



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 14748 OF 2025**

Classic Legends Pvt Ltd

.. Petitioner

Versus

Assessment Unit & Ors

.. Respondents

Mr. Jehangir D. Mistry, Senior Advocate, with Mr. Devendra jain, Shashank Mehta i/b Kashyap Chothani, Advocates for the Petitioner.

Mr. Akhileshwar Sharma, Advocates for the Respondent.

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**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: SEPTEMBER 9, 2025**

ORAL JUDGMENT (Per B. P. Colabawalla, J.)

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

2. The above Writ Petition is filed seeking to quash and set aside the impugned Draft Assessment Order dated 8th March 2025 passed under Section 144C and the Final Assessment Order dated 7th April 2025 passed

under Section 143 (3) read with Section 144C and Section 144B of the Income Tax Act, 1961 (“for short **“I. T. Act”**). Consequently, the Demand Notice issued under Section 156 as well as the Show Cause Notice issued for imposing penalty under Section 270A and Section 271AAC are also impugned.

3. The short ground on which all these orders and notices are impugned is that the Assessing Officer has wrongly invoked the provisions of Section 144C which relate to a reference to the Dispute Resolution Panel. According to the Petitioner, in the facts of the present case, initially the Assessing Officer had made a reference to the Transfer Pricing Officer (“**TPO**”) under Section 92CA of the I. T. Act. Pursuant to this reference, the TPO issued notices to the Petitioner and thereafter passed an order under Section 92CA(3) accepting that the international transactions entered into by the Petitioner with its Associated Enterprises were at an Arms Length Price. In other words, the TPO made no variation. According to the Petitioner, by virtue of the definition of the words “*eligible assessee*” appearing in Section 144C(15), the Petitioner could never fall within the aforesaid definition because the TPO never made any variation. Since no variation was made, there was no occasion for the Assessing Officer to pass any Draft Assessment Order and thereafter serve it upon the Petitioner. In other words, the

Assessing Officer ought to have passed his Assessment Order under Section 143 (3) without invoking the provisions of Section 144C of the I. T. Act.

4. On the other hand, in the affidavit in reply dated 14th August 2025 filed by the Revenue, it is contention of the Revenue that it is totally incorrect to submit that the Draft Assessment Order as well as the Final Assessment Order passed under the provisions of Section 144C read with Section 143 (3) are without jurisdiction. Though the Revenue admits that the TPO did not propose any variation, it contends that this would not mean that the Assessing Officer was powerless to issue a Draft Assessment Order under Section 144C. According to the Revenue, the Petitioner puts a very restrictive meaning to the words “*eligible assessee*” when infact a broader meaning has to be given which would include all Assesseees where a reference to the TPO is made by the Assessing Officer proposing a variation to the income declared by the Assessee. As the meaning of income includes loss, similar meaning of “variation” would also include “no variation” by the TPO, is the submission of the Revenue.

5. We have heard the learned counsel for the parties at length and we have also perused the papers and proceedings in the above Writ Petition. The short question that falls for consideration in the present Petition is really

whether the Petitioner is an “*eligible assessee*”. Section 144C provides for a detailed procedure to be followed in cases where any variation in income or loss returned, which is prejudicial to the interest of an assessee, occurs on account of a reference made under Section 92CA of the I. T. Act. The relevant portion of Section 144C is reproduced hereinbelow:-

*“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 [***] 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 [Principal Commissioner or] Commissioners of Income-tax Constituted by the Board 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 non-resident not being a company, or any foreign company:]

[Provided that such eligible assessee shall not include person referred to in sub-section (1) of section 158BA or other person other person referred to in section 158BD.]”

(emphasis supplied)

6. In the facts of the present case, it is not in dispute that the Petitioner is not a non-resident or a foreign company as contemplated under Section 144C (15) (b)(ii). The question is whether the Petitioner would fall within the definition of “*eligible assessee*” as contemplated under Section 144C (15) (b) (i). On a plain reading of the said provision, the Petitioner can be stated to be an “*eligible assessee*” only if there is a case of variation referred to in the said sub-section 1 and which arises as a consequence of the order passed by the TPO under sub-section 3 of Section 92CA. In the facts of the present case, it is an admitted position that there was no variation in the income of the Petitioner by virtue of the order of the TPO. That being the position, the Petitioner cannot be stated to be an “*eligible assessee*” as defined in clause (b) of sub-section 15 of Section 144C of the I. T. Act. Once this is the case, the entire procedure for issuance of a draft order calling for the Petitioner’s objections thereon and taking further steps as laid down under Section 144C would, therefore, not apply.

7. We are unable to agree with the contention of the Revenue that the word “*variation*” appearing in Section 144C(1) and 144C(15) would also include “*no variation*”. This is clear from Section 144C(1) itself which categorically states that the Assessing Officer would have to forward a draft assessment order to the “*eligible assessee*”, if he proposes to make, on or after 1st October 2009, any variation which is prejudicial to the interest of such Assessee. When there is no variation, there is no question of any prejudice being caused to the Assessee which would then entail him to file any objections to the Draft Order as contemplated under sub-section 2 of Section 144C. We, therefore, find that the arguments canvassed by the Revenue on this aspect is contrary to the statutory provisions.

8. In the view that we take, we are supported by a decision of the Hon’ble Gujarat High Court in the case of ***Pankaj Extrusion Ltd v/s Assistant Commissioner of Income-tax (OSD) [2011] 10 taxmann.com 17 (Gujarat)***. The relevant portion of this decision reads thus:-

“5. Short question that calls for consideration in the present petition is whether the petitioner is an “eligible assessee”.

6. *Section 144C provides for a detailed procedure to be followed in cases where any variation in income or Loss returned which is prejudicial to the interest of an assessee occurs on account of reference made in section 92CA of the Act. Relevant portion of section 144C is reproduced here-in-below :*

"144C.Reference to Dispute Resolution Panel.-(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 in the income or loss returned which is prejudicial to the interest of such assessee.

15. For the purposes of this section,—

(b)"eligible assessee" means,—

(i) any person in whose case the variation referred to in sub-section (1) arises as consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any foreign company."

7. Plain reading of clause (b) of sub-section (15) of section 144C would show that an assessee can be stated to be an eligible assessee as referred to in sub-section (1) of section 144C in whose case variation referred to in the said sub-section arises as a consequence of order of Transfer Pricing Officer passed under sub-section (3) of section 92CA. We have

been taken through the order passed by the Assistant Commissioner of Income-tax dated 29-9-2010, wherein it is held as under:

“3.The assessee is engaged in the business of manufacture of Aluminium Profiles. The details of international transactions in terms of section 92B of the Act between the assessee and its Associate Enterprise are given in Form 3CEB. Relevant details regarding international transactions were produced by the assessee and are kept on record. After discussion and based on records produced, no adjustment is being made to the arm's length price of the transactions.” (Emphasis supplied)

8. From the above, it is clear that for assessment year relevant for our purpose, on account of procedure undertaken in section 92CA of the Act, there was no variation in the income by virtue of order of Transfer Pricing Officer. That being the position, the petitioner cannot be stated to be an eligible assessee as defined in clause (b) of sub-section (15) of section 144C of the Act. Procedure for issuance of draft order calling for his objection and taking further steps as laid down under section 144C therefore, would not apply.”

(emphasis supplied)

9. The decision of the Hon’ble Gujarat High Court in Pankaj Extrusion (supra) was thereafter also followed by the Hon’ble Delhi High Court in the case of ***Honda Cars India Ltd v/s Deputy Commissioner of Income-tax [2016] 67 taxmann.com 29 (Delhi)***. The relevant portion of the Hon’ble Delhi High Court judgment reads thus:-

“8. A reading of Section 144C(1) of the Act shows that the Assessing Officer, in the first instance, is to forward a draft of the proposed order of assessment to the "eligible assessee", if he proposes to make any variation in the income or loss return which is prejudicial to the interest of such assessee. The draft assessment order is to be forwarded to an "eligible assessee" which means that for the section to apply a person has to be an "eligible assessee".

9. Section 144C(15)(b) of the Act defines an "eligible assessee" to mean (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 section 92CA(3); and (ii) any foreign company.

10. The Supreme Court in *P. Kasilingam v. P.S.G. College of Technology* 1995 (Suppl) 2 SCC 348 has held that the use of word "means" indicates that the definition is a hard and fast definition and no other meaning can be assigned to the expression than is put down in the definition.

11. In Section 144C(15)(b) of the Act, the term "eligible assessee" is followed by an expression "means" only and there are two categories referred therein (i) any person in whose case the variation arises as a consequence of an order of the Transfer Pricing Officer and (ii) any foreign company. The use of the word "means" indicates that the definition "eligible assessee" for the purposes of Section 144(C)(15)(b) is a hard and fast definition and can only be applicable in the above two categories.

12. **First of all, the petitioner is admittedly not a foreign Company. Secondly, the Transfer Pricing Officer has not proposed any variation to the return filed by the petitioner. The consequence of this is that the Assessing Officer cannot propose an order of assessment that is at variance in the income or loss return. The Transfer Pricing Officer has accepted the return filed by the petitioner. In view of the which, neither of the two conditions are satisfied in the case of the petitioner and thus the petitioner for the purposes of Section 144C(15)(b) is not an "eligible assessee".**

Since the petitioner is not an eligible assessee in terms of Section 144C(15)(b), no draft order can be passed in the case of the petitioner under Section 144C(1).

14. In view of the above, it is clear that the petitioner, not being an “eligible assessee” in terms of Section 144C(15)(b) of the Act, the Assessing Officer was not competent to pass the draft assessment order under Section 144C(1) of the Act. The draft assessment order dated 31.03.2015 is accordingly quashed.”

(emphasis supplied)

10. In view of the above discussion, it is clear that the Petitioner in the present case, not being an “eligible assessee” in terms of Section 144C(15)(b) of the I. T. Act, the Assessing Officer was not competent to pass the Draft Assessment Order under Section 144C(1) of the I. T. Act. Consequently, there was no occasion for him to thereafter pass a Final Assessment Order under Section 143 (3) read with Section 144C (3) read with Section 144B of the I. T. Act. Accordingly, the Draft Assessment Order dated 8th March 2025; the Final Assessment Order dated 7th April 2025 and the Demand Notice dated 7th April 2025 as well as the Show Cause Notices dated 7th April 2025 seeking to impose penalty, are all hereby quashed and set aside.

11. 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.

12. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]