

IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI

BEFORE SHRI B. R. BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.1256/Mum/2015

(निर्धारण वर्ष / Assessment Years: 2010-11)

Multi Screen Media Pvt. Ltd. Interface Building-7, 4 th Floor, Malad Link Road, Malad West, Mumbai-400064.	बनाम / Vs.	ACIT, Central Circle-3(2) R. No. 402, Aayakar Bhavan, M. K. Marg, Mumbai-400020.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AABCS1728D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nishant Thakkar
Revenue by:	Dr. Samuel Pitta (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 18/11/2022

घोषणा की तारीख /Date of Pronouncement: 22/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Assessing Officer (hereinafter “AO”) dated 30.01.2015 for AY. 2010-11 passed u/s 143(3) read with section 144C(13) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. At the outset, the Ld. AR of the assessee drew our attention to the legal ground raised by the assessee challenging the action of the Transfer Pricing Officer (TPO) to have passed the Transfer Pricing [TP] order beyond the time limit prescribed by the Act, which impugned action of TPO, according to the Ld. AR vitiate the TP order. Since ground no. 23 & 24 are grounds which questions the jurisdiction of TPO to have passed the TP order, we will adjudicate the same first. The ground no. 23 & 24 reads as under: -



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“23. Without prejudice to Ground nos. 1 to 23, the order dated 30.01.2014 passed under section 92CA(3) is without jurisdiction and bad in law since the same is passed beyond the time limit provided under section 92CA(3A) of the Act.

24. Withour prejudice to the above, the final assessment order dated 30.01.2015 passed under section 143(3) read with section 144C (13) of the Act is without jurisdiction and bad in law as the same is passed beyond the time limit provided under section 153 of the Act.”

3. Assailing the action of the Transfer Pricing Officer [TPO] to have passed the Transfer Pricing Adjustment (TPA), after the expiry of time limit prescribed by Section 92CA(3) of the Act, which according to the Ld. AR has expired on 29.01.2014; and since in the instant case the TPO has passed the Transfer Pricing order u/s 92CA(3) of the Act on 30.01.2014, the same is time barred and therefore without jurisdiction.

4. Per contra, the Ld. CIT-DR opposed the admission of the additional ground no. 23 & 24 by submitting that the assessee has not raised the same before the lower authorities. So, therefore, it is precluded from raising the same before the Tribunal for the first time.

5. In his rejoinder, to the preliminary objection of Ld. DR, the Ld. AR submitted that the legal ground raised by the assessee goes to the root of the very assessment itself, as it challenges the jurisdiction of the TPO to have passed the TP order in the instant case: and since the



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additional ground raised supra are pure questions of law and all the facts necessary for the adjudication of the additional grounds are already on record, therefore according to him, the additional ground raised by the appellant ought to be decided on its own merits as held by the Hon'ble Supreme Court in the case of NTPC Vs. CIT (229 ITR 383) (SC).

6. Having heard both the parties for admission of the ground no. 23 as well as ground no. 24 which we note are purely legal issue raised by assessee which is challenging the jurisdiction of the TPO/AO to have passed the Transfer Pricing Adjustment within the time limit prescribed by Section 92CA(3) of the Act. Therefore, we are inclined to admit this additional grounds of appeal raised by the assessee.

7. Having admitted the legal grounds nos. 23 & 24 (Ground no. 24 will be reproduced infra) we would first of all look into the merits of the legal issue raised by ground no. 23 (supra) which is reproduced again as under: -

“2. Without prejudice to Ground nos. 1 to 23, the order dated 30.01.2014 passed under section 92CA(3) is without jurisdiction and bad in law since the same is passed beyond the time limit provided under section 92CA(3A) of the Act.”

8. Briefly stated the facts relevant to adjudicate the aforesaid legal issues are that the assessee M/s. Culver Max Entertainment Pvt. Ltd. formerly known as M/s. Sony Pictures Networks India Pvt. Ltd.



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erstwhile Multi Screen Media Pvt. Ltd. (hereinafter “M/s. CMEPL”) had filed the return of income on 14.10.2010 for AY. 2010-11 declaring total income of Rs.73,48,87,289/-. The AO notes that the assessee later on filed revised return of income on 28.03.2012 declaring total income of Rs.73,48,87,289/- and claimed total TDS credit of Rs.34,53,46,215/-. Later, the case of assessee was selected for scrutiny and the AO noted that the assessee had declared international transactions as per Form 3CEB which were referred to the Transfer Pricing Officer (TPO) for determination of Arm’s Length Price (ALP). And by an order u/s 92CA(3) of the Act dated 30.01.2014, the TPO has made an adjustment amounting to Rs.65,86,10,784/- towards notional income to be received by M/s. MSM (erstwhile name of assessee) on extended credit facility to its AE; and Rs.1,89,88,67,100/- on account of Arm’s Length compensation receivable by the assessee for re-structuring of business. And thus made total Transfer Pricing Adjustment of Rs.255,74,77,884/- to the income of the assessee. Thereafter, the AO had passed the draft assessment order dated 29.03.2014 proposing to assess the income at Rs.435,02,38,320/-. The assessee moved against the draft assessment order before the Ld. DRP and pursuant to which Ld. DRP gave certain direction to AO on 19.12.2014, pursuant thereto the AO has passed the final assessment order dated 30.01.2015 u/s 143 r.w.s. 144C(13) of the Act determining the total income of the assessee at Rs.289,18,03,600/- as against the total income of Rs.73,48,87,829/- as returned by the assessee in its return of income. The legal issue raised by assessee is against the TPO



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order/Transfer Pricing Adjustment from notional interest on AE [outstanding receivables from its Associate Enterprises (AE)] i.e. MSM Satellite (Singapore) Pvt. Ltd. (hereinafter “MSMS”) to the tune of Rs.27,25,10,236/- and Transfer Pricing Adjustment from business re-structuring to the tune of Rs.189,88,67,100/-. The assessee has raised the legal ground challenging the impugned order passed by the AO pursuant to the DRP direction to the extent of making adjustment on account of ALP on the legal ground that the TP order in this case has been passed by the TPO after the time limit prescribed u/s 92CA(3A) r.w.s. 153 of the Act, rendering the TP order and consequential assessment order illegal, void-ab-initio and liable to be quashed.

9. Thus we note that by raising the additional ground No.23, the assessee challenges the action of TPO to have passed the TP order after the period of limitation prescribed by the Statute. It was submitted that the TP order ought to have been passed on or before 29th January, 2014. However, in the present case, the TPO passed the transfer pricing order on 30.01.2014, that is beyond the time limit prescribed under the Act. Hence, according to assessee, the same is barred in terms of section 92CA(3A) r.w.s. 153 of the Act. In this context, the Ld AR relied on the judgment of the Hon'ble Madras High Court in the case of DCIT v. M/s.Pfizer Healthcare India Pvt. Ltd. (Writ Petition Nos.1148 and 1149 of 2021 judgment dated 31st March, 2022). The AR also placed reliance on the following orders of the Tribunal:-



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(i) DCIT v. Tata Power Solar Systems Ltd. [IT(TP)A Nos. 548 & 699/Bang/2016 (order dated 30.03.2022)]

(ii) M/s.Swiss Re Global Business Solutions India Pvt. Ltd. v. DCIT [IT(TP)A No.290/Bang/2015 (order dated 30.12.2021)]

(iii) ECL Finance Ltd. v. ACIT [ITA No.899/Mum/2018 (order dated 22.09.2021)]

10. Per contra the Ld. DR drew our attention to the Circular issued by the CBDT which is as under: -

“43. Extension of Time limitation for making assessment where a reference is made to the Transfer Pricing Officer

1. The existing provisions of the Act does not provide any additional time to the Assessing Officer for completing assessment or reassessment in cases where a reference is made by him under sub-section 92CA to the Transfer Pricing Officer for determination of the Arm's length price of an international transaction. Since, the time limit for selection of cases for scrutiny is one year from the end of the month in which the return was filed, references to Transfer Pricing Officers are made mostly after one year of filing of the return. Thus Transfer Pricing Officers are not getting adequate time to make a meaningful audit of transfer price in cases referred to them.

2. With a view that the Transfer Pricing Officers get sufficient time to make the audit of transfer price and also to provide Assessing Officers sufficient time to make assessment in cases involving international transactions, the time limits specified in sections 153 and 153B for making the assessment or reassessment, in cases where a reference has been made to the Transfer Pricing Officer, has been revised. The



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revised time limits in such cases shall be the time limits specified under the aforesaid sections, as increased by twelve months. Further, it has also been provided that the Transfer Pricing Officer shall determine the Arm's length price at least two months before the expiry of statutory time limit for making the assessment or reassessment. Thus, a time-limit has been provided in the statute, making it obligatory for the TPO to complete audit of transfer price within the stipulated time.”

11. We have heard rival submissions and perused the material on record. Section 92CA(3A) of the Act provides for the time limit for passing the transfer pricing order. The sub-section (3A) to section 92CA of the Act reads as follows:-

“(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under subsection (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.”

12. From a perusal of the above section 92CA(3A) of the Act, it can be seen that the TPO has the power to pass an order at any time before 60 days prior to the due date u/s 153 of the Act for passing the assessment order. Section 153 of the Act (as applicable to A.Y.2010-11) prescribes a time limit of 36 (Thirty Six) months from the end of the assessment year for completion of assessment (where a reference is made to the TPO for determination of ALP). Accordingly, the due date

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for passing the assessment order in the case of the assessee for assessment year 2010-2011 is 31st March, 2014. Consequently, in terms of section 92CA(3A) of the Act, the 60th day prior to 31st March, 2014 (i.e., 60th day from 30th March, 2014) falls on 30th January, 2014 (counting 30 days in March, 28 days in February and 02 days in January). Accordingly, the due date for the TPO to pass the transfer pricing order for assessment year 2010-2011 should be at any time before 30th January, 2014, i.e., on or before 29th January, 2014. In the present case, the TPO has passed the transfer pricing order on 30th January, 2014, i.e., beyond the time limit prescribed under the Act. Hence, the same is barred by limitation in terms of section 92CA(3A) r.w.s. 153 of the Act. In this context, we note that an identical/ similar question came up before the Hon'ble Madras High Court (D.B) in the case of DCIT v. M/s.Pfizer Healthcare India Pvt. Ltd. (supra) wherein the Hon'ble High Court had dismissed the Writ appeal filed by the Revenue and thus upheld the judgment of the Hon'ble Single Judge (Writ Petition No.32699 of 2019 dated 07th September, 2020) wherein, we note that facts were identical/similar to the instant case in hand as that of the assessee. The Hon'ble High Court held that transfer pricing order passed after the limitation time prescribed by statute i.e. during 60 days prior to the due date of completion of assessment is time barred under section 92CA(3A) r.w.s. 153 of the Act. Accordingly, the transfer pricing order was quashed being barred by limitation. The relevant finding of the Hon'ble High Court (Division Bench) reads as follows:-



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“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 31.12.20 19 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 flat 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). "



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16. As per the International Standards Organization, ISO 8601- :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*, r(1995) 6 see 509], taking into consideration Section 5 of the General Clauses Act and the relevant passage of the same reads as under:



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“6.Sub-section (7) of Section -11 -A provides for automatic transfer to the Arbitration Tribunal of all arbitration proceedings of the kind specified in subsection (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 011 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. (In 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 come 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 110 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".



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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



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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] 53. 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 *Commr. of Customs v. Dilip Kumar & Co.*, [(2018) 9 SCC 1 : 2018 see OnLine se 747], which reads as under:- "

17. In doing so, the principles of interpretation have been evolved in common law. 11 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



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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

(I) 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".



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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



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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 I : -I MIA I79J "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 1747J, *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 2-18 : (1992) 19 ATC 219: AIR 1992 SC 96J, *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 : .IT (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 1111/2019 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

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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.

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. SubSection (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



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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 provision 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 W.A.N os.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 {he 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



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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 interdependency 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."



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13. In the light of the Hon'ble High Court decision Pfizer (supra) the relevant dates of events pertaining to the legal issue of passing of TPO order in the present Appeal is as under:-

Sr. No.	Particulars	Relevant dates
1	Assessment Year (AY)	2010-11
2	End of Assessment Year	31.03.2011
3	Due date for completion of assessment under section 153(1) i.e. 3 years from the end of AY	31.03.2014
4	Time Limit for passing the order under section 92CA(3A) i.e. 60 days prior to the date prescribed under section 153	
5	Less: Date on which limitation expires under section 153 i.e. 31.03.2014	1 day
6	Less: Remaining days of March (1 March 2014 to 30 March 2014)	30 days
7	Less: Number of days of February (of February 2014-28 Feb 2014)	28 days
8	Less: Number of days of January (30 and 31 January 2014)	2 days
9	Due date for passing the order under section 92CA(3) of the Act i.e. 61 days from 31 March 2014	29.01.2014
10	Date of passing of the impugned TP order in the present case under section 92CA(3)	30.01.2014



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14. Therefore, we note that in the present case the TPO has passed the order only on 30.01.2014 which was after the limitation period as prescribed u/s 92CA(3) of the Act [supra]. We note the similar view has been taken by the Tribunal in the following cases:- (i) DCIT v. Tata Power Solar Systems Ltd (supra), (ii) M/s.Swiss Re Global Business Solutions India Pvt. Ltd. (supra) (iii) ECL Finance Ltd. (supra) & DCIT Vs. M/s. Unisys India Pvt. Ltd. (ITA. No. 2025/Bang/2017 for AY. 2017-18 dated 16.06.2022.

15. Since the impugned order passed by the TPO u/s 92CA of the Act is beyond the period of limitation it is held to be bad in law. Therefore the addition in respect of TP adjustments stands quashed. Therefore, grounds on merits on TP adjustments, both in assessee's and revenue's appeals have become academic.

16. Coming to the Corporate Tax Issues, the grounds that are surviving are only ground nos. 15 to 18 which reads as under: -

“Non-grant of Foreign Tax Credit under India-Singapore Treaty

15. On the facts and circumstances of the case, the learned AO erred in not granting a tax credit of Rs.41,063,711/- in terms of Article 25(2) of the India-Singapore Tax Treaty, read with Section 90 of the Act, before computing the tax liability for the year.

Non-grant of TDS Credit

16. On the facts and circumstances of the case, the learned AO erred in not granting a credit of tax deducted at source (TDS) of Rs.6,477,178/- while computing the tax liability for the year.

Levy of Interest



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17. On the facts and circumstances of the case, the learned AO erred in levying excess interest under section 234B of the Act.

18. On the facts and circumstances of the case, the learned AO erred in levying interest under section 234C of the Act on the assessed income rather than on the returned income of the appellant.”

17. From the perusal of the aforesaid grounds, it is noted that the main grievance of the assessee is that the foreign tax credit claimed by the assessee has not been granted. Since it requires factual verification the same is restored back to the file of the AO for de novo consideration. The AO is directed to compute foreign tax credit that is due to the assessee in accordance to the law after affording a reasonable opportunity of hearing to the assessee. Likewise, the assessee has claimed credit of tax deducted at source while computing the tax liability for the year, which also requires verification at the end of the AO; and the AO to verify the same and grant credit of tax in accordance to the law after hearing the assessee.

18. In the light of the above, ground nos. 15 & 16 are allowed for statistical purposes.

19. Ground nos. 17 & 18 are consequential, so there is no necessity of adjudication of the same.



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20. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 22/12/2022.

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/12/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
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