order, particularly when the Final Assessment Order had

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already been passed without following the mandatory procedure prescribed by law. Hence, the learned Advocate for the Petitioner reiterated that the defect was not curable in the manner suggested by the Respondents. Further, the learned Advocate for the Petitioner also submitted that the legal issue was no longer *res integra*, as this specific legal aspect had already been addressed by this Court in the case of ***SHL (India) Pvt. Ltd. v Deputy Commissioner of Income-tax and Others (2021) 438 ITR 317 (Bom.)***, wherein the consequences of failure to follow the procedure prescribed under Section 144C of the Act had been considered.

8. We have heard the learned Counsel for the parties and also perused the papers and proceedings in the above Writ Petition.

9. We find that to the provisions of Section 144B(1), and more particularly Sections 144B(1)(xxi) to 144B(1)(xxix), the provisions of Sections 144C have been made applicable. These provisions clearly stipulate that in case of an eligible assessee, a Draft Assessment Order has to be served on the Petitioner to enable the Petitioner to approach the DRP. This, has not been done in the facts of the present case. On the contrary, a Final Assessment Order dated 24th March 2025 has been directly passed by the Faceless Officer without serving a Draft Assessment Order on the Petitioner to

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enable it to approach the DRP. This is in clear violation not only of the provisions of Section 144C but also of Section 144B(1)(xxi) to (xxix) thereof. Once this is the case, the Final Assessment Order assailed in the above Petition cannot stand and would have to be set aside.

10. In the view that we take we are supported by the decision of this Court in the case of ***Danfoss Fluid Power Private Limited Vs. Union of India and Ors. (Writ Petition No. 10403 of 2025 decided on 29th September 2025)*** and ***Barentz India Private Limited vs Assessment Unit, National Faceless Assessment Centre and Another (Writ Petition No. 1460 of 2025 decided on 13th October 2025)***. In the facts of *Danfoss (supra)*, a Final Assessment Order was passed without serving the Draft Assessment Order on the Petitioner. This Court held that the same would clearly be in contravention of the provisions set out in Section 144C. In fact, while deciding the case of *Danfoss (supra)*, this Court relied upon another decision of this Court in the case of ***SHL(India) Pvt. Ltd. Vs. Deputy Commissioner of Income- Tax and Others [(2021) 438 ITR 317 (Bom)]***. The relevant portion of *Danfoss (supra)* reads thus:-

> *"4. We have heard the learned Counsel for the parties. We have also perused the papers and proceedings in the present Writ Petition. It is not in dispute that in the present case, the shares of Danfoss Systems Limited were sought to be purchased by the Petitioner inter alia from a Company in Mauritius, at the price of Rs. 363.10 per share. When the Assessing Officer referred the above matter to Transfer Pricing Officer, the Transfer Pricing Officer made a*

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variation to the Arm's Length Price and valued the transaction at Rs. 517.82 per share. In other words, he recommended a variation in the Arm's Length Price. In these circumstances, the Petitioner would certainly be an eligible Assessee as contemplated under Section 144C(15)(b) (i) of the IT Act. Since this variation was prejudicial to the interest of the eligible Assessee, it was mandatory for the Assessing Officer, in the first instance, to forward to the Petitioner a draft of the proposed order of assessment as contemplated under Section 144C(1). Only once this draft assessment order was served upon the Petitioner could it then choose, either to file its objections [to the draft assessment order] before the Dispute Resolution Panel (DRP), as contemplated under Section 144C(2), or choose to go by the normal route, i.e. to ask the Assessing Officer to pass a final assessment order and thereafter challenge the same before the CIT [Appeals]. By directly passing a final assessment order without serving a draft assessment order on the Petitioner clearly flies in the teeth of Section 144C. Once this is the case, we find that the assessment order dated 28th March 2025 cannot be allowed to stand and has to be quashed and set aside.

5. In the view that we take, we are supported by a decision of a Division Bench of this court in the case of ***SHL (India) Pvt. Ltd. V. Deputy Commissioner of Income-Tax And Others, [2021] 438 ITR 317 (Bom).*** *The relevant portion of this decision reads thus :-*

> *"27.* ***Applying the aforesaid principles to the facts of this case, we are of the view that the failure on the part of the Assessing Officer to follow the procedure under Section 144C(1) is not a merely procedural or inadvertent error, but a breach of a mandatory provision.*** *We are also not impressed with the arguments of the Revenue that the Assessing Officer was under pressure of two charges, as there were timelines to adhere to, since the said timelines from time to time have been extended, the most recent one being to September 30, 2021.* ***The Revenue ought to have appreciated that the requirement under Section 144C(1) to first pass a draft Assessment Order and to provide a copy thereof to the assessee is a mandatory requirement which gave substantive right to the assessee to object to any variation, that is prejudicial to it.*** *In this case, the order under Section 92CA(3) of the Income-tax Act, proposed to make an adjustment of Rs.107,454,337/- to the arm's length price considered as Nil by Petitioner and to that extent the said adjustment was evidently prejudicial to the interest of the Petitioner.* ***Depriving Petitioner of this valuable right to raise objection before Dispute Resolution Panel would***

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be denial of substantive rights to the assessee, for which, in our view, the Assessing Officer has no power under the statute, as the provision clearly mandates the Assessing Officer to pass and furnish a draft Assessment Order in the first instance in such a case. The Legislature, in our view, has intended to give an important opportunity to the Petitioner, who is an eligible assessee, which in our view, has been taken away. In our view, failure to follow the procedure under Section 144C(1) would be a jurisdictional error and not merely procedural error or a mere irregularity. *The Assessment Order has not been passed in accordance with the provisions of Section 144C of the Income-tax Act. This is not an issue, which involves a mistake in the said order, but it involves the power of the Assessing Officer to pass the order. By not following the procedure laid down in Section 144C(1) to pass and furnish a draft Assessment Order to the Petitioner and directly passing a final Assessment Order and without giving the Petitioner an opportunity to raise objections before the Dispute Resolution Panel, there is a complete contravention of Section 144C, the Assessing Officer having wrongly assumed jurisdiction to straight away pass the final order.* ***This is not a mere irregularity but an incurable illegality.*** *Even the provisions of Section 292B of the Income-tax Act would not protect such an order as Section 292B of the Income-tax Act cannot be read to confer jurisdiction on the Assessing Officer, where none exists. The Supreme Court decision in the case of ITO Vs. M. Pirai Choodi; [2011] 334 ITR 262 (SC) referred to in the Revenue's reply is also not applicable to the issue at hand as that was a case where the assessee was not given an opportunity to cross-examine the concerned witness and which assessee also had a statutory appellate remedy which the assessee had failed to avail of, whereas there is no such right available to the Petitioner in this case. In fact, the Petitioner has lost a substantive right due to the failure of the Respondents to pass and forward a draft assessment order in the first instance on a variance, prejudicial to the interest of the Petitioner. In our view, this is clearly a case of jurisdictional error. The final assessment order passed by the Assessing Officer stands vitiated on account of lack of jurisdiction, which is incurable and deserves to be set aside as void ab initio.*

We, therefore, quash and set aside the impugned assessment order, demand notice and penalty notice, all dated April 6, 2021 for the assessment year 2017-18.

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The Writ Petition is allowed in the above terms. However, there shall be no order as to costs." (emphasis supplied)

6. In view of the foregoing discussion, the impugned assessment order dated 28th March 2025 is hereby quashed and set aside."

11. In view of the above decision we are inclined to hold that the impugned Final Assessment Order ought to be quashed.

12. As far as the prayer for remand is concerned, we see no reason to remand the matter back to the Assessing Officer. If the Assessing Officer, in law, is entitled to initiate this process again by passing a fresh Draft Assessment Order and serving it upon the Petitioner, they are free to do so, if they are otherwise entitled to in law. We have not opined on this aspect of the matter one way or the other and all contentions in that regard are expressly kept open to be agitated if and when the need arises.

13. In view of the foregoing discussion, the above Writ Petition is allowed in terms of prayer clause (a), which reads thus:-

"(a) issue a writ of and / or order and / or directions in the nature of certiorari, mandamus, prohibition or any other appropriate writ, order or direction for quashing the impugned final assessment order dated 24.03.2025 passed under section 143(3) read with section 144B of the Act by the Respondent No.1 in the case of the Petitioner for assessment year 2022-23;"

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14. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

15. This order shall be digitally signed by the Personal Assistant / Private Secretary of this Court. All persons / parties shall act on the digitally signed copy of this order, downloaded from the official website of the Bombay High Court.

(FARHAN P. DUBASH, J.) (B. P. COLABAWALLA, J.)

Shubham Gadhavepatil

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