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# Tax alert: Split verdict on interplay between sections 144C and 153 – Larger Bench of Supreme Court to decide

**13 August 2025**

While deciding the Special Leave Petition (SLP) in the much-awaited matter concerning the applicability of the time limit under Section 153 for issuance of final assessment orders read with Section 144C, a Bench of the Supreme Court comprising J. B. V. Nagarathna and J. Satish Chandra Sharma has delivered a split verdict and referred the matter to the Hon'ble Chief Justice of India for constitution of a larger bench.

## In a nutshell

The two-judge bench of the Hon'ble Supreme Court delivers a split verdict providing divergent opinions on whether the time limit prescribed under section 153 applies to the final assessment order issued under Section 144C, in cases involving an 'eligible assessee'.

One judge ruled in favour of the taxpayer, upholding the High Courts' view that Section 153 prescribes an outer time limit that must be adhered to, even in cases governed by Section 144C. The other judge, however, ruled in favour of the Revenue, observing that such an interpretation renders the scheme under Section 144C unworkable.

Considering the divergent opinions, the matter is to be placed before the Hon'ble Chief Justice of India for constitution of a larger bench.

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**Background:**

- The taxpayer[1], a non-resident, engaged in providing services of prospecting for or extraction or production of mineral oils, computed its income on presumption basis u/s 44B of the Income Tax Act, 1961 (the Act).
- However, for AY 2014-15, it opted out of this option and computed its income basis normal provisions of tax and declared a loss.
- The tax return of the taxpayer was selected for a scrutiny assessment. The assessing officer (AO) proposed an upward adjustment. Being an 'eligible assessee', u/s 144C(15) of the act, the taxpayer filed objections before the Dispute Resolution Panel (DRP). Rejecting the taxpayer's objections, the DRP gave directions to the AO to pass the final order upholding the adjustment proposed in the draft assessment order.
- The taxpayer appealed against the final assessment order before the Income-tax Appellate Tribunal (ITAT). The ITAT remanded the case back to the AO for fresh adjudication on 4 October 2019.
- As per section 153(3) of the Act, an assessment order in such case must be issued within 12 months from the end of the year in which the ITAT order has been received by the specified income tax authority[2]. The AO passed a draft assessment order on 28 September 2021. It may be noted that as per the taxpayer the last date for passing the final assessment order under section 153(3) of the Act read with TOLA 2020, was 30 September 2021[3].
- Accordingly, in the second round of proceedings, the taxpayer filed objections before DRP against the draft order dated 28th September 2021. The taxpayer also filed a writ petition before the Bombay High Court (HC) to challenge the assessment proceedings on the grounds of limitation. The taxpayer was of the view that the limitation period as provided under section 153 of the I-T Act was the outermost limit provided for passing final assessment order under the I-T Act. The draft assessment order, the DRP order and the final assessment order should have been passed within the said limitation period, i.e., by 30 September 2021. This contention was in line with the decision of the Madras High Court in the case of Roca Bathroom Products Pvt Ltd.[4]
- Further, for AY 2018-19 the taxpayer's case was selected for a scrutiny assessment. In these cases, the draft order u/144C was passed on 28.9.2021. The taxpayer contended that in these cases, the assessment orders were required to be passed within the time prescribed u/s 153(1) of the Act for AY 2018-19, i.e., eighteen months from the end of the assessment year i.e, for AY 2018-19 it was 30.9.2021 (after operation of TOLA). Since, a final assessment order was not passed by 30.9.2021, the assessment proceedings were barred by limitation. Accordingly, the taxpayer had also challenged this before the HC by filing a writ petition.
- The Bombay HC[5] ruled in favour of the taxpayer in line with the ruling of Hon'ble Madras HC[4]
- The revenue preferred an SLP before the SC against the Bombay and Madras HC orders. The question before the Hon'ble Supreme Court was on the statutory interpretation of interplay between section 144C and section 153.
- Supreme Court bench comprising two judges, have delivered a split verdict. A summary of the opinion and reasoning provided by each of the Hon'ble SC Judges is as follows:

[1] Shelf Drilling Ron Tappmeyer Limited [TS-456-SC-2025-TP]

[2] Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be

[3] Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020

[4] Roca Bathroom Products (P) Ltd. vs. Dispute Resolution Panel-2, Bangalore 2 (2021) 127 taxmann.com 332 (Madars)]

[5] Shelf Drilling Ron Tappmeyer Limited [TS-485-HC-2023(BOM)-TP]

**Opinion 1: In favour of the taxpayer[6] –**

- It is well settled that a taxing statute should be strictly construed. This rule of interpretation does not exclude a reasonable construction which gives effect to the purpose or intention of a provision as apparent from the scheme of the Act. Such reasonable construction is to be achieved only with the assistance of the internal and external aids permissible under the law and not by drawing reliance on any superlative or equitable considerations or, even, the goal of "recovering lost tax".
- Another principle of statutory interpretation is that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, courts are bound to give effect to that meaning irrespective of consequences. The results of the construction are then not a matter for the court, even though they may be strange or surprising, unreasonable or unjust or oppressive.
- Thus, mere hardship cannot be a ground for not giving effective and grammatical meaning to every word of the provisions of a statute if the language used therein is unequivocal.
- Section 144C was introduced by the parliament to attract foreign investments in India by providing quicker resolution to the disputes involving such non-residents taxpayers.
- Section 144C is a self-contained code offering an alternate dispute resolution mechanism within the four corners of the I-T Act. It outlines the procedure to be followed by the taxpayer and the revenue with specific timelines outlined in the particular sub-sections.
- These provisions are to be strictly interpreted as reading it otherwise would inflate the limitation timelines of section 144C which would be against the intent of the bringing this legislation.
- There are three provisions under section 144C which involve a non-obstante clause, section 144C(1), section 144C(4) and section 144C(13). Sub-section (1) is notwithstanding anything to the contrary contained in the Act, while sub-section (4) and (13) are notwithstanding anything contained in Section 153 or 153B of the Act.
- While interpreting a non-obstante clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the non-obstante clause is used.
- The non-obstante clause in sub-section (1) of Section 144C implies that it overrides all sections of the Act contrary to the procedure contemplated under Section 144C of the Act in as much as it contemplates a special procedure insofar as eligible assessees are concerned. Thus, the non-obstante clause in sub-section (1) of Section 144C is not related to the overall limitation period prescribed under Section 153 of the Act but with the aspect of there being a distinct procedure which has been envisaged in the case of only eligible assessees.
- On the contrary, Section 144C(4) contains a non-obstante clause only with respect to section 153 and section 153B. It prescribes that the assessing officer shall pass the assessment order within one month from the end of the month in which the acceptance is received or the period of filing objections is expired although under the proviso to sub-section (3) of Section 153 the period of limitation prescribed to make a fresh assessment is twelve months.
- Further, if directions are issued by the DRP to the Assessing Officer within a period of nine months, on receipt of the said directions issued under sub-section (5) of Section 144C, the Assessing Officer shall in conformity with the said directions, complete the assessment without providing any further opportunity of being heard to the assessee within one month from the end of the month in which such directions are received. However, there is again a non obstante clause in sub-section (13) of Section 144C i.e., the

[6] By Justice B.V. Nagarathna

completion of the assessment order shall be notwithstanding anything contrary contained in Section 153 or Section 153B.

- There is no difficulty in a scenario where Assessing Officers assessing a small set of eligible assessees would have to work backwards and accommodate for the entire timelines prescribed under Section 144C. Arguendo, that the Parliament could not have conceived such a procedure to be followed by Assessing Officers, it is not for a court to import provisions in the statute to supply any assumed deficiency, especially when the statute is otherwise workable.

  The Act is certainly workable if the proceedings under Section 144C are subsumed within the limitation prescribed under Section 153(1) or (3), or as the case may be.

- The object is to conclude the proceedings and make an assessment as expeditiously as possible. If orders are not made within the time stipulated under Section 153(3), then there would be no final assessment order and the return of income as filed by the assessee would have to be accepted.

**Opinion 2: In favour of the revenue[7]–**

- While interpreting the provisions of Sections 144C and 153(3), it is essential to strike a balance between granting the Revenue sufficient time to complete the assessment and prevent tax evasion while ensuring that the taxpayer is not subjected to scrutiny after an unduly long lapse of time.
- Section 144C provides an option to the taxpayer, and it cannot be contended that the taxpayer is prejudiced by the proceedings before the DRP or the time such proceedings take, as it is a mechanism voluntarily initiated by the taxpayer and not a mandatory requirement.
- The Ld. AR argued that the non-obstante clause in Section 144C(1) only overrides those provisions of the Income-tax Act that are in direct conflict with it. Accordingly, the only conflicting aspect between Section 144C and the rest of the Act is that Section 144C requires a "draft assessment order" instead of a "final assessment order", which is otherwise the norm. Therefore, the non-obstante clause should not be interpreted to override or ignore the timelines (i.e., deadlines) set under Section 153 for completing an assessment.
- However, the judge disagreed with this contention and opined that when section 153(1) is examined, though there is a reference to Section 143 and Section 144, there is no reference to Section 144C. It cannot therefore be held that the timelines under Section 153 also includes the process conceived under Section 144C.
- The judge further observed that if the contention of the Ld. AR is accepted, it would effectively mean that an AO would have to firstly foresee that an 'eligible assessee' would compulsorily file objections to the draft assessment order u/s 144C(2)(b) and the Dispute Resolution Panel would require the entire nine months period to issue any direction. The Parliament while enacting Section 144C, could not have conceived such a procedure to be followed by an AO in the country.
- Giving an example of Section 92CD(5) of the Act, which provides for the passing of order by the AO giving effect to an Advance Pricing Agreement, the judge held that Section 92CD(5) operates notwithstanding anything contained in Section 153, Section 153B or Section 144C. Had Section 153 subsumed the timelines prescribed under Section 144C, there was no occasion for the Parliament to specifically mention Section 144C in Section 92CD(5), which too provided alternate timelines, contrary to the timelines prescribed under Section 153. This too is an indication of the intention of the Parliament to operate the timelines under Section 144C over and above Section 153.

[7] By Justice Satish Chandra Sharma

- The timelines u/s 144C(4) and 144C(13) are independent of the timelines contemplated in section 153 of the Act, and operate in addition to the timelines contemplated in Section 153.
- The non-obstante clauses in Section 144C must therefore be harmoniously construed. The timelines prescribed under Section 153 will be applicable up to the stage of passing the draft assessment order under Section 144C(1).
- The Ld. AR argued that Explanation 1 to Section 153, which lists situations where certain time periods are excluded when calculating the assessment time limit, does not include any exclusion for the time taken by the DRP under Section 144C. The Judge rejected this, noting that once a draft assessment order is issued under Section 144C, the AO cannot conduct fresh enquiries or add new issues in the final order. The AO's role is only to implement the DRP's directions. Since the exceptions in Explanation 1 apply only where the AO acts in a quasi-judicial capacity, and in Section 144C the AO's role is merely executory, Explanation 1 has no application here.
- If the contentions of the Ld. AR are accepted, the DRP would be forced to decide the objections in a very quick manner inhibited by the timelines prescribed under Section 153 of the Income Tax Act, amounting to a violation of the Principles of natural justice.
- Taking the interpretation that the time limit for all the procedures u/s 144C is subsumed within the section 153(3) would result in a complete catastrophe for recovering lost tax. The time period within which the AO would have to pass orders would be negligible.
- In conclusion, the judge opined that Section 144C(4) and 144C(13) are non-obstante clauses which override section 153, and accordingly the time limit u/s 153(3) applies to section 144C only to the extent of passing the draft order u/s 144C(1).

Owing to the differing opinions by the two-judge bench, the matter is referred to the Hon'ble Chief Justice of India (CJI) for constitution of a larger bench and deciding the issue afresh.

**Conclusion:**

The split decision of the Hon'ble Supreme Court has left the issue unresolved. In September 2023, while hearing an SLP filed by the Revenue, the Hon'ble Supreme Court had directed that the High Court's judgment in the given case shall not be cited as precedent in any subsequent matter until the issue reaches finality. With the potential revenue impact estimated at around INR 1.3 lakh crore, taxpayers now await the new hearing with keen interest.

Another related question in such cases which may come up for taxpayers eligible for refund, is the amount of refund claim which could be made. The Delhi High Court in an earlier ruling [8] had held that income returned by taxpayer was to be accepted in the absence of AO not passing assessment order within time limit under section 153, pursuant to remand back matter by the ITAT.

Given the significance and scale of the matter, it is anticipated that the Hon'ble CJI may expedite the constitution of a larger bench to commence the hearing at the earliest.

[8] Aricent Technologies (Holdings) Ltd. vs ACIT [2023] 152 taxmann.com 299 (Delhi)

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