IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal Nos. 1120, 1115, 1139, 1148, 1149, 2035,
2036, 2039, 2043 and 2066 of 2021
and
CMP.Nos.7069, 7014, 7170, 7199, 7212, 12990, 12999,
13006, 13017 and 13070 of 2021
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1. The Deputy Commissioner of Income Tax
   Transfer Pricing Officer Circle – 3(1)
   Tower – 1, BSNL Building,
   No.16, Greams Road,
   Chennai – 600 006.

2. The Deputy Commissioner of Income Tax
   Large Tax Payer Unit – 2
   121, Nungambakkam, High Road,
   Chennai – 600 034.

.. Appellants in W.A.No.1120 of 2021

1. The Joint Commissioner of Income Tax
   Transfer Pricing Officer - 2 (I/c)
   Room No. 511, 5th Floor
   Tower 1, BSNL Building
   No.16, Greams Road
   Chennai - 600 006.

2. The Deputy Commissioner of Income Tax
Corporate Circle 1 (2)
6th Floor, Wanaparty Block
Aayakar Bhawan
Nungambakkam, Chennai - 600 034

.. Appellants in W.A.No.1115 of 2021

1. The Additional Commissioner of Income Tax,
Transfer Pricing Officer Circle – 3
Tower – 1, BSNL Building,
No.16, Greams Road, Chennai – 600 006.

2. The Assistant Commissioner of Income Tax,
Corportate Circle 4(2),
121, Nungambakkam High Road,
Chennai – 600 034.

.. Appellants in W.A.No.1139 of 2021

1. Joint Commissioner of Income Tax,
Addl./JCIT, Transfer Princing Officer – 2,
Room No.505, 5th Floor, Tower – 1,
BSNL Building, 16, Greams Road,
Chennai – 600 006.

2. Deputy Commissioner of Income Tax,
Corporate Circle – 5(2),
4th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

.. Appellants in W.A.No.1148 of 2021

1. Deputy Commissioner of Income Tax,
Transfer Pricing Officer – 2(2)
Room No.505, 5th floor, Tower -1,
Income Tax Office, BSNL Building,
No.16, Greams Road, Chennai – 600 006.

2. Deputy Commissioner of Income Tax,
Corporate Circle – 5(2)
4th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

.. Appellants in W.A.No.1149 of 2021

1. The Joint commissioner of Income Tax,
Transfer Pricing Officer No.-2,
Room No.511, 5th Floor, BSNL Building,
Tower – 1, No.16, Greams Road,
Chennai – 600 006.

2.The Deputy Commissioner of Income tax,
Corporate Circle – 5(2),
Room No.415, Main Building -4th floor,
Chennai Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034,
Tamilnadu.

.. Appellants in W.A.No.2035 of 2021

1. The Additional Commissioner of Income Tax,
ADDL/JCIT, TPO3,
Room No.502, 5th floor, Tower -1,
Income Tax Office, BSNL tower,
No.16, Greams Road, Chennai – 600 006.

2. The Assistant Commissioner of Income Tax,
Corporate Circle – 4(1),
Room No.430, Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

.. Appellants in W.A.No.2036 of 2021

1. The Additional Commissioner of Income Tax,
Transfer Pricing Officer – 1,
Tower – 1, BSNL Building,
No.16, Greams Road,
Chennai – 600 006.

2. The Deputy Commissioner of Income Tax,
Corporate Circle – 1 (1),
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

.. Appellants in W.A.No.2039 of 2021

1. The Additional Commissioner of Income Tax,
   Additional / JCIT – Transfer Pricing Officer – 3,
   Income Tax Office – BSNL Tower,
   No.16, Greams road,
   Chennai – 600 006.

2. The Deputy Commissioner of Income Tax,
   Corporate Circle – 2(1),
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034.

.. Appellants in W.A.No.2043 of 2021

1. The Additional / Joint Commissioner of Income Tax,
   Transfer Pricing Officer – 1 (TPO-1),
   Room No.502, 5th floor, Tower – 1,
   Income Tax Office, BSNL Tower,
   No.16, Greams Road,
   Chennai – 600 006.

2. The Assistant Commissioner of Income Tax,
   Corporate Circle – 2(1),
   Room No.511, Wanaparthy Block – V Floor,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600 034.

.. Appellants in W.A.No.2066 of 2021

Versus

Saint Gobain India Private Limited
Level – 7 and Sugapi Achi Building
Rukmini Lakshmipathi Road,
Egmore, Chennai – 600 008.
Represented by its company secretary
Mr.L.Venkateswaran

.. Respondent in W.A.No.1120 of 2021

M/s. BNY Mellon Technology Private Limited
(formerly known as iNautix Technologies
India Private Limited)
Represented by its Managing Director
Mr. Nitin Chandel
No.4, 10th Floor, Tidel Park
Taramani, Chennai - 600 113.

.. Respondent in W.A.No.1115 of 2021

Kubota Agricultural Machinery India Private Limited,
Block No.94, Tower – 1, 8th floor,
TVH Beliciaa Towers, MRC Nagar,
Chennai – 600 0028.
Represented by its Managing Director,
Mr.Akira Kato.

.. Respondent in W.A.No.1139 of 2021

M/s.Pfizer healthcare India Private Limited
(formerly known as Hospira Healthcare India Private Limited)
Represented by the authorized signatory
Bodhisatwa Ray, Sri Nivas, New No.86,
Old No.89, GN Chetty Road, T.Nagar,
Chennai – 600 017.

.. Respondent in W.A.Nos.1148 & 1149 of 2021

Perkins India Private Limited,
7th Floor, International Tech Park, Chennai,
Taramani Road, Taramani,
Chennai – 600 113.
PAN : AAGCP3353A
Represented by its Authorised Signatory,
Mr.Krishna Kumar K.

.. Respondent in W.A.No.2035 of 2021

M/s Mando Automotive India Private Limited,
S1A and S5, Pillaipakkam Post, Vengadu village,
Kancheepuram District – 602 105,
Tamilnadu.
Represented by its Director – Finance,
Sundararajan J

.. Respondent in W.A.No.2036 of 2021

Allison Transmission India Private Limited (ATIPL),
A-21, SIPCOT Industrial Park,
Oragadam, Sriperumbudur Taluk,
Kanchipuram – 602 105.
Tamilnadu.
Represented by its Managing Director
Mr.Rajsingh Moses. .. Respondent in W.A.No.2039 of 2021

M/s Siemens Gamesa Renewable Power Private Limited
(Formerly known as M/s Gamesa Renewable Power Pvt. Ltd.,)
Represented by the Fiscal Head – S.Ramachandran,
334, the Futura, Block – B, 8th Floor,
Rajiv Gandhi Salai, Sholinganallur,
Chennai – 600 119.
.. Respondent in W.A.No.2043 of 2021

M/s Flextronics Technologies (India) Private Limited,
Plot No.3, Phase II, SIPCOT Industrial Park,
Sandavellure village, Sriperumbudur Taluk,
Kanchipuram District,
Tamilnadu – 602 106.
Represented by its authorised Signatory,
Mr.Ashok Sridharan.
.. Respondent in W.A.No.2066 of 2021

Common Prayer:- Appeals filed under Clause 15 of Letters Patent to set aside the common order dated 07.09.2020 passed in WP.Nos.33751, 34389, 34568, 32699, 32703, 35300, 34817, 35520, 34174 and 34743 of 2019.

For Appellants : Ms. Hema Muralikrishnan
in Writ Appeal Nos. 1115, 1120, 1139, 1148 and 1149 of 2021

Mr. A.P. Srinivas
in Writ Appeal Nos. 2035, 2036, 2039, 2043 and 2066 of 2021

For Respondents : Mr. S.P. Chidambaram
in Writ Appeal Nos. 1139, 1120 and 2039 of 2021

Mr. R. Sandeep Bagmar
in Writ Appeal Nos. 2036 & 2066 of 2021

Mr. Ajay Vohra, Sr.counsel for
Mr. R. Sivaraman
in Writ Appeal Nos. 1148 and 1149/2021

Mr. R. Sivaraman
in Writ Appeal No. 2043/2021

Mr. N.V. Balaji
in Writ Appeal No. 1115 of 2021

Mr.Sumit Mangal in
Writ Appeal No.2035 of 2021

COMMON JUDGMENT

R. MAHADEVAN, J.

I. Introduction.

These intra-court appeals arise from a common order dated 07.09.2020 passed by the learned Judge in W.P.No.32699 of 2019 etc. batch.

2. The respondents in these writ appeals filed the aforesaid WP No.32699 of 2019 etc. batch, questioning the validity of the orders dated 01.11.2019 passed by the first appellant herein under Section 92CA (3) of The Income Tax Act, 1961 (hereinafter referred to as The Act) on the ground of limitation as contemplated under Section 153 of the Act. The learned Judge allowed the writ petitions, which has given rise to the filing of the present intra-court appeals by the appellants herein.

II. Facts.

3. At the outset, in order to understand the issue involved herein, the pleadings projected by the parties in one of the writ petitions, viz., WP.No.32699 of 2019, which was taken as a test case by the learned Judge, have been stated hereunder:

Averments made by the writ petitioner / respondent herein:

4.1. The writ petitioner is a private limited company, engaged in the business of manufacturing generic drugs, exporting the same to group entities and contract research and development services for pharmaceutical products. For the assessment year 2016-2017, they filed their return of income on 30.11.2016. On receipt of the same, a notice dated 18.07.2017 was issued to the writ petitioner under Section 143 (2) of the Act. Subsequently, a reference was made by the second appellant to the first appellant for determining the arm's length price of the international transactions reported in Form No.3CEB. On 10.12.2018, a notice under Section 92CA(2) of the Act was issued by the first appellant calling upon the writ petitioner to furnish certain particulars. The first appellant, thereafter, passed the order under Section 92CA (3) of the Act on 01.11.2019, which according to the writ petitioner, was passed, after the time limit prescribed for passing such order until 31.10.2019. Therefore, the order dated 01.11.2019 passed by the first appellant is beyond

the period of limitation as stipulated under Section 92CA(3A) of the Act.

4.2. It was the contention on the side of the writ petitioner before the learned Judge that in case, where there is no reference made to a Transfer Pricing Officer, the time limit for completion of the assessment is 21 months from the end of the assessment year, as contemplated under Section 153 (1) of the Act and in that event, the last date for passing an order of assessment in this case will be 31.12.2018. On the other hand, in case reference is made to the Transfer Pricing Officer for completion of assessment, as per Section 153(1) read with Section 153 (4), the time limit is 33 months from the end of the assessment year and in such event, the time limit available for passing an assessment order is till 31.12.2019. But in case of an order to be passed under Section 92CA of the Act, the time limit is 60 days prior to the due date for completion of assessment under Section 92CA (3A) of the Act and such an order ought to have been passed in this case by the first appellant on or before 31.10.2019. However, such an order was passed only on 01.11.2019 and therefore, the order dated 01.11.2019 passed by the first appellant is beyond the time limit stipulated under Section 92CA(3A) read with Section 153 (1) of the Act.

4.3. Elaborating further, it was contended that the time limit for passing a Transfer Pricing Order is governed by sub-section 3A of Section

92CA. As per Section 92CA (3A), a Transfer Pricing Order has to be passed 60 days prior to the date on which the time limit provided under Section 153 of the Act expires. The word "prior to" mentioned in the Section indicates that it is referable to the date preceding 31.12.2019 i.e., 30.12.2019.

4.4. It was also submitted that after the reference was made by the second appellant on 13.03.2018, the office of the first appellant initiated the Transfer Pricing proceedings on 10.12.2018 and took nearly 19 months time for completion of the assessment under Section 92CA of the Act. The show cause notice dated 19.10.2019 was issued with only two weeks to complete the proceedings and the second show cause notice dated 26.10.2019 was issued, when five days were left for passing the order of assessment. In fact, the issuance of show cause notices itself was to comply with an empty formality, when the writ petitioner has already responded to the questionnaires issued by the first appellant. The entire proceedings, relating to the transfer pricing proceedings were hastily concluded within ten working days without giving any meaningful opportunity to the writ petitioner. Thus, the order dated 01.11.2019 impugned in the writ petition was violative of principles of natural justice. As against the said order passed by the first appellant under Section 92CA(3) of the Act, there is no effective and alternative remedy available except to file the writ petition under Article 226 of The Constitution of India.

Accordingly, the writ petitioner filed WP No. 32699 of 2019 seeking to issue a Writ of Certiorari to quash the order dated 01.11.2019 of the first appellant.

Averments made by the respondents / appellants herein

5.1. The first appellant herein filed a detailed counter affidavit in the writ petition, in which it was, at first, stated that as against the order passed under Section 92CA (3) of the Act, there is an alternative remedy available to the writ petitioner. It was further stated that the order, which was impugned in the writ petition, is only a proposal for transfer pricing adjustment and based on the same, the Assessing Officer has to pass a further order under Section 144C(1). Thus, there will not be any demand on account of the draft assessment order. Based on the assessment order, objections will be called for and it is always open to the writ petitioner to file their objection before the Dispute Resolution Panel (DRP) comprising of three Commissioners of Income Tax. The DRP will examine the objections and after hearing the writ petitioner / assessee, directions will be issued to the Assessing Officer, who will then pass a final order of assessment in accordance with the directions of DRP. If the assessment order goes against the financial interest of the writ petitioner / assessee, then it is open to them to file an appeal before the appellate authority. Therefore, it is not as if there is no alternative remedy

available to the writ petitioner except to file the writ petition. In any event, soon after passing the order, which was impugned in the writ petition, there was no demand made by the appellants for payment of tax against the writ petitioner and therefore, there is no cause of action arisen at all to file the writ petition. The entire process of passing a draft proposal till the passing of final order by the Assessing Officer will take one year time and only in the event of the writ petitioner being aggrieved by the final order passed by the Assessing Officer, they can approach the legal forum to ventilate their grievance. Thus, according to the appellants, the writ petition itself is not maintainable in law.

5.2. As regards the plea of limitation raised by the writ petitioner, it was submitted that the interpretation to Section 92CA (3) is depended on the interpretation to Section 153 of the Act. The order passed under Section 92CA(3) is a process initiated before passing the final order of assessment and as long as the order of assessment is passed in accordance with the period stipulated under Section 153 of the Act, an order under Section 92CA(3) will not be construed as a final order. As such, the assertion of the writ petitioner that the first appellant has to pass the order before 31.10.2019 as per Section 92CA(3) of the Act is untenable.

5.3. By referring to Section 153 (1) and (4) of the Act, the appellants pointed out before the learned Judge that when a reference is made under

Section 92CA (1), the assessing officer is not empowered to pass an order of assessment after the expiry of thirty three months from the end of calendar year 2016-2017. The assessment year 2016-17 ends with 31.03.2017 and 33 months from March 2017 would expire during 31.12.2019. As per Section 153 of the Act, the Assessing Officer cannot pass order after the expiry of December 2019, meaning thereby, an order of assessment cannot be passed on 01.01.2020. The Assessing Officer has time upto 23:59:59 hours of 31.12.2019 to pass the assessment order and the time limit for passing the assessment order expires on 00.00 hours of 01.01.2020. The words "after the expiry of 21 months" used in Section 153 of the Act is only used in this Central Enactment under Section 153 of the Act and in all other taxing statutes, the parliament thought it fit to use the word "within". For example, under Section 11A of the Central Excise Act, it is incumbent upon the Central Excise Officer to serve notice within a period of two years. Further, Section 73 of the Finance Act, 1994 stipulates that the Central Excise Officer may, within thirty months from the relevant date of service of notice, proceed to recover the service tax. Under Section 73 (10) of the Central General Sales Tax Act (CGST) 2017, an order shall be passed within three years from the date of furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to within three

years from the date of erroneous refund. Therefore, the assertion of the writ petitioner that the time limit fixed under Section 153 (1) of the Act expired on 31.12.2019 and the order dated 01.11.2019 is beyond the time limit stipulated under Section 92CA (3A) of the Act, is legally not sustainable.

5.4. Pointing out Section 92CA(3A) of the Act, it is submitted that the words used in the said section are "60 days" prior to the date on which the period of limitation expires. The date on which the period of limitation expires in this case is 00.00.00 am of 01.01.2020 and 60 days prior to 01.01.2020 is 02.11.2019 (31 days of December and 29 days of November). Therefore, the date before 60 days would be a date before 02.11.2019. Thus, the order, which was impugned in the writ petition, passed on 01.11.2019 is well within the time stipulated under Section 92CA(3A) of the Act and not barred by limitation. Further, the word "may" is used in Section 92CA(3) of the Act and therefore, even if the order was passed after the period of 60 days, as contemplated under Section 153, still, it would be treated as having been passed within the time limit.

5.5. The counter affidavit also proceeds to state that the appellants can continue with the proceedings in respect of other issues involved in the assessment during the pendency of the proceedings relating to Arm's length Price determination. The incorporation of the order to be passed by the TPO is

a mere formality and the assessee and the Assessing Officer had ample time to continue with the assessment order on other issues. After the receipt of the order passed by the TPO, the income of the assessee will be computed and it has nothing to do with the other issues.

5.6. It was further stated that sub-section 3A to Section 92CA3 was introduced by the Finance Act, 2007 from 01.06.2007 making it mandatory on the part of the Assessing Officer to comply with the Arm's length computation made by the TPO. Prior to this amendment, it was not mandatory for the Assessing Officer to wait for or accept the arm's length computation. Thus, the words "with regard to" were replaced by the amendment with the words "in conformity with" Section 92CA(4) of the Act. Therefore, after the amendment, the Assessing Officer need not apply his mind with respect to Arm's length computed by the TPO and the sixty days prescribed in Section 92CA(3) is only for internal convenience and it was not compulsory with the words "No order shall be made" as in sub-section 1 to Section 153 of the Act. With these averments, the appellants prayed for dismissal of the writ petition filed by the writ petitioner / respondent herein.

Findings of the learned Judge

6. The learned Judge, by the order dated 07.09.2020 in WP.No.32699 of 2019 etc., cases which is impugned in these appeals, has

concluded that the order dated 01.11.2019 passed by the first appellant herein, is barred by the period of limitation as the proceedings for assessment ought to have been completed before 11;59;59 of 31.12.2019. It was therefore held that the transfer pricing order ought to have been passed on 31.10.2019 or any date prior thereto. Paragraph 30 of the said order can usefully be quoted hereunder:-

> *"30. Now, coming to the question of how the 60 day period is to be computed, the critical question would be whether the period of 60 days would be computed including the 31st of December or excluding it. Section 153 states that no order of assessment shall be made at any time after the expiry of 21 months from the end of the assessment year in which the income was first assessable. The submission of the revenue is to the effect that limitation expires only on 12 a m of 01.01.2020. However, this would mean that an order of assessment can be passed at 12 a m on 01.01.2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31.12.2019. The period of 21 months therefore, expires on 31.12.2019 that must stand excluded since Section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to Section 153 expires'. Excluding 31.12.2019, the period of 60 days would expire on 01.11.2019 and the transfer pricing orders thus ought to have been passed on 31.10.2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31.10.2019. The impugned orders are thus, held to be barred by limitation."*

7. Aggrieved by the aforesaid common order passed by the learned Judge in the batch of writ petitions, the appellants / Revenue are before this court with these intra-court appeals.

III. Contentions.

8.1.1. Mrs. Hema Muralikrishnan, learned Senior Standing Counsel appearing for the appellants in WA.Nos.1115, 1120, 1139, 1148 and 1149 of 2021 would contend that the learned Judge ought not to have entertained the writ petitions filed by the respective respondent herein especially when there is an alternative remedy of appeal available as against the orders dated 01.11.2019 passed by the first appellant. When an in-built statutory remedy is available, the learned Judge ought to have relegated the respondents herein to approach the appellate authority. To buttress this submission, the learned counsel placed reliance on the decision of this Court in the case of **Intimate Fashions (India) Pvt Ltd. [(2010) 321 ITR 265 (Madras)]** as well as the decision of the Delhi High Court in the case of **Messe Dusseldorf India (P) Ltd. [(2010) 320 ITR 565 (Delhi)]**. In those cases, it was held that there is an alternative remedy of appeal available under the Act and therefore, the writ petitions were dismissed and the assessees were directed to work out their remedy before the appellate authority.

8.1.2. Referring to Section 92CA(3A) of the Act, it is further submitted that the word employed therein is "to" and if it is considered in the light of Section 9 of the General Clauses Act, for the purpose of computation of the time limit, the day referred to as "from" has to be excluded and the day referred to as "to" has to be included. In the case on hand, the order dated

01.11.2019 was taken as starting point for determination of limitation and the 60 days computed from 01.11.2019. As per Section 9 of the General Clauses Act, the last day namely 31.12.2019 must be included and if so, the order dated 01.11.2019 is well within the period of limitation. According to the learned counsel, for computing the 60 days period, the last day of December has to be counted for computing the limitation. If the same is counted, then working reverse, the period of limitation for passing the order expires only on 01.11.2019 and in such event, the order dated 01.11.2019 is well within limitation. However, the learned Judge has given a different interpretation to the effect that the word "may" used in Section 92CA(3A) should be read as "shall" to determine the 60 days period backwards, by excluding the date "31.12.2019" even though the limitation prescribed under Section 92CA(3A) by use of terminology "to" and held that the 60 days period expires on 01.11.2019. When the word "to" is specifically incorporated in Section 92CA(3A), the other interpretation to exclude the last day would be against the plain language of the statute and would run contrary to the intend of the legislature. On the other hand, the learned Judge excluded both the date of order as well as the last day, which is not the intent with which Section 92CA(3A) was enacted. Section 92CA(3A) expressly provides for counting the last day i.e., 31.12.2019 and therefore for counting 60 days, the last day

has to be taken into account and if it is reckoned, the order passed on 01.11.2019 by the first appellant is well within the time. However, the learned Judge erred in allowing the writ petitions on the ground of limitation. Hence, the learned counsel sought to allow these writ appeals by setting aside the order passed by the learned Judge.

8.2. Mr.A.P.Srinivas, learned senior standing counsel appearing for the appellants in other writ appeals submitted that Section 144C of the Act comes to play only after the transfer pricing officer's order is received by the Assessing Officer and upon receipt of the order only, the assessing officer is bound to pass a draft assessment order. It is further submitted that the assessment order comprises of both international transaction comprising of computation of Arms length price and non-international transaction and therefore, there cannot be an interpretation that merely because the alleged delay of one day beyond the time line with regard to the TPO issue, the right of assessment is lost; on the other hand, the interpretation ought to have been taken to advance the cause of justice in order to protect the right of assessment; and hence, the outer limitation as provided in section 153 alone is the criteria and the in between time limits with regard to TPO is not limitation in *stricto sensu* as stated in section 153. Thus, according to the learned counsel, pursuant to the order dated 01.11.2019, which was impugned in the

writ petitions, there is no demand for tax made by the Assessing Officer as the order dated 01.11.2019 is only a draft proposal and it will not give rise to a cause of action for the respondents to file the writ petitions.

9.1.1. Mr.Ajay Vohra, learned senior counsel appearing for the respondents in WA.Nos.1148 and 1149 of 2021 would mainly contend that the order dated 01.11.2019 passed by the first appellant is beyond the statutorily prescribed limitation in Section 92CA(3A) and therefore, it is bad in law, *void ab initio* and legally not sustainable. Adding further, he submitted that the Act prescribes an embargo for the first appellant to pass an order beyond the time limit prescribed under Section 92CA(3A) of the Act, which was rightly taken note of by the learned Judge for allowing the writ petitions. According to the learned counsel, Section 92CA(3A) of the Act uses the phrase "*an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153 expires."* Thus, it is apparent that the first appellant has no other option except to pass an order within the time limit prescribed under the statute. It is in this context, the word "may" in the sub-section has been read as "shall" by the learned Judge. To buttress his submissions, the learned senior counsel placed reliance on the following decisions of the Honourable Supreme Court:

(a)**State of Uttar Pradesh v. Jogendra Singh [AIR 1963 SC 1618]**

wherein in para no.8, it was held as under:-

> *"(8) Rule 4 (2) deals with the class of gazetted government servants and gives them the right to make a request to the governor that their cases should be referred to the Tribunal in respect of matters specified in cls.(a) to (d) of sub-r.(1). The question for our decision is whether like the word "may" in R.4(1) which confers the discretion on the Governor, the word "may" in sub-r(2) confers the discretion on him, or does the word "may" in sub-rule(2) really mean "shall" or "must". There is no doubt that the word "may" generally does not mean "must" or "shall". But it is well-settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the Legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is in the context which is decisive. The whole purpose of R.4 (2) would be frustrated if the word "may" in the said rule receives the same construction as in sub-r.(1). It is because in regard to gazetted government servants, the discretion had already been given to the Governor to refer their cases to the Tribunal that the rule-making authority wanted to make a special provision in respect of them as distinguished from other government servants falling under R.4(1) and R.4(2) has been prescribed, otherwise R.4(2) would be wholly redundant. In other words, the plain and unambiguous object of enacting R. 4(2) is to provide an option to the gazetted government servants to request the Governor that their cases should be tried by a Tribunal and not otherwise. The rule-making authority presumably thought that having regard to the status of the gazetted government servants, it would be legitimate to give such an option to them. Therefore, we feel no difficulty in accepting the view taken by the High Court that R.4(2) imposes an obligation on the Governor to grant a request made by the gazetted government servant that his case should be referred to the Tribunal under the Rules. Such a request was admittedly made by the respondent and has not been granted. Therefore, we are satisfied that the High Court was right in quashing the proceedings proposed to be taken by the appellant against the respondent, otherwise than by referring his case to the Tribunal under the Rules."*

(b)In **Superintendent & Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity [(1979) 4 Supreme Court Cases 85]** in para Nos. 16 to 18, the following observations were made:

"16. Accordingly, the word "liable" occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be". Thus, where an American Revenue Statute declared that for the commission of a certain act, a vessel "shall be liable to forfeiture", it was held that these words do not effect a present absolute forfeiture but only give a right to have the vessel forfeited under due process of law". Similarly, it has been held that in Section 302, Indian Penal Code, the phrase "shall also be liable to fine" does not convey a mandate but leaves it to the discretion of the Court convicting an accused of the offence of murder, to impose or not to impose fine in addition to the sentence of death or imprisonment for life.

17. But a statute is not to be interpreted merely from the lexicographer's angle. The court must give effect to the will and inbuilt policy of the legislature as discernible from the object and scheme of the enactment and the language employed therein.

18. Exposition ex visceribus actus is a long recognised rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation. For instance, the use of the word "may" would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, "of an ineffectual angel beating its wings in a luminous void in vain"...."

(c)In **Mohan Singh and others v. International Airport Authority of India and others [(1997) 9 Supreme Court Cases 132],** it was held as follows:

"17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall" or "may" depends on conferment of power. In the present context, "may" does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In "Craies on Statute Law" (7th Edn.), it is stated that the Court

will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall" is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under Consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched. The meaning and intention of the legislature would govern design and purpose the Act seeks to achieve. In "Sutherland Statutory Construction" (3rd Edn.) Volume 1 at page 81 in paragraph 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence - the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, then variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation...."

(d)In **Sara Goel and others v. Kishan Chand [(2009) 7 Supreme Court Cases 658],** it was observed as under:

"28. From a conjoint reading of this provision referred to hereinabove and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the Legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may"

shall be used as "shall", would depend upon the intention of the Legislature. It is not to be taken that once the word "may" is used by the Legislature in Section 27 of the Act, would not (sic) mean that the intention of the Legislature was only to show that the provisions under Section 27 of the Act was directory but not mandatory.

29. In other words, taking into consideration the object of the Act and the intention of the Legislature and in view of the discussions made herein earlier, we are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may", in our view, was used by the Legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the Legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them."

9.1.2. It is also contended by the learned senior counsel that when it is expressly provided in a statute with respect to adherence of time limit, the first appellant ought to have scrupulously followed it. In the present case, the first appellant failed to adhere to the provisions contained under Section 92CA(3A) of the Act and passed an order beyond the period prescribed thereunder. The learned Senior counsel would further submit that Section 92CA(3A) of the Act provides an ultimatum for the assessment order to be passed before 60 days prior to the period of limitation prescribed under Section 153 (1) of the Act. As per Section 153 (1) of the Act, the limitation for passing an order for the assessment year 2016-2017 corresponding to financial year 2015-2016 falls on 31.12.2019. As per Section 12 of the Limitation Act and Section 9 of the General Clauses Act, the last day has to be reckoned by inferring the word "to"

mentioned thereof. However, while computing the 60 day period, for the purpose of Section 92CA (3A), the last date of limitation prescribed under the Act will have to be excluded as the section uses the phrase "prior to" the date and not merely the phrase "to" on which date the period of limitation expires. Therefore, the last date, for the purpose of computation of 60 days period, has to be computed from 30.12.2019 which is prior to 31.12.2019. While computing the 60 days backwards from 30.12.2019, the 60th day falls on 01.11.2019, including 30.12.2019 and 01.11.2019. However, the Section states that "before 60 days prior to limitation under Section 153 of the Act" which means the order of assessment should be passed before 01.11.2019, excluding the first day and as such 31.10.2019 will be the last date for the Transfer Pricing Officer to pass the Transfer Pricing Assessment Order. Therefore, the period of limitation prescribed under a statute has to be adhered to strictly without any departure therefrom. In this case, as the order was passed by the first appellant beyond the period stipulated under Section 92CA(3A) of the Act, it was rightly quashed by the learned Judge. In this context, the learned senior counsel placed reliance on the following decisions:

(a)In **R. Rudraiah and another v. State of Karnataka and others [(1998) 3 Supreme Court Cases 23],** the following observations have been made by the Hon'ble Supreme Court:

"16. It is obvious that by deleting the provisions relating to the power to condone the delay for sufficient cause, the legislature had clearly intended to do away with the said power of condonation of the Tribunal. It was in fact so held by a learned Single Judge of the Karnataka High Court in Virupaxappa Basappa v. Land Tribunal [1980 (2) Kart L.J.428]. This view, in our opinion, is quite correct. If therefore the legislature wanted to make a deliberate departure and introduced an amendment to take away the power of condonation of delay, it is difficult to accept the contention that Section 48-A is capable of more than one interpretation - one leading to injustice and another permitting avoidance of such injustice to tenants and that the Court should opt for a liberal interpretation. Another reason for rejecting the appellant's contention is that we have also to give importance to the words `save as provided in the Act', occurring in Section 48-A. It is nowhere else provided in the Land Reforms Act, 1961 that the period fixed for tenant to file an application under Section 45 gets extended. None has been brought to our notice.

17. It is true there is a principle of interpretation of statutes that the plain or grammatical construction which leads to injustice or absurdity is to be avoided (See Venkatarama Iyer, J in Tirath Singh vs. Bachiter Singh (AIR 1955 SC 830 at 855). But that principle can be applied only if "the language admits of an interpretation which would avoid it". Shamrao V. Parulekar v. District Magistrate (AIR 1952 SC 324 at 327). In our view Section 48-A, as amended, has fixed a specific date for the making of an application by a simple rule of arithmetic, and there is therefore no scope for implying any `ambiguity' at all. Further "the fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide". (Sir Dinshaw Mulla in Nagendranath De v. Sureshchandra De [ILR (1933) 60 Cal 1]."

(b)In **Nokia India P. Ltd v. Deputy Commissioner of Income Tax [(2018) 407 ITR 20 (Delhi)]** it was held by the Delhi High Court as under:

"20. By an amendment brought about by the Finance Act, 2001 the general time limit under Section 153 (2A) was reduced to one year. With effect from 1st July 2012, the time limit was increased to two years in certain TP cases. Finally, by the amendment in 2016, the time limit under Section 153 (2A) has been reduced to 9 months.

21. The reason behind the introduction of sub-section (2A) to Section 153 of the Act can be gleaned from para 22 of the Circular No. 56 dated

March 19, 1971 issued by the Central Board of Direct Taxes which reads as under:

> *"Time limit for completion of assessments set aside in appeal or reopened under section 146*
>
> *22. Section 153, relating to time limits for completion of assessments and reassessments has been amended so as to provide a time limit for completion of fresh assessments, to be made in cases where : (i) the original assessment made under section 144 has been cancelled by the Income Tax Officer on an application by the assessee under Section 146; or (ii) the original assessment is set aside or cancelled in appeal by the Appellate Assistant Commissioner or the Appellate Tribunal or in revision by the Commissioner. For this sub-section (2A) has been inserted in section 153. Under this sub-section the fresh assessment in the cases mentioned at (i) may be made at any time before the expiry of two years from the end of the financial year in which the original assessment was cancelled by the Income-tax Officer under section 146. In the cases mentioned at (ii) the fresh assessment may be made at any time before the expiry of two years from the end of the financial year in which the order of the Appellate Assistant Commissioner or the Appellate Tribunal is received by the Commissioner or, as the case may be, the order in revision is passed by the Commissioner. Such fresh assessments may be completed within the above-mentioned time limit even if the time limit specified in sub-section (1) or sub-section (2) of section 153 for the completion of assessment or reassessment has expired. Under the existing provisions of Section 153 (3), such fresh assessments are not subject to any time limit. The time limit laid down under new sub-section (2A) of Section 153 will be operative only in relation to assessments for the assessment year 1971-72 or any subsequent years." (emphasis supplied)*

22. Having perused the impugned order of the Income Tax Appellate Tribunal carefully and the operative portions qua which the assessment order was set aside and the matter remanded to the Assessing Officer, the Court is unable to agree with the contention of learned ASG that the aforementioned order of the Income Tax Appellate Tribunal did not constitute a complete setting aside of the assessment with directions to the Assessing Officer to pass a fresh order. The Court does not agree with the submission of the learned ASG that the Assessing Officer was 'chained' by the Income Tax Appellate Tribunal's directions and could not have passed a fresh assessment order de novo pursuant to such remand.

> *23. The Court is also unable to agree with the contention that unless the entire assessment order is wholly set aside, the time limit for passing the fresh order under Section 153 (2A) would not be attracted. There is no warrant for such an interpretation. The object behind introduction of sub-section (2A) was to prescribe a time limit for completing the assessment proceedings upon the original assessment being set aside or being cancelled in appeal. Clearly, the intention was not to restrict the applicability of sub-section (2A) only to such cases where the 'entire' original assessment order is set aside. It was noted that, "Under the existing provisions of Section 153 (3), such fresh assessments are not subject to any time limit." Indeed, Section 153, as it stood at that time, did not prescribe any time limits. Section 153(3)(ii), in particular, did not require the order passed thereunder to be issued within any particular time limit. Further there is a distinction between an 'assessment' that is set aside and an 'assessment order' being set aside. When the assessment on an issue is set aside and the matter remanded, with a direction that the issue has to be determined afresh, Section 153 (2A) of the Act would get attracted.*
>
> *24. What is important to note is that, along with the insertion of sub-section (2A), sub-section (3) underwent a simultaneous change. It was expressly made "subject to the provisions of sub-section (2A)." This meant that Section 153 (3) would thereafter apply only to such cases where Section 153 (2A) did not apply. In other words, in all instances of an Assessing officer having to pass a fresh assessment order upon remand where Section 153 (2A) would apply, the Assessing Officer would be bound to follow the time- limit imposed by sub-section (2A). Where the Assessing Officer was only giving effect to an appellate order, then Section 153 (3) (ii) of the Act would apply."*

Stating so, the learned senior counsel submitted that the order of the learned Judge does not call for any interference at the hands of this court.

9.2. Mr.R.Sivaraman, learned counsel appearing for the respondent in WA.No.2043 of 2021 has adopted the arguments of the learned senior counsel Mr.Ajay Vohra.

9.3. Repudiating the contentions raised on the side of the appellants,

Mr.S.P.Chidambaram, learned counsel appearing for the respondents in W.A.Nos.1120, 1139 and 2039 of 2021, submitted that section 92CA of the Act was inserted by Finance Act, 2002, which did not contain sub section (3A). Later on, by Finance Act, 2007, sub section (3A) was introduced. While inserting the sub section in the Notes on Clauses forming part of the Finance Bill, 2007, it is mentioned as under:

> *"Clause 25 of the Bill seeks to amend section 92CA of the Income-tax Act relating to reference to Transfer Pricing Officer. Under the existing provisions contained in sub-section (3) of section 92CA, there is no time limit for making the order of determination of arm's length price of an international transaction by a Transfer Pricing Officer.*
> *It is proposed to insert a new sub-section (3A) in the said section so as to provide that an order under sub-section (3) of the said section by a Transfer Pricing Officer for determination of arm's length price of international transactions shall be made at least two months before the period of limitation referred to in section 153 or section 153B, as the case may be, for making the order of assessment or reassessment or recomputation, or fresh assessment expires. This time limitation shall also be applicable in cases where a reference was made to the Transfer Pricing Officer before 1st June, 2007 for determining arm's length price of an international transaction but an order under sub-section (3) of the said section has not been passed by him before the said date.*
> *The provisions of sub-section (4) of the said section provides that on receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C having regard to the arm's length price determined under sub-section (3) by the Transfer Pricing Officer.*
> *It is proposed to amend the said sub-section (4) of section 92CA so as to provide that, on receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arm's length price determined under sub-section (3) of section 92CA by the Transfer Pricing Officer.*
> *These amendments will take effect from 1st June, 2007."*

Thus, the Notes on Clauses reveal the intention of legislature, which explicitly

mentions that two months prior to limitation under section 153. Accordingly, the intention of legislature was always that the transfer pricing assessment order should be passed on or before 31st October of the respective year and as such, the order can never be passed in November. In relation to section 92CA, it is submitted by the learned counsel that prior to the amendment, the TPO was not issuing the transfer pricing orders within the timeline which posed greater hardships to the assessing officer to complete the assessment proceedings; in order to make it mandatory for the transfer pricing officer to abide by the timeline, a strict timeline has been given to pass the transfer pricing order; and therefore, the Finance Act, 2007 inserted sub section (3A) carrying the time limit of sixty days for passing of the order by the TPO before the expiry of time limit for completion of assessment by the Assessing officer under section 153. Thus, according to the learned counsel, the exclusion of start date and inclusion of end date for computing the period of limitation by referring to General Clauses Act and Limitation Act, is incorrect and unsustainable and hence, the orders passed by the appellants are barred by limitation and are invalid.

9.4. Referring to para no.30 of the order impugned herein, Mr.Sandeep Bagmar, learned counsel for the respondents in WA.Nos.2036 and

2066 of 2021 submitted that section 153 states that no order of assessment shall be made at any time after the expiry of 21 months from the end of the assessment year in which the income was first assessable. In the present case, the period of 21 months expires on 31.12.2019 that has to be excluded, since section 92CA(3A) states that 'before 60 days prior to the date on which the period of limitation referred to section 153 expires'. Excluding 31.12.2019, the period of 60 days would expire on 01.11.2019 and the transfer pricing orders ought to have been passed on 31.10.2019 or any date prior thereto. Hence, the orders passed on 01.11.2019 are certainly barred by limitation and the learned Judge rightly held so, in the order impugned herein, which warrants no interference by this court.

9.5. Mr.Sumit Mangal, learned counsel for the respondent in WA.No.2035 of 2021, submitted that the Transfer Pricing Officer is mandated by section 92CA to conduct an independent assessment; accordingly, where a reference has been made to the Transfer Pricing Officer, the time line stipulated in section 92CA(3A) should be independently complied with; mere completion of the assessment on or before the time line i.e., 31.12.2019 as mentioned in section 153(1) r/w section 153(4) alone does not suffice; and hence, the orders passed by the appellants are absolutely barred by limitation. It is also submitted that section 9 of the General Clauses Act, 1897 does not

override the statute, but is merely a tool of statutory interpretation. Adding further, he submitted that section 12 of the Limitation Act shall not be applied, when specific time limits are prescribed in the statute itself. Therefore, the learned counsel submitted that the orders passed by the appellants computing the period of limitation by referring to those Acts, are not sustainable in law.

9.6. Mr.N.V.Balaji, learned counsel for the respondent in W.A.No.1115 of 2021 submitted that it is settled law that "*the circulars issued by the Central Board of Direct Taxes under section 119 of the Act are not meant for contradicting or nullifying any provision of the statute, but for ensuring proper administration of law by all the income tax authorities; they are designed to mitigate the rigours of the application of a particular provision in question, so as to benefit the assessee and make the application of the fiscal provision; they would be binding on the department; and hence, the same cannot be ignored"*. Chapter VII of the Central Action Plan for 2018-19 on International taxation and Transfer Pricing mentions about the transfer pricing audit getting time barred on 31.10.2018 and 31.10.2019. Therefore, the order of the learned Judge placing reliance on the Central Action Plan issued by the CBDT for providing guidance to the income tax authorities for efficient and effective tax administration and improving tax compliance, cannot be

faulted with. Thus, the learned counsel prayed for dismissal of the writ appeals, as they are not maintainable.

10. By way of reply, the learned senior standing counsel appearing for the writ appeals, reiterated that the orders passed under section 92CA(3) of the Act, which were impugned in the writ petitions, do not have legs to stand to cause any hardship / damage to the respondents, since the first appellant in the said orders, proposed only a transfer pricing adjustment and the assessing officer has to pass draft assessment orders under section 144C(1); and hence, there would not be any demand on account of the draft assessment orders. The learned senior standing counsel further submitted that section 9 of the General Clauses Act, 1897 would also be applicable to interpret "to" appearing in the phrase "prior to" in section 92CA(3A) of the Act; and the use of word "to" would result in inclusion of the last date i.e., 31st December from which the 60 days period is worked backwards. Thus, according to the learned counsel, the order of the TPO is binding on the Assessing Officer, which would mean that the Assessing Officer does not require time to examine the order passed by the TPO. Therefore, the time period mentioned in section 92CA(3A) cannot be read as mandatory as there is no provision to provide sufficient time for Assessing Officer to examine the TPO's order. It is also submitted that the legislature has employed "shall" and "may" in different portions of section

92CA and thus, the intention of the same, while employing "may" is to render it directory and not mandatory. While so, the learned senior standing counsel sought to allow these writ appeals by setting aside the order impugned herein.

11. We have considered the submissions made by all the parties and also perused the materials placed on record.

IV. Analysis and Reasons.

Alternative remedy

12.1. Firstly, we shall examine the plea of the appellants *qua* alternative remedy. It is the submission of the learned senior standing counsel that when alternative remedies are available as against the orders of the TPO and the assessing officer, the writ petitions were not maintainable and the respondents ought to have been relegated to avail the alternative remedy. In this connection, she relied on the following decisions:

(a)***Intimate Fashions (India) P. Ltd. v. Joint Commissioner of Income-Tax*, [2009 SCC OnLine Mad 2950 : (2010) 321 ITR 265 : (2010) 232 CTR 36 at page 269],** in which, it was held as under:

> "***10.*** *In the face of the limitation given under section 153 thus taken care of under section 144C and that it provides for service of a draft assessment order, it is open to the assessee to exhaust the remedies as provided for under section 144C of the Act. In the circumstances, considering the availability of the alternative remedy, the writ petition stands dismissed. No costs. Consequently, M.P. No. 1 of 2009 is closed."*

(b)***Dusseldorf India P. Ltd v. Deputy Commissioner of Income-Tax*, [2009 SCC OnLine Del 4254 : (2010) 320 ITR 565 : (2010) 231 CTR 176 at page 568]**, wherein, it was observed as follows:

> "***8.*** *The petitioner thus shall be entitled to raise all possible objections and along with that furnish necessary evidence as well to rebut the report of the Transfer Pricing Officer as draft assessment order. Since such a remedy is available to the petitioner, it is not necessary to go into this aspect in the present writ petition filed by the petitioner. We expect and hope that the Dispute Resolution Panel shall, positively, deal with the objections filed by the petitioner along with support evidence furnished by him to rebut the basis adopted by the Transfer Pricing Officer (TPO) to arrive at the arm's length price (ALP) and thereafter only it shall pass speaking orders."*

12.2. It could be seen that the above decisions do not lay down any ratio and are only cases where the learned Judges refused to exercise the discretionary relief under Article 226 of the Constitution of India. It is settled law that the refusal to exercise the discretionary relief under Article 226 of the Constitution of India is a self-imposed restriction. We feel it unnecessary to refer to the plethora of judgments available on the subject, but necessary to reiterate the circumstances under which the writ petitions would be maintainable under Article 226 of the Constitution of India, *dehors* the availability of alternative remedy and the same are stated below:

a. when the order is against the express statutory provisions or offends the constitutional safeguards,

b. when the order passed is without authority/jurisdiction,

c. when the order passed is against the principles of natural justice,

d. when the order passed is irrational, arbitrary and shocks the human conscience,

e. when irrelevant materials are considered ignoring the relevant materials.

12.3. In the cases before us, the order of the TPO has been challenged on the ground of limitation, which goes to the root of authority/jurisdiction. It is not in dispute that what was disputed is only the addition made on account of the order of the TPO. There is no dispute on facts about the date on which the order was passed, which is 01/11/2019 in all the cases or the receipt of such orders for the purpose of calculation of limitation. What was called upon to be adjudicated is the interpretation of the provision, which is a pure question of law in the present cases. Therefore, we are of the view that the writ petitions are maintainable and has been rightly entertained by the Learned Judge.

Legal position

13.1. Secondly, we shall deal with the provisions of law, for determination of the issue arisen in the instant cases. Much reliance has been placed upon the provisions of the General Clauses Act on the side of the appellants / Revenue to contend that in computation of time limit, the day

referred to as "from" has to be excluded and the day referred to as "to" has to be included. It is the contention of the Revenue that if 31/12/2019 is included, then the last date for passing the order by the TPO would be 1/11/2019 and hence all the orders would be in time. This stand is taken by the Revenue by treating 01/01/2020 as the last date for passing orders under Section 153 of the Income Tax Act. Before dealing with the said contention, it is apropos to refer to the relevant provisions.

13.2. **Section 92CA** of the Income Tax Act, 1961, deals with Reference to Transfer Pricing Officer and the same reads as under:

> "*Section 92CA. (1) Where any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Principal Commissioner or Commissioner refer the computation of the arm's length price in relation to the said international transaction or specified domestic transaction under Section 92C to the Transfer Pricing Officer*
> *(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction referred to in sub-section (1).*
> *2A. Where any other international transaction other than an international transaction referred under sub-section (1) comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply, as if such other international transaction is an international transaction referred to him under sub-section (1).*
>
> *2B. Where in respect of an international transaction the assessee has not furnished the report under Section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1)*

2C. Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July 2012.

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

3A. Where a reference was made under sub-section (1) before the 1st day of June 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation, referred to in section 153 or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires.

Provided that in the circumstances referred to in clause (ii) or clause (x) of Explanation 1 to Section 153, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty days, such remaining period shall be extended by sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly

(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of Section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly

(6) Where any amendments is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer

(7) The Transfer Pricing Officer may, for the purpose of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of sub-section (1) of section 131 or sub-section (6) of section 133 or section 133A

Explanation:- For the purposes of this section, Transfer Pricing Officer

means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of the Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons."

13.3. **Section 153** of the Income Tax Act, reads as follows:

"***Section 153.*** *(1) No Order of assessment shall be made under Section 143 or Section 144 at any time after expiry of twenty one months from the end of the assessment year in which the income was first assessable.*
Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months, the words "eighteen months" had been substituted.

(2)No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served.
Provided that where the notice under section 148 is served on or after the 1st day of April 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner.

Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.
(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months

.....

.....

Provided further *that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly."*

13.4. **Section 9** of the General Clauses Act reads as follows;

"*9. Commencement and termination of time.—(1) In any Central Act]or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".*

Provided that nothing in this section shall apply to any act or proceeding to which the "Indian Limitation Act, 1877 (15 of 1877)", applies

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

14. In the present cases, the Financial Year is 2015-16 and the assessment year is 2016-17. The period of 21 months would commence on 31.03.2017, the assessment year ended on 31.12.2018 normally and the extended period would end on 31.12.2019 and not on 01.01.2020. The contention of the appellants that the time to pass the assessment order would end at 00.00 hours on 01.01.2020, is fallacious as 31.12.2019 would end at 23:59:59 and 00.00 is regarded as the next day. A day for the purpose of reckoning the date ends before the stroke of midnight and the next date would commence at midnight immediately after the expiry of the previous day. The

last date would be the last day of the month (31.12.2019), which cannot be the first day of the next month (01.01.2020). The "date" must not be reckoned with respect to sun rise but with respect to the time of 24 hours in a day. The moment last minute of the day expires, the day ends and the next moment which is the first moment of the next day becomes irrelevant for the purpose of reckoning the period of limitation.

15. As per the details given in the website of National Institute of Standards and Technology of the United States Government, the Times and Frequency Division, while dealing with FAQ's on times of day suggests the following:

> *"**Is midnight the end of a day or the beginning of a day?***
>
> *When someone refers to "midnight tonight" or "midnight last night" the reference of time is obvious. However, if a date/time is referred to as "at midnight on Friday, October 20th" the intention could be either midnight the beginning of the day or midnight at the end of the day.*
>
> *To avoid ambiguity, specification of an event as occurring on a particular day at 11:59 p.m. or 12:01 a.m. is a good idea, especially legal documents such as contracts and insurance policies. Another option would be to use 24-hour clock, using the designation of 0000 to refer to midnight at the beginning of a given day (or date) and 2400 to designate the end of a given day (or date)."*

16. As per the International Standards Organization, ISO 8601-1:2019 midnight may only be referred to as "00:00", corresponding to the beginning of a calendar day. The earlier use of reference to 24.00 hours to

mark the end of the day, was dropped.

17. In India, the midnight or 00.00 hours has been always used to denote the beginning of the next date. A reference could be made to our Independence day, wherein the stroke of midnight at 00.00 hours on 15.08.1947 is considered as the moment of Independence as per the Indian Independence Act, 1947.

18. Also, it is not out of place to mention here that the new year eve of every year, through out the world is celebrated at 00.00 hours and it is regarded as the beginning of a new day and not as an extension of the previous day.

19. A reference can also be made to various insurance policies, wherein the beginning of the day is reckoned as 00.00 hours and the end of the day at 23:59:59 hours.

20. Even as per the contentions of the appellants, the assessing officer has time upto 23:59:59 hours on 31.12.2019 to pass assessment orders. However, according to them, the time limit expires at/on 00.00 hours of 01.01.2020. The fallacy in such contention is that 00.00 hours of 01.01.2020 denotes not only the beginning of the next day of the month, but also the fact that it comes after 23:59:59 hours on 31.12.2019 and by such time, the time limit had already expired. By resorting to such fallacious argument, the

department wants to relate 00:00 hours of 01.01.2020 to 31.12.2019 and stretch it to 01.01.2020 to extend the period of limitation for the entire day of 01.01.2020, which cannot be permitted. Even as per Section 153, no order can be passed at any time after expiry of twenty one month's implying that the order has to be passed before 23:59:59 hours on 31.12.2019. The provision cannot be considered ignoring the words "at any time after expiry", in the opinion of this court.

21. It will be useful to refer to the judgment of the Apex Court in ***B.N. Agarwalla v. State of Orissa*, [(1995) 6 SCC 509],** taking into consideration Section 5 of the General Clauses Act and the relevant passage of the same reads as under:

> "***6.****Sub-section (7) of Section 41-A provides for automatic transfer to the Arbitration Tribunal of all arbitration proceedings of the kind specified in sub-section (1) which were "pending before any arbitrator on the date of commencement" of the said Act and "in which no award had been made by the said date". Obviously, the expression "by the said date" here means by the date of commencement of the Arbitration (Orissa Amendment) Act, 1982. The first expression clearly means an arbitration proceeding pending before any arbitrator on the date of commencement of the Act, namely, 26-3-1983. The meaning of the second expression should be consistent with that of the first expression since the two could not be used to create a conflict. The purpose of sub-section (7) is to divest the arbitrator of authority to make the award in all such arbitration proceedings which were pending before the arbitrator on the date of commencement of the said Act and to provide for their automatic transfer to the Arbitration Tribunal. The General Clauses Act, 1897 provides that unless the contrary is expressed, an Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. There being no contrary indication in the Act, it must be held that the said Act came into force on the midnight on the expiration of the day preceding its commencement, i.e., the midnight between 25-3-1983 and 26-3-1983. There can be no doubt that if the second*

expression "in which no award has been made by the said date" was not also present in sub-section (7), then the undoubted result of the first expression would be that an arbitration proceeding in which no award had been made up to the midnight between 25-3-1983 and 26-3-1983 would be a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal. The question, therefore, is whether the further words used in the second expression in sub-section (7) must lead to a different conclusion. The construction of the first expression being unambiguous, the second expression must be construed harmoniously unless that is not a permissible construction of the expression "by the said date".

7.*It does appear to us that the second expression, namely, "in which no award has been made by the said date" was further used in sub-section (7) ex abundante cautela to clarify the meaning of pending proceedings by indicating that only those arbitration proceedings in which the award also had been made "by the said date" were excluded from the operation of sub-section (7) and that every other arbitration proceeding including those in which the award alone remained to be made "by the said date" stood transferred to the Arbitration Tribunal. In other words, if the arbitration proceedings had been closed but the arbitrator had not made the award till the midnight between 25-3-1983 and 26-3-1983 when the Act came into force, it was a pending arbitration proceeding governed by sub-section (7). Acceptance of the appellant's contention would amount to holding that even though the Act had come into force on the midnight between 25-3-1983 and 26-3-1983, an award made thereafter on 26-3-1983 was not a pending arbitration proceeding on the date of commencement of the Act. Unless meaning of the expression "by the said date" used in sub-section (7) be only that suggested by learned counsel for the appellant, the construction which would harmonise with the meaning of the earlier expression, must be given to the provision.*

8.*We may now consider the meaning of the word 'by' for ascertaining the meaning of the expression "by the said date". Meaning of the word 'by' in some of the dictionaries is:*

Black's Law Dictionary (Sixth Edn.)

"*Before a certain time; ... not later than a certain time; on or before a certain time; ....*"

The New Shorter Oxford English Dictionary

"*… On or before, not later than. ...*"

9.*No doubt the word 'by' means "before a certain time" as well as "on or before a certain time". The question is: whether, the word 'by' in the expression "by the said date" would mean in other words 'before' or 'on' 26-3-1983 in the present context? We have already indicated the meaning of the first expression "pending before any arbitrator on the date of commencement" to mean clearly and unambiguously pending up to the*

midnight between 25-3-1983 and 26-3-1983, i.e., before commencement of the date 26-3-1983 or at the time of expiry of the preceding day i.e. 25-3-1983. The other expression must, therefore, be construed in this context and since the word 'by' means 'before' also, in this context it must be held to mean 'before' and not 'on' the date of commencement of the Act. So construed, the second expression would read as "in which no award has been made before the said date" i.e. in which no award has been made before the date of commencement of the Act, namely, 26-3-1983. This would be the harmonious construction of the two expressions in the provision.

10.*Obviously, an award made on 26-3-1983 cannot be said to be an award made before 26-3-1983 and, therefore, the award in the present case having been made on 26-3-1983 and not before 26-3-1983, the date of commencement of the Act, the arbitrator had no jurisdiction to make the award as it was a pending arbitration proceeding which automatically stood transferred to the Arbitration Tribunal."*

22. From Section 153, the regular time for passing the assessment order ends on 31.12.2018 and with extension on the matter being referred to TPO, the time limit to pass assessment order would lapse on 31.12.2019. What is not to be forgotten, while interpreting a taxing statute, is the explicit and clear language used by the parliament while enacting the law. If the language employed in any statute is clear and unambiguous from its plain and natural meaning, external aid for interpretation are unnecessary. In the present case, we are called upon to adjudicate the period of limitation applicable to TPO under Section 92CA(3A) and incidentally under Section 153.

23. On the applicability of the General Clauses Act, it is relevant to point out the ratio laid down in the Constitutional Bench Judgment of the Hon'ble Supreme Court in C***ommr. of Customs v. Dilip Kumar & Co.*****, [(2018) 9 SCC 1 : 2018 SCC OnLine SC 747],** which reads as under:

> "***17.*** *In doing so, the principles of interpretation have been evolved in common law. It has also been the practice for the appropriate legislative body to enact the Interpretation Acts or the General Clauses Act. In all the Acts and Regulations, made either by Parliament or Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in the General Clauses Act are to be necessarily kept in view. If while interpreting a statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on the General Clauses Act. Notwithstanding this, we should remember that when there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessarily refer to the provisions of the statute."*

24. The finding so rendered by the Constitutional Bench of the Hon'ble Supreme Court can be related to Article 367 (1) of the Constitution of India, which reads as follows:

> *"367. Interpretation*
>
> *(1) Unless the context otherwise requires, the General Clauses Act, 1897 , shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India"*

25. The above Article commences with the words, "unless the context otherwise requires". Therefore, the interpretation sought to be projected by the department cannot be accepted as the General Clauses Act cannot override any interpretation propounded by the parliament/Legislature in the clear, distinct and express language with an intention to convey a certainty as to how time is to be calculated. The ratio laid down by the Constitutional Bench of the Apex Court is squarely applicable to this case.

26. Further, the general interpretation by resorting to the meaning conveyed under the General Clauses Act cannot be adopted while interpreting 92CA (3A), because, the context and the language employed therein are completely different and it is pertinent to note that the words "from" and "to" have not been used. Even the employment of the General Clauses Act will not aid the Revenue, the reason of which will be disclosed a little later in this judgment. But, right now, it is relevant to consider the scope of the word "to".

27. The word "to" is used as a preposition or as an adverb. In popular sense, it is used to express the direction in which a person, thing, or time travels. The flow of direction is to be gauged from the preceding word or words used, like "prior to" or "upto". Keeping the same in mind, if we look at the wording of Section 92CA (3A), we cannot accept the contention of the Revenue that the time to be reckoned is from 31.12.2019 and not 30.12.2019 as has been rightly done by the learned Judge.

28. The word "date" in section 92CA(3A) would indicate 31.12.2019. But the preceding words "prior to" would indicate that for the purpose of calculating the 60 days, 31.12.2019 must be excluded. The usage of the word "prior" is not without significance. It is not open to this court to just consider the word "to" by ignoring "prior". The word "prior" in the present context, not only denotes the flow of direction, but also actual date from which the period

of 60 days is to be calculated. It is settled law that while interpreting a statute, it is not for the courts to treat any word(s) as redundant or superfluous and ignore the same. In this connection, it is pertinent to note the judgment of the Apex Court in ***Grasim Industries Ltd. v. Collector of Customs*****, [(2002) 4 SCC 297 : 2002 SCC OnLine SC 413],** wherein, it was held as follows:

> "***10.*** *No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner [(1846) 6 Moore PC 1 : 4 MIA 179] "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See : Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests [1990 Supp SCC 785 : AIR 1990 SC 1747] , Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] , Institute of Chartered Accountants of India v. Price Waterhouse[(1997) 6 SCC 312] and Harbhajan Singh v. Press Council of India [(2002) 3 SCC 722 : JT (2002) 3 SC 21] .)"*

29. The language employed is simple. 31.12.2019 is the last date for the assessing officer to pass his order under Section 153. The TPO has to pass

order before 60 days prior to the last date. The 60 days is to be calculated excluding the last date because of the use of the words "prior to" and the TPO has to pass order before the 60th day. In the present case, the word "before" used before "60 days" would indicate that an order has to be passed before 1/11/2019 i.e on or before 31.10.2019 as rightly held by the Learned Judge.

30. Even considering for the purpose of alternate interpretation, the scope of Section 9 of the General Clauses Act, it is to be noted that an inverted calculation of the period of limitation takes place here. If the last date is taken to be the first date from which the period of 60 days is to be calculated, reading down the provision with the use of the word "from", which denotes the starting point or period of direction in general parlance, would mean that 60 days "from the last date". Even going by Section 9 of the General Clauses Act, when the word "from" is used, then, that date is to be excluded, implying here that 31.12.2019 must be excluded. After excluding 31.12.2019, if the period of 60 days is calculated, the 60th day would fall on 01.11.2019 and the TPO must have passed the order on or before 31.10.2019 as orders are to be passed before the 60th day. Therefore, either way the contention of the Revenue is a fallacy and has no legs to stand.

Mandatory or Directory

31. The next contention that has been raised by the learned senior standing counsel for the appellants is that the usage of the word "may" in Section 92CA (3A) indicates that the time fixed is only directory, a guideline, not mandatory and is for the sake of internal proceedings.

32. Let us now examine the relevant procedures relating to Transfer Pricing. 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. 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 92CA(4), the assessing officer has to pass an order in conformity with the order of the TPO. After 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 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. 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. It goes without saying that if no objections are filed by the Assessee either before the DRP or the assessing officer to the determination by the TPO, section 92CA(4) would come into operation. Therefore, it is very clear that once a reference is made, it would have an impact on the assessment unless a decision on merits is taken by DRP rejecting or varying the determination by the TPO.

33. It would only be apropos to note that as per 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 is the time frame mandatory, but also that the TPO has to pass an order within 60 days.

34. 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.

35. Also, 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 is pending, the department gets another 12 months. Once reference is made and after availing the benefit of the extended period to pass orders, the department cannot claim that the time limits are not mandatory. Hence, the contention raised in this regard is rejected.

36. As rightly pointed out by Mr.Ajay Vohra, learned senior counsel for the respondents in WA.Nos.1148 and 1149/2021, the word "may" has to be sometimes read as "shall" and vice versa depending upon the context in which it is used, the consequences of the performance or failure on the overall scheme and object of the provisions would have to be considered while determining whether it is mandatory or directory.

37. At this juncture, it is noteworthy to mention the commentary of *Justice G.P.Singh on the interpretation of statutes, Principles of Statutory Interpretation* (1st Edn., Lexis Nexis 2015), which is quoted below for ready reference:

> "*The intention of the legislature thus assimilates two aspects: In one aspect it carries the concept of "meaning" i.e. what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason and spirit" pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. This formulation later received the approval of the Supreme Court and was called the "cardinal principle of*

construction”.”

38. In case of assessments involving transfer pricing, fixing of time limits at various stages sets forth that the object of the provisions is to facilitate faster assessment involving such determination. In the present case, as rightly held by the learned Judge in paragraphs 22 to 29 of the order dated 07.09.2020, the order of the TPO or the failure to pass an order before 60 days will have an impact in the order to be passed by the Assessing Officer, for which an outer time limit has been prescribed under Sections 144C and 153 and is hence mandatory. What is also not to be forgotten, considering the scheme of the Act, the inter-relatability and inter-dependency of the provisions to conclude the assessment, is the consequence or the effect that follows, if an order is not passed in time. When an order is passed in time, the procedures under 144C and 92CA(4) are to be followed. When the determination is not in time, it cannot be relied upon by the assessing officer while concluding the assessment proceedings.

39. Upon consideration of the judgments and the scheme of the Act, we are of the opinion that the word “may” used therein has to be construed as “shall” and the time period fixed therein has to be scrupulously followed. The word “may” is used there to imply that an order can be passed any day before

60 days and it is not that the order must be made on the day before the 60th day. The impact of the proviso to the sub-section clarifies the mandatory nature of the time schedule. The word "may" cannot be interpreted to say that the legislature never wanted the authority to pass an order within 60 days and it gave a discretion. Therefore, the learned Judge rightly held the orders impugned in the writ petitions as barred by limitation, as the Board, in the Central Action Plan, has specified 31.10.2019 as the date on which orders are to be passed by the TPO, reiterating the time limit to be mandatory.

V. Conclusion.

40. Ergo, we find no reasons to interfere with the order of the Learned Judge, which is impugned herein and accordingly, dismiss these intra-court appeals, but without costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) **(J.S.N.P., J.)**

rsh 31.03.2022

Index : Yes/No
Internet : Yes

To
1. The Deputy Commissioner of Income Tax
   Transfer Pricing Officer Circle – 3(1)
   Tower – 1, BSNL Building,
   No.16, Greams Road, Chennai – 600 006.

2. The Deputy Commissioner of Income Tax
   Large Tax Payer Unit – 2

121, Nungambakkam, High Road,
Chennai – 600 034.

3. The Joint Commissioner of Income Tax
Transfer Pricing Officer - 2 (I/c)
Room No. 511, 5th Floor
Tower 1, BSNL Building
No.16, Greams Road
Chennai - 600 006.

4. The Deputy Commissioner of Income Tax
Corporate Circle 1 (2)
6th Floor, Wanaparty Block
Aayakar Bhawan
Nungambakkam, Chennai - 600 034

5. The Additional Commissioner of Income Tax,
Transfer Pricing Officer Circle – 3
Tower – 1, BSNL Building,
No.16, Greams Road, Chennai – 600 006.

6. The Assistant Commissioner of Income Tax,
Corporate Circle 4(2),
121, Nungambakkam High Road,
Chennai – 600 034.

7. Joint Commissioner of Income Tax,
Addl./JCIT, Transfer Princing Officer – 2,
Room No.505, 5th Floor, Tower – 1,
BSNL Building, 16, Greams Road,
Chennai – 600 006.

8. Deputy Commissioner of Income Tax,
Corporate Circle – 5(2),
4th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

9. Deputy Commissioner of Income Tax,
Transfer Pricing Officer – 2(2)

Room No.505, 5th floor, Tower -1,
Income Tax Office, BSNL Building,
No.16, Greams Road, Chennai – 600 006.

10. Deputy Commissioner of Income Tax,
Corporate Circle – 5(2)
4th Floor, Wanaparthy Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

11. The Joint commissioner of Income Tax,
Transfer Pricing Officer No.-2,
Room No.511, 5th Floor, BSNL Building,
Tower – 1, No.16, Greams Road,
Chennai – 600 006.

12.The Deputy Commissioner of Income tax,
Corporate Circle – 5(2),
Room No.415, Main Building -4th floor,
Chennai Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034,
Tamilnadu.

13. The Additional Commissioner of Income Tax,
ADDL/JCIT, TPO3,
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14. The Assistant Commissioner of Income Tax,
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15. The Additional Commissioner of Income Tax,
Transfer Pricing Officer – 1,

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No.16, Greams Road,
Chennai – 600 006.

16. The Deputy Commissioner of Income Tax,
Corporate Circle – 1 (1),
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17. The Additional Commissioner of Income Tax,
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18. The Deputy Commissioner of Income Tax,
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20. The Assistant Commissioner of Income Tax,
Corporate Circle – 2(1),
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No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

R. MAHADEVAN, J.
and
J. SATHYA NARAYANA PRASAD, J.

rsh/rk

Pre-delivery Common Judgment in
W.A. No. 1120 of 2021 etc., batch

31.03.2022