HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN

WRIT PETITION NO: 4061 OF 2024

Between:

Deloitte Consulting India Private Limited, Floor No.4, Deloitte Tower 1, Survey No. 41 Gachibowli, Hyderabad 500032, Telangana Represented by its Authorized Signatory, Pratima Gottumukkala, D/o. G. V. N. Raju, aged about 44 years, R/o. Hyderabad

...PETITIONER

AND

1. The Assessment Unit, Income-tax Department, National Faceless Assessment Center, New Delhi, India
2. The Assistant Commissioner of Income-tax, Circle 8(1), Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Direction or Order in the nature of Certiorari or Mandamus

a. Quashing the Impugned reassessment order passed by the 1st Respondent under section 147 r.w.s. 144B of the Act dated 16.01.2024 in DIN No. ITBA/AST/S/147/2023- 24/1059794711(1) for Assessment Year 2018-19 in PAN. AABCD0476H as arbitrary, illegal and violative of section 92CC r.w.s 92CD of the Income-tax Act, 1961, Rules 10-M, 10-0, 10-P and 10-R of the Income-tax Rules, 1962 and the Advance' Pricing Agreement dated 15.02.2023

b. Declaring the impugned reassessment order as illegal, void ab initio and violative of Article 265 of the Constitution of India.

c. Directing the 1st Respondent to accept the modified return of income filed on 28.03.2023 under section 92CD of the Act.

d. Directing the 1st Respondent to recompute the total income in accordance with law and issue appropriate refund, if any.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of all further proceedings including recovery of the tax demand in pursuance of the impugned reassessment order passed by the 1st Respondent under section 147 r.w.s. 144B of the Act dated 16.01.2024 in DIN No. ITBA/AST/S/147/2023-24/1059794711(1) for Assessment Year 2018-19 in PAN. AABCD0476H against the Petitioner pending disposal of the writ petition.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the Petitioner to file the additional documents as material papers in Writ Petition No. 4061 of 2024 in the interest of justice.

IA NO: 3 OF 2024

Between:

1. Assessment Unit, Income-tax Department, National Faceless Assessment Center, New Delhi, India
2. The Assistant Commissioner of Income-tax, Circle 8(1), Hyderabad

...PETITIONERS

AND

Deloitte Consulting India Private Limited, Floor No.4, Deloitte Tower 1, Survey No. 41 Gachibowli, Hyderabad 500032, Telangana Represented by its Authorized Signatory, Pratima Gottumukkala, D/o. G. V. N. Raju, aged about 44 years, R/o. Hyderabad

...RESPONDENT

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Vacate the interim order granted on 06-03-2024 in W.P.No.4061 of 2024.

Counsel for the Petitioner: SRI JAHANGIR D.MISTRI, Sr. COUNSEL, REP. FOR SRI K.PRATIK REDDY

Counsel for the Respondents: Ms. J.SUNITHA, Sr. SC FOR IT

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH

AND

THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

WRIT PETITION No.4061 of 2024

ORDER (Per the Hon'ble the Chief Justice Sri Aparesh Kumar Singh):

Mr. Jahangir D.Mistri, learned Senior Counsel representing Mr. K.Pratik Reddy, learned counsel for the petitioner.

Ms. J.Sunitha, learned Senior Standing Counsel for the Income Tax Department appears for the respondents.

2. This writ petition has been preferred for the following reliefs:

> "(a) Quashing the Impugned reassessment order passed by the 1st Respondent under Section 147 r/w Section 144B of the Act dated 16.01.2024 in DIN No.ITBA/AST/S /147/2023-24/1059794711(1) for Assessment Year 2018-19 in PAN:AABCD0476H as arbitrary, illegal and violative of Section 92CC r/w Section 92CD of the Income tax Act, 1961, Rules 10-M, 10-O, 10-P and 10-R of the Income Tax Rules, 1962 and the Advance Pricing Agreement dated 15.02.2023;
>
> (b) Declaring the impugned reassessment order as illegal, void *ab initio* and violative of Article 265 of the Constitution of India;

(c) Directing the 1st Respondent to accept the modified return of income filed on 28.03.2023 under section 92CD of the Act;

(d) Directing the 1st Respondent to recompute the total income in accordance with law and issue appropriate refund if any;

(e) and pass such other order or orders as this Hon'ble Court deems fit and proper in the extraordinary circumstances of the case in the interest of justice."

Facts:

3. The petitioner is a Private Limited Company incorporated under the Companies Act, 1956 in India and during the year of assessment, it was engaged in the business of providing Information Technology Consulting Services to Deloitte Consulting LLP and Deloitte Consulting India Projects LLC.

4. The case of the petitioner is that the petitioner filed its return of income electronically on 30.11.2018 for the Assessment Year 2018-19 declaring a total income of Rs.720,43,70,980/-. It was processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide an Intimation dated 24.02.2020 (Ex.1) in terms of

which an addition of Rs.7,89,84,031/- under Section 43B read with Section 36(1)(va) of the Act was made. Challenging the same, the petitioner filed an Appeal before the CIT (A) and the same was dismissed by an order dated 31.07.2023 (Ex.2) based on the decision of the Supreme Court in **Checkmate Services (P) Limited vs. CIT**[1], by which the issue of belated payment of employees contribution towards provident fund reached finality.

5. Subsequently the return was selected for scrutiny assessment under e-Assessment Scheme for examining the issues of i) claim of any other amount allowable as deduction in schedule BP; ii) Default in TDS and disallowance for such default; iii) ICDS compliance and adjustment and iv) deduction from total income under Chapter VI-A. The then Assessing Officer, after consideration of the responses filed by the petitioner, completed the scrutiny assessment under Section 143(3) of the Act vide order dated 25.02.2021 (Ex.3) by accepting the return of income without making any addition/

[1] [2022] 143 taxmann.com 178

disallowance. It is stated that after issuance of Intimation under Section 143(1) and completion of scrutiny assessment under Section 143(3) of the Act, the Jurisdictional Assessing Officer (JAO)/respondent No.2 (Assistant Commissioner of Income-tax) issued notice under Section 148A(b) of the Act dated 23.03.2022 (Ex.4) stating that income chargeable to tax has escaped assessment in respect of two issues, namely (a) belated remittance of employees contribution to provident fund of Rs.7,89,84,973/- and (b) disallowance of Corporate Social Responsibility (CSR) expenses amounting to Rs.4,90,13,021/-. The petitioner filed response to the said notice on 30.03.2022 (Ex.5) pointing out the lack of jurisdiction in view of the fact that the alleged escapement of income on merits was simple and straightforward. However, the Jurisdictional Assessing Officer (for short, 'JAO') summarily rejected the objections and passed an Order under Section 148A(d) of the Act on 07.04.2022 (Ex.6) and also issued Notice under Section 148 of the Act dated 07.04.2022 (Ex.7) reopening the assessment. In response to the said notice, the petitioner filed its Return of Income dated 04.05.2022 declaring the same total income of

Rs.720,43,70,980/- as declared in the Original Return of Income. Subsequently, the petitioner received Intimation dated 30.01.2023 (Ex.8) from the Assessment Unit, Income-tax Department/respondent No.1 stating that the reassessment proceedings are transferred to the Assessment Unit under the National Faceless Assessment Centre.

6. The petitioner and the Central Board of Direct Taxes (for short, 'CBDT'), on specific terms and conditions and critical assumptions, entered into a unilateral Advance Pricing Agreement dated 15.02.2023 (Ex.9) (hereinafter referred to as 'APA') at various positions which, among other terms and conditions, *inter alia* included the Operating Expenses, Operating Revenue and Arm's Length Price (for short, 'ALP'). It covered the subject Assessment Year 2018-19. As per the said APA, the net margin of the petitioner was agreed to be at 17% based on explicitly defined terms, namely 'operating expense' and 'operating revenue'. Further, as per para 8 of the APA, the petitioner is mandated to maintain documents including the final computation showing operating expenses, operating revenues and

operating profit margin in relation to covered transaction. Para 9 of the APA also mandated filing of the modified return of income as per Section 92CD of the Act in accordance with the terms of APA. As per para 10 of the APA, the petitioner is also required to file the Annual Compliance Report (ACR) in Form 3CEF confirming that it has satisfied/fulfilled all the relevant and applicable terms and conditions of the APA, within 90 days of entering into the APA. The said ACR is forwarded to the competent authority, Commissioner of Income-tax and Transfer Pricing Officer (for short, 'TPO'). As per para 11 of the APA, it requires the TPO to undertake audit of ACR in accordance with Rule10P of the Rules and furnish a report to the Director General of Income Tax (DGIT) within six months from the end of the month in which the ACR is received by the TPO. In the said audit report, the jurisdictional TPO is required to mention its findings as regards the compliance by the assessee. Subsequently, the DGIT forwards the report to CBDT only in case there is a failure on the part of assessee to comply with the terms of the APA. Accordingly, the petitioner filed its Modified Return of Income under

Section 92CD(1) read with Section 139 of the Act on 28.03.2023. Later, the petitioner also filed statutory Form 3CEF on 31.03.2023 (Ex.10).

7. Subsequently, another notice under Section 143(2) of the Act, dated 17.11.2023 (Ex.15) was issued to the petitioner calling for explanation in relation to two issues for which assessment was reopened. In response to the said show cause notice, the petitioner filed its submissions dated 23.11.2023 (Ex.16) wherein it has once again explained at point No.9 the basis for not offering additional income in the modified return of income.

8. Later, again the Assessment Unit/respondent No.1 issued show cause notice dated 22.11.2023 (Ex.17) pointing out that the nil income pursuant to APA was not supported with documentary evidence and called upon the petitioner to furnish details by 29.11.2023. In the meanwhile, the Assessment Unit/respondent No.1 issued another show cause notice dated 28.11.2023 proposing an adjustment of Rs.106,47,00,730/- in relation to modified return allegedly in pursuance of APA. It is stated that the petitioner had

already filed the requisite documentary evidence and once again furnished necessary documents and filed its submissions dated 04.12.2023 (Ex.19). Without considering the submissions and the documents already on record, the Assessment Unit/respondent No.1 passed the impugned reassessment order by making the following additions/deletions dated 16.01.2024 (Ex.20):

a. Accepted that no disallowance of deduction under Section 80G pertaining to CSR donation could be made;
b. Disallowed employees contribution to PF (which was already disallowed in Intimation order under Section 143(1) and the appeal against such order was already dismissed and accepted by the petitioner by remittance of corresponding taxes);
c. Adjustment relying on the APA of Rs.106,47,00,730/-.

Challenging the above reassessment order dated 16.01.2024, the instant writ petition is filed.

9. The list of chronological dates and events, as born from the record, are furnished in the following tabular chart submitted by the petitioner:

Date	Event
30.11.2018	Original Return of Income (RoI) for the Assessment Year 2018-19
24.02.2020	Original RoI processed vide Intimation u/s 143(1) of the Income-tax Act, 1961 in terms of which a disallowance was made u/s 36(1)(va) of the Act on

	account of delay in employee contribution to provident fund.
25.02.2021	Assessment Order under Section 143(3) of the Act passed accepting the returned income as assessed income
23.03.2022	Notice under Section 148A(b) of the Act issued stating reasons for re-opening the assessment.
30.03.2022	Response filed to notice under Section 148A(b) of the Act
07.04.2022	Order passed under Section 148A(d) of the Act
07.04.2022	Notice under Section 148 of the Act was issued
04.05.2022	RoI filed in response to Notice
15.02.2023	Advance Pricing Agreement (APA) was entered by the petitioner with the Central Board for Direct Taxes (CBDT) for the Assessment Years, 2016-17, 2017-18 and 2018-19.
28.03.2023	Modified return under Section 92CD of the Act was filed pursuant to the APA
31.03.2023	Annual Compliance Report (ACR) in accordance with Rule 10-O of the Income-tax Rules, 1962 filed in the prescribed Form No.3CEF to the Principal Chief Commissioner of Income-tax (International Taxation), who will send one copy to the Transfer Pricing Officer (TPO) having the jurisdiction over the petitioner as prescribed under the said Rule.
29.06.2023	Notice under Section 143(2) of the Act issued in connection with re-assessment proceedings
06.07.2023	Response filed in response to Notice under Section 143(2) of the Act
31.07.2023	Order passed by the CIT(A) under Section 250 of the Act dismissing the Appeal filed by the petitioner against the intimation issued under Section 143(1), thereby sustaining the disallowance under Section 36(1)(va) of the Act on account of delay in depositing the employee contribution to the Provident Fund before due date of fund
05.10.2023	Notice under Section 142(1) of the Act
25.10.2023	Response to Notice under Section 142(1) of the Act
17.11.2023	First show cause notice was issued
23.11.2023	Response filed to notice under Section 143(2) of the Act pointing out how no adjustment is required vis-à-vis any of the items mentioned in the show cause notice
28.11.2023	Second show cause notice was issued
04.12.2023	Response to the show cause notices was filed
16.01.2024	Impugned order was passed under Section 147 read with Section 144B of the Act

Submissions of the learned Senior Counsel for the petitioner:

10. Learned Senior Counsel for the petitioner has advanced five propositions challenging the validity of the impugned reassessment order.

I. In view of the fact that there was no adverse report of non-compliance with the terms of the APA issued by the TPO/CBDT, the Respondent No.1 was bound to accept the modified return filed under Section 92CD and he had no jurisdiction to make any adjustment/ addition to the income disclosed in such modified return;

II. Sanction/approval obtained for reopening of the assessment was not in accordance with Section 151 of the Act and as a result the Assessment Order dated 16 January 2024 was void, bad in law and of no legal effect;

III. Lack of jurisdiction for issue of Notice under Section 148A(b) of the Act and Notice under Section 148 of the Act by the Jurisdictional Assessing Officer when the law required that the said proceedings be undertaken by the Faceless Assessing Officer ['FAO'] in terms of the Notification No.18 of 2022 i.e. e-Assessment of Income Escaping Assessment Scheme, 2022 issued by the CBDT as per section 151A of the Act;

IV. Reopening is not justified in respect of a further issue, when the issues set out in the reasons recorded for

reopening are dropped/have not resulted in an assessment of alleged escaped income; and

V. Without prejudice to the above, erroneous computation of the ALP based on the erroneous interpretation of the APA has been made by the Respondent No.1.

11. In support of the first proposition, learned Senior Counsel for the petitioner has submitted that upon entering into an APA on 15.02.2023 (pgs.83 - 118 of the petition), the petitioner in terms of Section 92CD(1) of the Act, which covered the year under consideration, filed a modified return of income on 28.03.2023 (pg.399 of the petition) and also filed ACR in Form 3CEF on 31.03.2023 (pgs.119 – 249 of the petition) as prescribed in Rule 10-O of the Income-tax Rules, 1962 (hereinafter referred to as 'the Rules'). As per Rule 10P of the Rules, the TPO is the only authority vested with the power to audit the Form 3CEF. The respondent No.1/assessing authority is bound to accept the ALP of an international transaction in accordance with the APA. The respondent No.1 does not have the power to make an addition or vary the ALP of an international transaction. In terms of Rule 10P, upon entering into the APA and filing of the ACR, the TPO is required to furnish his audit report to

the Director General of Income-tax (International Taxation) (DGIT)(IT) within six months from the end of the month in which the ACR is received mentioning his findings as regards compliance of the APA by the petitioner. In cases where the TPO's audit report suggests that there is non-compliance of the terms and conditions of APA, the DGIT shall forward such report to the CBDT when cancellation is required. The ACR, in the instant case, was filed on 31.03.2023 and as such six months period to complete the audit of ACR ended on 30.09.2023. Till date, the petitioner has not received any communication regarding the ACR nor has received any adverse report from the TPO or any appropriate authority nor does the respondent state that any adverse report has been received from the TPO or other appropriate authority. In such a case, the respondent No.1 is mandated to accept the modified return filed in pursuance of the APA and complete the reassessment as per Section 92CD of the Act. It is also pointed out that as per Section 92CD of the Act, modified return has to be filed within a period of three months from the end of the month in which the said agreement was entered into, a modified

return in accordance with and limited to the agreement. Therefore, the respondent No.1 wrongly assumed jurisdiction by not accepting the modified return and making the impugned assessment based on his erroneous interpretation of the APA. The respondent No.1 failed to appreciate that the TPO is vested with the power to audit the ACR. The respondent No.1 is not vested with independent jurisdiction to interpret the APA and arrive at a conclusion as to whether the petitioner has satisfied the terms and conditions of the APA. It is further submitted that if the jurisdictional TPO upon audit of the compliance report submitted by the petitioner, submits audit report to the DGIT (IT), the DGIT (IT) shall forward the report to the CBDT where there is a finding of failure on the part of the assessee to comply with the terms of the agreement and cancellation of the agreement is required in terms of Rule 10P(3) of the Rules. The CBDT shall cancel the agreement for the reason that the compliance audit referred to in Rule 10P has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement in terms of Rule 10R(1)(i) of the Rules.

12. Learned Senior Counsel for the petitioner has submitted that for Assessment Years 2016-17 and 2017-18, similar modified returns filed pursuant to APA were accepted by the respondents without any addition/dispute (pgs.197–202 of the convenience compilation). For determining the ALP in an international or specified domestic transaction, the Assessing Officer if he considers it necessary or expedient to do so, he may refer the computation of ALP in relation to such an international or specified domestic transaction to the TPO, as per Section 92CA(1) of the Act. It is also submitted that even in a case where the APA has not been entered into, the Assessing Officer may proceed to determine the ALP of the international or specified domestic transaction on the basis of the material or information or document available with him provided an opportunity is given to the assessee why such ALP not be determined by him. The CBDT has issued an instruction No.3 of 2016, dated 10.03.2016 to reconcile the provisions of Sections 92CA(3) and 92CA(1) for proper administration of the Act which *inter alia* contain the

detailed guidelines for implementation of the transfer pricing provisions. It requires the Assessing Officer to mandatorily refer to the TPO for determination of ALP of international or specified domestic transaction. Reference is made to paras 3.2, 3.3, 3.5 and 3.7 of the said Circular. It is submitted that, therefore, the respondent No.1 erred in not accepting the modified return of income under Section 92CD of the Act. He had no jurisdiction to verify the ALP since the jurisdictional TPO is vested with the power to do so. The respondent No.1 could not have made any addition to the income of the petitioner based on the terms of APA. Respondent No.1 failed to appreciate that in the absence of any adverse report from the TPO/CBDT, it had to hold that the petitioner had complied with the terms of the APA and no addition can be made to the modified return of income.

13. In support of the second proposition, learned Senior Counsel for the petitioner has submitted that the order dated 07.04.2022 issued under Section 148A(d) of the Act and the notice dated 07.04.2022 under Section 148 of the Act, both require approval of the specified authority. But

such approval has been obtained from the Principal CIT, Hyderabad-2, though as per Section 151 of the Act, as applicable, the specified authority for issuance of notice under Section 148 and the Order under Section 148A(d) of the Act, which are dated 07.04.2022, which is beyond a period of three years from the end of the assessment year 2018-19, is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or the Director General. The prior approval has been obtained from PCIT, Hyderabad-2, who is the not the specified authority under Section 151 of the Act. In support of the aforesaid submission, reliance has been placed upon the case in **Vodafone Idea Limited vs. Deputy Commissioner of Income Tax**, rendered by the Bombay High Court in W.P.No.2768 of 2022, decided on 06.02.2024, which has relied upon the decision in the case of **Siemens Financial Services (Private) Limited vs. DCIT**[2]. Learned Senior Counsel for the petitioner has submitted that, therefore, the reopening is invalid as the respondent No.1

[2] [2023] 154 taxmann.com 159 (Bom)

has not obtained prior approval from the concerned specified authority.

14. In support of the third proposition, i.e., lack of jurisdiction of the Jurisdictional Assessing Officer (JAO) in reopening assessment, it is submitted that the proceedings can be undertaken only by the Faceless Assessing Officer (FAO) in terms of Notification No.18 of 2022 i.e., e-Assessment of Income Escaping Assessment Scheme, 2022 issued by the CBDT as per Section 151A of the Act. In the instant case, a notice dated 07.04.2022 under Section 148 of the Act has been issued by the JAO holding charge of Circle 8(1), Hyderabad and not the FAO. Therefore, it is not in accordance with the e-Assessment of Income Escaping Assessment Scheme, 2022 issued by the CBDT vide Notification No.18 of 2022 in terms of Section 151A of the Act. Therefore, the impugned reassessment proceedings are invalid and are to be quashed. In this regard, learned Senior Counsel for the petitioner has relied upon the decision rendered in the case of the petitioner for Assessment Years 2015-16 and 2016-17 vide judgment dated 14.09.2023 on

similar set of facts. The notice under Section 148 of the Act was issued by the JAO instead of FAO was quashed. It is further submitted that the Special Leave Petition filed by the respondent Department against the judgment in W.P.No.23573 of 2024 has been dismissed by the Hon'ble Supreme Court on 16.07.2025 in S.L.P. (C) No.33956 of 2025. Therefore, post introduction of the Faceless Assessment Scheme, respondent No.2 being the JAO was precluded from conducting the reassessment proceedings. Therefore, notice dated 07.04.2022 issued under Section 148 of the Act by the JAO being a non-faceless manner is without jurisdiction.

15. Learned Senior Counsel for the petitioner, in support of the fourth proposition, has submitted that in respect of a further issue, which was not set out in the reasons recorded for reopening and which has been dropped, no reopening was permissible. The reasons for which reassessment was reopened as per Notice dated 23.03.2022 under Section 148A(b) of the Act were as under:

a. Disallowance under Section 36(1)(va) of Rs.7,89,84,973/- on account of employee contribution to provident fund; and

b. Deduction under section 80G on account of it being a contribution/donation to CSR.

16. The petitioner, vide its letter dated 30.03.2022 had pointed out that the disallowance under Section 36(1)(va) of the Act had already been made in the Intimation dated 24.02.2020 issued under Section 143(1) of the Act. This disallowance was upheld by the CIT vide order dated 31.07.2023 in view of the decision of the Hon'ble Supreme Court in the case of **Checkmate Services Private Limited** (supra). It is submitted that the petitioner has deposited the additional tax upon demand being raised by the Department pursuant to the said disallowance towards contribution made to the provident fund. Thus, the issue has reached finality and the same could not be added again.

17. On the issue of deduction under Section 80G of the Act pertaining to CSR donation, the petitioner had relied on various decisions on the subject, wherein various Benches of the Income Tax Appellate Tribunal (ITAT) had allowed the

said deduction. It is submitted that no addition can be made in the reassessment dated 16.01.2024 *vis-a-vis* either of the two issues for which the assessment was reopened. The only addition made in the impugned order is pertaining to an arm's length adjustment on the international transaction entered into by the petitioner with its Associated Enterprises. Therefore, the main issue on which reopening was done ceases to exist/survive, reassessment proceedings could not be independently carried on for other issues. Hence, the impugned order dated 16.01.2024 passed by the respondent No.1 is bad in law. In this regard, he has relied upon the decision of the Bombay High Court in **CIT vs. Jet Airways (I) Limited**[3], the decisions of the Delhi High Court in the case of **PCIT vs. Sunlight Tour and Travels (P) Limited**[4]. In view of the aforesaid circumstances and the judicial precedents cited, the reopening is bad in law as the issues raised on which reopening was initiated ceased to exist.

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[3] [2011] 331 ITR 236 (Bombay) (paras 15 to 17)
[4] [2024] 169 taxmann.com 673 (Delhi)

18. Learned Senior Counsel for the petitioner has sought to draw the attention of this Court to erroneous computation of the ALP based on the erroneous interpretation of the APA by the respondent No.1, in support of the fifth proposition raised above. It is submitted that for the other two years covered by the very same APA i.e., the Assessment Years 2016-17 and 2017-18, the respondent No.1 vide order dated 30.03.2024 and 03.12.2024 respectively, has accepted the modified return of income filed by the petitioner. These orders were received by the petitioner post filing of the instant writ petition. It is submitted that the respondent No.1 has grossly erred in computing the operating expenses and operating revenue for arriving at the ALP which is not in accordance with the terms agreed as per the APA. He submits that for all the above reasons, the impugned order of reassessment dated 16.01.2024 passed under Section 147 of the Act cannot be sustained and therefore, relief prayed for may be granted.

Submissions of the learned Senior Standing Counsel for the Income Tax Department:

19. In reply to the five propositions of law raised by the learned Senior Counsel for the petitioner, learned Senior Standing Counsel for the Income Tax Department has *inter alia* made the following submissions:

20. The Petitioner, M/s.Deloitte Consulting India Private Limited (PAN: AABCD0476H) has filed return of income for the Assessment Year 2018-19 on 30.11.2018 declaring a total income of Rs.720,43,70,980/-. However, the same was revised under Section 143(1) of the Act, dated 24.02.2020 by making additions of Rs.7,89,84,031/- against delayed payment of provident fund, thereby resulting a tax demand of Rs.2,82,20,440/-. The assessee appealed before CIT(A) against order passed under Section 143(1) on 24.02.2020 but the Ld. CIT(A) vide order under Section 250 of the Act, dated 31.07.2023 dismissed the appeal of the assessee.

21. The case of the assessee firm has been selected for Complete Scrutiny under Computer-Assisted Scrutiny Selection (CASS) for the following reasons:

i. Large any other amount allowable as deduction claimed in Schedule BP of the return.
ii. Non-compliance to income computation and disclosure standards.
iii. Lower amount disallowed u/s 40(a)(ia) in ITR (Part AO-I) in comparison to audit report.
iv. Deduction from Total Income (Chapter VI-A) Business ITR.

22. Accordingly, a Notice under Section 143(2) and Notice under Section 142(1) of the Act had been issued to the assessee and in response the relevant submissions were given by the assessee and the same were considered and the return of income was accepted.

23. Subsequently it is observed by audit party that employee contributions of provident fund amounting to Rs.7,89,84,973/- was remitted beyond the due dates by the assessee company, however, the same was not added back to the returned income. Hence, the said amount needs to be disallowed under Section 36(1)(va) of the Act. Further, the audit party observed that as per the P&L account and computation statement, the assessee company debited an amount of Rs.9,80,26,042/- towards CSR expenditure (which was incurred by way of donations given to various

organizations) and an amount of Rs.57,79,894/- towards Donations. However, the assessee claimed the entire CSR expenditure of Rs.9,80,26,042/- as Donations and claimed the deduction of 50% of the expenditure i.e. Rs.4,90,13,021/- under Section 80G of the Act in the computation statement under Chapter VIA deductions.

24. Therefore, a show cause notice under Section 148A(b) of the Act was issued to the assessee on 23.03.2022 and in response the assessee replied vide letter dated 30.03.2022. The same was perused and not accepted by the Assessing Officer and it was established that the case was a fit case for issuance of notice under Section 148 of the Act. In response to notice issued under Section 148 dated 07.04.2022, the assessee filed return of income in ITR-6 on 04.05.2022 declaring total income of Rs.720,43,70,980/- after claiming deduction under chapter VIA of Rs.5,76,56,943/- and claimed a refund of Rs.2,730/-. Accordingly, notice under Section 143(2) of the Act was issued to the assessee on 29.06.2023 fixing the case for hearing on 06.07.2023.

25. On perusal of the records it seen that the assessee company filed its return under Section 92CD on 28.03.2023 in ITR-6 declaring gross total income of Rs.726,20,27,920/- and total income of Rs.720,43,70,980/- after getting deduction under chapter VIA of Rs.5,76,56,943/- [Part-B of chapter VI-A of Rs.5,19,02,970/- under Section 80G & Part-C of Chapter VI-A of Rs.57,53,973/- under Section 80JJAA] in response to Unilateral Advance Pricing Agreement under Section 92CC of the Act dated 15.02.2023 claiming a refund of Rs.3,41,63,990/-. The book profit under Section 115JB of the Act is shown at Rs.664,48,05,234/-. It may be seen that the total income declared under Section 92CD is the total income declared in the return of income filed under Section 139 of the Act.

26. On perusal of clause 20(b) of the TAR it is seen that the assessee had paid employee's contribution to provident fund of Rs.7,89,84,973/- beyond the due date of the respective law in violation of the provisions of Section 36(1)(va) of the Act read with Section 2(24)(x) of the Act. The assessee submitted that it didn't make any addition in the

modified return filed on 28.03.2023 as the effect to be given in the modified return was only in respect of Transfer Pricing adjustments giving effect to Unilateral Advance Pricing Agreement. It is stated that it computed additional income tax with reference to the delay in employees' contribution to provident fund and stated that the same had been paid as self-assessment taxes and disclosed in modified return. The company had withdrawn its appeal before CIT(A) pursuant to Hon'ble Supreme Court ruling in the case of **Checkmate Services Private Limited** (supra). In view of the acceptance of the assessee, Rs.7,89,84,973/- was added to the total income of the assessee.

27. It is submitted, with reference to International Related Party Transactions in Services/modification of income as per the APA under Section 9CD of the Act, that on perusal of Appendix V of the APA between CBDT and the M/s Deloitte Consulting India Private Limited, it is seen that the amount of the notional cost to be considered as per Para 1(b)(i) of the Agreement for the APA Years is mentioned at

Rs.109,95,11,977/- for the Financial Year relevant to Assessment Year 2018-19.

28. As per the modified computation, revised operating cost is computed at Rs.35,22,37,61,308/- and modified operating profit @ 17% have been computed at Rs.598,80,39,422/-. Thus, the revised operating revenue as per APA comes to Rs.4121,18,00,730/- Rs.35,22,37,61,308/- + Rs.598,80,39,422/-]. It has already been mentioned herein above that as per audited financials the export revenue from services is shown at Rs.401,471 lakh or Rs.4014,71,00,000/-. Thus, there is a difference of Rs.106,47,00,730/- [Rs.4121,18,00,730/- - Rs.4014,71,00,000/-] between the modified operating revenue and the export revenue from services declared in the audited financials which should have been added to total income of the assessee company in its modified return of income.

29. In view of the above, a show cause notice was issued to the assessee on 28.11.2023 requesting to explain as to why Rs.106,47,00,730/- shall not be added to total income

declared in the return filed under Section 148 of the Act or in the modified return filed by the assessee. In response, the assessee furnished explanation but the same was not accepted by the Assessing Officer.

30. In view of the above, Rs. 106,47,00,730/- [Rs.4121,18,00,730/- - Rs.4014,71,00,000/-] and Rs.7,89,84,973/-are added to the total income declared in the return filed under Section 148 in respect of APA adjustments.

31. In reply to the first proposition, learned Senior Standing Counsel for the Income Tax Department has submitted that the Assessing Officer had jurisdiction to make any adjustment/addition to the income disclosed in such modified return under Section 92CD of the Act, which provides that the Assessing Officer shall complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished. Therefore, it was open for the Assessing Officer to make addition to the income disclosed in such modified return.

32. As regards the second proposition on whether the sanction/approval before reopening of assessment was taken from the specified authority in terms of Section 151 of the Act, it is submitted that the explanation to amended Section 151 of the Act introduced with effect from 01.04.2023 by the Finance Act, 2023 is clarificatory in nature. Therefore, for the purpose of computing the three years period, the period of limitation is excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of Section 149 of the Act has to be taken into account. The impugned order under Section 148A(d) of the Act and the Notice under Section 148 of the Act were issued on 07.04.2022 as the period of limitation was extended by seven days provided to the assessee to file its reply in response to the Notice under Section 148A(b) of the Act. Therefore, the initiation of the proceedings was well within three years period provided under Section 148 of the Act and the approval/sanction obtained from the PCIT, Hyderabad-2 was proper in the eye of the law.

33. In response to the third proposition regarding the jurisdiction of the JAO to reopen the proceedings in the wake of Faceless Assessment Scheme vide Notification No.18 of 2022, it is submitted that the issue decided by this Court has not reached finality as the Special Leave Petition filed by the Department is still pending before the Hon'ble Supreme Court.

34. Learned Senior Standing Counsel for the Revenue submits that the Assessing Officer has reopened the issue as the employee contributions of provident fund amounting to Rs.7,89,84,973/- was remitted beyond the due dates by the assessee company and was not added back to the returned income. Hence, the said amount needs to be disallowed under Section 36(1)(va) of the Act. Moreover, the assessee company debited an amount of Rs.9,80,26,042/- towards CSR expenditure and an amount of Rs.57,79,894/- towards donations. The assessee company, however, claimed the entire CSR expenditure of Rs.9,80,26,042/- as donations and claimed deduction of 50% of the expenditure under Section 80G of the Act in the Computation Statement

under Chapter VA. Therefore, reopening of assessment in respect of ALP determined as reflected in the modified return was opened by the JAO. Therefore, the contention of the petitioner is not tenable in law.

35. Learned Senior Standing Counsel for the Revenue at the end submits that the petitioner has remedy of appeal before the CIT under Section 246A of the Act. The assessee company can file a revision before the learned PCIT, Hyderabad-2, under Section 263 of the Act. It can also file an Appeal under Section 253 of the Act before the ITAT against the order passed by the CIT (Appeals). The petitioner bypassing the alternative remedy has approached this Court and therefore, the writ petition cannot be maintained.

36. Based on the above submissions, learned Senior Standing Counsel for respondents has submitted that the petitioner is not entitled to any of the reliefs as prayed for and therefore, the writ petition should be dismissed.

Analysis of the submissions of the parties and reasoning:

37. The present challenge relates to reassessment proceedings under Section 147 read with Section 144B of the Act, dated 16.01.2024 for the assessment year 2018-19. Petitioner had initially filed its return for income on 30.11.2018 for the assessment year 2018-19 for a total income of Rs.720,43,70,980/-. Petitioner received an Intimation dated 24.02.2020 upon processing of its return in terms of which addition of Rs.7,89,84,031/- was done under Section 43B read with Section 36(1)(va) of the Act. The appeal preferred against the addition was dismissed on 31.07.2023 by the CIT (Appeals), in view of the decision of the Supreme Court in **Checkmate Services (P) Limited** (supra), the issue of belated payment of employees' contribution towards provident fund has reached finality. The petitioner, therefore, accepted the disallowance of addition of Rs.7,89,84,031/- and remitted the corresponding additional taxes. Later, the petitioner's return was subjected to scrutiny assessment under Section 143(3) of the Act. However, vide order dated 25.02.2022, the return

of income was accepted without making any addition/disallowance. Thereafter, the Jurisdictional Assessing Officer, respondent No.2 (ACIT) issued notice under Section 148A(b) of the Act dated 23.03.2022 stating that the income chargeable to tax has escaped assessment in respect of two issues, namely (a) belated remittance of employee contribution of provident fund amounting to Rs.7,89,84,973/- and (b) disallowance of Corporate Social Responsibility (CSR) expenses amounting to Rs.4,90,13,021/-. The petitioner filed its response on 30.03.2022. However, the JAO rejected the objections and passed an order under Section 148A(d) of the Act, on 07.04.2022 and also issued notice under Section 148 of the Act, on 07.04.2022, reopening the assessment. The petitioner filed its return on 04.05.2022 declaring the total income of Rs.720,43,70,980/- as declared in the original return of income. Thereafter, the petitioner received Intimation dated 30.01.2023 from the Assessment Unit in Income Tax Department stating that the reassessment proceedings are transferred to the Assessment Unit under the National Faceless Assessment Centre.

38. The petitioner and the CBDT entered into a unilateral Advance Pricing Agreement (APA) dated 15.02.2023 after discussions and negotiations, which among other terms and conditions included the operative expenses, operative revenue and Arms' Length Price. The APA related back to five years from the date of the APA and covered the subject Assessment Year 2018-19. Under Section 92CD(1) read with Section 139 of the Act and in terms of APA, the petitioner filed its modified return on 28.03.2023. The petitioner also filed statutory Form 3CEF on 31.03.2023 as per para 10 of the APA within 90 days of entering into the APA conforming that it had satisfied and fulfilled all the relevant and applicable terms and conditions of APA. Subsequently, another notice under Section 143(2) read with Section 147 of the Act was issued on 17.11.2023 calling for explanation in relation to two issues, for which reassessment was opened. The petitioner filed submission on 23.11.2023, wherein it explained the basis for not offering the additional income in the modified return of income. Another show cause notice was issued on 22.11.2023 pointing out that

the Nil income pursuant to APA was not supported by any documentary evidence and called upon the petitioner to furnish details by 29.11.2023. Meanwhile, the assessment unit issued another show cause notice dated 28.11.2023 calling upon the petitioner to explain as to why an amount of Rs.106,47,00,730/- shall not be added to total income in relation to the modified return in pursuance of APA. The petitioner contended that it had filed the requisite documentary evidence and once again furnished necessary documents with its submissions on 04.12.2023. The assessment unit/respondent No.1 thereafter passed the impugned reassessment order by making the following additions/deletions dated 16.01.2024 (Ex.A.20):- (a) accepted that no disallowance of deduction under Section 80G pertaining to CSR donation; and (b) added Rs.7,89,84,973/- paid by the assessee towards employee contribution to the provident fund to the total income as per the provisions of Section 2(24) read with Section 36(1)(va) of the Act for the relevant assessment year 2018-19. It also recorded that since the assessee had under reported its income, penalty proceedings under Section 274 read with

Section 270A of the Act is initiated separately for such under reporting of income. The submission of the assessee in respect of disallowance of deduction under Section 80G pertaining to CSR donation was accepted, no adverse interference was drawn on this. The respondent No1, however, made addition pertaining to arm's length adjustment of international transaction entered into by the petitioner with its associated trading enterprises to the tune of Rs.106,47,00,730/- by the impugned order dated 16.01.2024.

39. This Court now proceeds to deal each of the proposition advanced by the petitioner in respect of its challenge to the reassessment order dated 16.01.2024, in the light of the relevant provisions of the Income Tax Act, 1961 as well as the Income Tax Rules, 1962 applicable to the subject period and taking into account the stand of the respondent Department:-

I. In view of the fact that there was no adverse report of non-compliance with the terms of the APA issued by the TPO/CBDT, the Respondent No.1 was bound to

accept the modified return filed under Section 92CD and he had no jurisdiction to make any adjustment/addition to the income disclosed in such modified return.

40. The petitioner upon entering into APA on 15.02.2023, as per Section 92CC, which *inter alia* covered the year under consideration was required to file the modified return of income in terms of Section 92CD(1) of the Act. The petitioner filed the ACR in Form No.3CEF on 31.03.2023 as per Rule 10-O of the Rules. Section 92CC[5] deals with

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[5] 92CC (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the—

(*a*) arm's length price or specifying the manner in which the arm's length price is to be determined, in relation to an international transaction to be entered into by that person;

(*b*) income referred to in clause (*i*) of sub-section (1) of Section 9, or specifying the manner in which said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident.

(2) The manner of determination of the arm's length price referred to in clause (*a*) or the income referred to in clause (*b*) of sub-section (1), may include the methods referred to in sub-section (1) of Section 92-C or the methods provided by rules made under this Act, respectively, with such adjustments or variations, as may be necessary or expedient so to do.

(3) Notwithstanding anything contained in Section 92-C or Section 92-CA or the methods provided by rules made under this Act, the arm's length price of any international transaction or the income referred to in clause (*b*) of sub-section (1), in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.]

(4) The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.

(5) The advance pricing agreement entered into shall be binding—

(*a*) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(*b*) on the Principal Commissioner or Commissioner, and the income tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

Advance Pricing Agreement. Section 92CC(1) provides that the Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person. The income referred to in clause (i) of sub-section (1) of Section 9, or specifying the manner in which said income is to be determined, as is reasonably

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(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement void ab initio,—

(*a*) all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and

(*b*) notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, 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.

(9) The Board may, for the purposes of this section, prescribe a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

(9-A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the—

(*a*) arm's length price or specify the manner in which the arm's length price shall be determined in relation to the international transaction entered into by the person;

(*b*) income referred to in clause (*i*) of sub-section (1) of Section 9, or specifying the manner in which the said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident,

during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction or the income of such person shall be determined in accordance with the said agreement.

(10) Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceeding shall be deemed to be pending in the case of the person for the purposes of the Act.

attributable to the operations carried out in India by or on behalf of that person, being a non-resident. Sub-section (3) provides that notwithstanding anything contained in Section 92C or 92CA, the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered. Sub-section (4) provides that agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement. Sub-section (5) provides that APA shall be binding on (a) the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and (b) the Principal Commissioner or Commissioner, and the income tax authorities subordinate to him, in respect of the said person and the said transaction. Sub-section (6) provides that the APA shall not be binding if there is a change in law or facts having bearing on the agreement so entered. Sub-section (7) provides that Board may, with the approval of the Central Government, by an order, declare an agreement to

be *void ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Section 92CD* provides for effect to advance pricing agreement. Sub-section (1) provides that notwithstanding anything contained in Section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of Section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement. Sub-section (2) provides that save as otherwise provided in this Section, all other provisions of the Act shall apply accordingly as if the modified return is a return furnished under Section 139. Sub-section (3) provides that if the assessment or

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* 92CD Effect to advance pricing agreement (1) Notwithstanding anything to the contrary contained in Section 139, where any perso has entered ito ana greemnt and prior to the date of enterig into the agreement, any return of income has been furnished under the provisions of Section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement

(2) Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139

(3) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), proceed to assess or reassess or recomputed the total income of the relevant assessment year having regard to and in accordance with the agreement

(4) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished

reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, as the case may be, having regard to and in accordance with the agreement. Sub-section (4) provides that where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

41. In the present case, the reassessment proceedings for the relevant assessment year were pending on the date of filing of modified return, which was filed in terms of sub-

section (1) of Section 92CD of the Act. Therefore, the Assessing Officer was required to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished. Rule 10-O[6] of the Rules relates to furnishing of Annual Compliance Report. Sub-rule (1) thereof provides that the assessee shall furnish an Annual Compliance Report to the Director General of Income-tax (International Taxation) for each year covered in the agreement. The Annual Compliance Report shall have to be filed in Form 3CEF in quadruplicate within ninety days of entering into an agreement as is applicable under sub-rule (3) thereof to the present case. At this stage, it is pertinent to note that the issue whether the assessment unit/respondent No.1 does have the jurisdiction to examine the arm's length price of an international transaction under the APA is answered in Rule 10P of the Income Tax Rules, 1962. Rule 10P[7] of the

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[6] 10-O Furnishing of Annual Compliance Report . (1) The assessee shall furnish an annual compliance report to the Director General of Income Tax (International Taxation) for each year covered in the agreement.
(2) The annual compliance report shall be in Form 3CEF
(3) The annual compliance report shall be furnished in quadruplicate, for each of the years covered in the agreement, within thirty days of the due date of filing the income-tax return for that year, or within ninety days of entering into an agreement, whichever is later.
(4) The Director General of Income-tax (International Taxation) shall send one copy of annual compliance report to the competent authority in India, one copy to the Commissioner of Income-tax who has the jurisdiction over the income-tax assessment of the assessee and one copy to the Transfer Pricing Officer having the jurisdiction over the assessee.

[7] 10P. Compliance Audit of the agreement: (1) the Transfer Pricing officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement.
(2) For the purposes of sub-rule (1), the Transfer Pricing Officer may require-
(i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;

Rules relates to Compliance Audit of the agreement. Rule 10P(1) of the Rules provides that the TPO having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement. Sub-rule (2) provides that the TPO may require (i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method; and (ii) the assessee is required to submit any information or document, to establish that the terms of the agreement has been complied with. Sub-rule (3) proves that the TPO shall submit the compliance audit report, for each year covered in the agreement, to the Director General of Income-tax (International Taxation) in

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(ii) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.
(3) The Transfer Pricing Officer shall submit the compliance audit report, for each year covered in the agreement, to the Director General of Income-tax (International Taxation) in case of unilateral agreement and to the competent authority in India, in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with terms of the agreement.
(4) The Director General of Income-tax (International Taxation) shall forward the report to the Board in a case where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required.
(5) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report referred to in Rule 10-O is received by the Transfer Pricing Officer.
(6) The regular audit of the covered transactions shall not be undertaken by the Transfer Pricing Officer if an agreement has been entered into under Rule 10L except where the agreement has been cancelled under Rule 10R.

case of unilateral agreement and to the competent authority in India, in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with the terms of the agreement. Sub-rule (4) provides that the DGIT shall forward the report to the Board in a case where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required. Sub-rule (5) provides that the compliance audit report shall be furnished by the TPO within six months from the end of the month in which the Annual Compliance Report referred to in Rule 10-O of the Rules is received by the TPO. Sub-rule (6) provides that the regular audit of the covered transaction shall not be undertaken by the TPO if an agreement has been entered into under Rule 10L except where the agreement has been cancelled under Rule 10R of the Rules.

42. In the present case, the petitioner had filed the ACR within ninety days on entering into APA in terms of Rule 10-O of the Rules. The TPO has not submitted any finding of failure on part of the assessee to comply with the terms of

the agreement, which could lead to cancellation of agreement. Respondents have not controverted the contention of the petitioner that any adverse report has been received from the TPO or any appropriate authority. It is, therefore, clear that the respondent No.1 or the Jurisdictional Assessing Officer does not have the jurisdiction to examine and to make reassessment on its own. He is not vested with the jurisdiction to interpret the APA as to whether the petitioner has satisfied the terms and conditions of the APA. It is only the TPO who has the jurisdiction over the assessee to carry out the compliance audit of the agreement for each of the year covered in the agreement. In case the compliance audit report submitted within the prescribed period of six months from the end of the month in which the ACR referred to Rule 10-O of the Rules, is furnished by the TPO with the finding of failure on the part of the assessee to comply with the terms of the agreement, the DGIT (International Transaction) is obligated to forward to the Board for cancellation of the agreement, if required in terms of Rule 10R of the Rules. Rule 10-R

provides that the agreement shall be cancelled for the following reasons:

i) the compliance audit referred to in Rule 10P has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;

ii) the assessee has failed to file the annual compliance report in time;

iii) the annual compliance report furnished by the assessee contains material errors; or

iv) the agreement is to be cancelled under sub-rule (4) of Rule 10Q or sub-rule (7) of Rule 10RA of the Rules.

43. Sub-rule (2) provides that the Board shall give an opportunity of being heard to the assessee, before proceeding to cancel an application. As per sub-rule (7) of Rule 10R of the Rules, the order of cancellation shall be intimated to the Assessing Officer and the TPO, having jurisdiction over the assessee. The understanding of the Assessment Unit/respondent No.1 that in terms of Section 92CD that it had the jurisdiction to examine the arm's length price furnished in the APA as per the modified return

in view of Section 92CD(2) is flawed. The conception of the respondent No.1 that the petitioner/assessee also was required to add other income in its modified return, is also incorrect since under Section 92CD(1), notwithstanding anything contained in Section 139, the person entering into APA is required to furnish a modified return in accordance with and limited to the agreement i.e., ALP covered under the international transaction within a period of three months from the end of the month in which the said agreement was entering into. Even in a case where the APA has not been entered into, the Assessing Officer if he considers it for determining the ALP in an international transaction or specified domestic transaction, as per Section 92CA(1), the Assessing Officer if he considers it necessary or expedient to do so, may, refer the computation of ALP in relation to such international transaction or specified domestic transaction to the TPO. The CBDT has issued instruction No.3 of 2016, dated 10.03.2016 to reconcile the provisions of Section 92C(3) and 92CA(1) for proper administration of the Act which *inter alia* contain detailed guidelines for implementation of the transfer pricing

provisions. It requires the Assessing Officer to mandatorily refer to the TPO the issue of determination of ALP of an international transaction or specified domestic transaction. The relevant paragraphs of the instruction No.3 of 2016 are extracted hereunder:

> 3.2 All cases selected for scrutiny, either under the Computer Assisted Scrutiny Selection (CASS) system or under the compulsory manual selection system (in accordance with the CBDT's annual instructions in this regard – for example, instruction No.6/2024 for selection in F.Y. 2014-15 and instruction No.8/2015 for selection in F.Y. 2015-16, on the basis of transfer pricing risk parameters in respect of international transactions or specified domestic transactions or both have to be referred to the TPO by the AO, after obtaining the approval of the jurisdictional Principal Commissioner of Income-tax (PCIT) or Commissioner of Income-tax (CIT). The fact that a case has been selected for scrutiny on a TP risk parameter becomes clear from a perusal of the reasons for which a particular case has been selected and the same are invariably available with the jurisdictional AO. Thus, if the reason or one of the reasons for selection of a case for scrutiny is a TP risk parameter, then the case has to be mandatorily referred to the TPO by the AO, after obtaining the approval of the jurisdictional PCIT or CIT.
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> 3.3. Cases selected for scrutiny on non-transfer pricing risk parameters but also having international

transactions or specified domestic transactions, shall be referred to TPOs only in the following circumstances:

(a) Where the AO comes to know that the taxpayer has entered into international transactions or specified domestic transactions or both but the taxpayer has either not filed the Accountant's report under Section 92E at all or has not disclosed the said transactions in the Accountant's report filed;

(b) where there has been a transfer pricing adjustment of Rs.10 crore or more in an earlier assessment year and such adjustment has been upheld by the judicial authorities or is pending in appeal; and

(c) where search and seizure or survey operations have been carried out under the provisions of the Income-tax Act and findings regarding transfer pricing issues in respect of international transactions or specified domestic transactions or both have been recorded by the Investigation Wing or the AO.

3.5 In addition to the cases to be referred as per paragraphs 3.2 and 3.3, a case involving a transfer pricing adjustment in an earlier assessment year that has been fully or partially set aside by the ITAT, High Court or Supreme Court on the issue of the said adjustment shall invariably be referred to the TPO for determination of the ALP.

3.7. For administering the transfer pricing regime in an efficient manner, it is clarified that though AO has the power under Section 92C to determine the ALP of

> international transactions or specified domestic transactions, determination of ALP should not be carried out at all by the AO in a case where reference is not made to the TPO. However, in such cases, the AO must record in the body of the assessment order that due to the Board's Instruction on this matter, the transfer pricing issue has not been examined at all.

44. Therefore, the respondent No.1 committed jurisdictional error in not accepting the modified return under Section 92CD of the Act. The respondent No.1 could not have made any addition to the income of the petitioner based on the terms of the APA. In the absence of any adverse report from the TPO/CBDT, the respondent No.1 was obligated to accept that the petitioner had complied with the terms of the APA and no addition can be made to the modified return of income.

45. The respondent No.1, therefore, went beyond jurisdiction to make addition of Rs.106,47,00,730/- in relation to the modified return filed in terms of APA on 28.03.2023 under Section 92CD(1) of the Act. The instant issue is therefore answered in favour of the petitioner/assessee.

II. Sanction/approval obtained for reopening of the assessment was not in accordance with section 151 of the Act and as a result the Assessment Order dated 16th January 2024 was void, bad-in-law and of no legal effect.

46. As per the chronology of dates and events contained in the tabular chart in the aforementioned paragraphs, notice under Section 148 of the Act was issued to the petitioner containing reasons for reopening the assessment on two counts: (a) belated remittance of employees contribution to the provident fund of Rs.7,89,84,973/- and (b) disallowance of CSR expenses amounting to Rs.4,90,13,021/-. The petitioner furnished its reply on 30.03.2022. The JAO summarily rejected the objection and passed the order under Section 148A(d) of the Act on 07.04.2022 and also issued notice under Section 148 of the Act on 07.04.2022 reopening the assessment. Both Sections 148A(d)[8] and

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[8] 148A. Conducting inquiry, providing opportunity before issue of notice under Section 148- The Assessing Officer shall, before issuing any notice under Section 148-

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is

Section 148[9] require the approval from the specified authority.

47. A perusal of Section 148A of the Act shows that every such stage i.e., at the stage of conducting the enquiry if

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issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the monthy in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,-

(a) a search is initiated under Section 132 or books of accountant, other documents or any assets are requisitioned under Section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under Section 132 or requisitioned under Section 132A, in the case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee; or

(d) The Assessing Officer has received any information under the scheme notified under Section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

Explanation.- For the purposes of this Section, specified authority means the specified authority referred to in Section 151.

[9] **148. Issue of notice where income has escaped assessment** - Before making the assessment, reassessment or recomputation under Section 147, and subject to the provisions of Section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of Section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139;

Provided that no notice under this section shall be issued unless **there is information** with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

required under sub-clause (a) or before service of notice to show case under sub-clause (b) and also at the time of passing the order under sub-clause (d) of Section 148A, prior approval of the specified authority is required. The explanation provides that specified authority means the specified authority referred to in Section 151. Similarly, under Section 148 while issuing notice upon the assessee on the basis of information which suggests that the income chargeable to tax has escaped assessment for the relevant assessment year, the Assessing Officer had to obtain prior approval of the specified authority to issue such notice. Section 151 provides for sanction for issue of notice. The substituted Section 151 brought with effect from 01.04.2021 applicable to the facts of the petitioner.

48. The proviso to Section 151 has been introduced by the Finance Act, 2023 with effect from 01.04.2023. The relevant Section 151 with its proviso is applicable to the case of the petitioner is quoted hereunder:

> **151. Sanction for issue of notice:-** Specified authority for the purposes of Section 148 and Section 148A shall be,-

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:

Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of Section 149.

49. In the present case, the order under Section 148A(d) and notice under Section 148 have been issued on 07.04.2022 relatable to the relevant Assessment Year 2018-19 i.e., after more than three years from the end of the relevant assessment year. The approval before passing the order under Section 148A(d) of the Act and before issuing of notice under Section 148 of the Act has been taken from the Principal Commissioner of Income Tax by the respondent No.1, which is permissible only if three years or less than three years have lapsed from the end of the relevant assessment year. In the present case, the relevant three

years lapsed on 31.03.2022. Therefore, the prior approval of the Principal Chief Commissioner or Principal Director General or the Chief Commissioner or the Director General was required to be obtained before passing of the order under Section 148A(d) or before issuance of the notice under Section 148 of the Act.

50. Learned counsel for the respondent has relied upon the proviso to Section 151 of the Act inserted by the Finance Act, 2023 with effect from 01.04.2023 quoted above to contend that the period of seven days furnished to the assessee to submit reply to the notice under Section 148A(b) issued on 23.03.2022 has to be excluded for counting the period of three years. It is submitted that the proviso is clarificatory in nature and as such, it would operate from the date when the amended Section 151 was brought into force i.e., 01.04.2021. However, such a contention is fit to be rejected since the proviso to Section 151 has been inserted by the Finance Act, 2023 only with effect from 01.04.2023. It, therefore, cannot be applied retrospectively to exclude the period of seven days in furnishing the reply to

the notice under Section 148A(b) of the Act by the assessee. The Assessing Officer could not have assumed exclusion of such a period while passing the order under Section 148A(d) of the Act or issuing notice under Section 148 of the Act on 07.04.2022 that such a proviso excluding the period consumed in furnishing the reply is going to be brought into the statute book by amendment by the Finance Act, 2023 with effect from 01.04.2023. In taxing statutes, intendment cannot be assumed unless specifically expressed in the provision enacted by the legislature. Therefore, the reopening of assessment without sanction/approval of the specified authority in accordance with Section 151 of the Act was bad in law. Consequently, reassessment order dated 16.01.2024 also is bad in law.

51. In this regard, learned Senior Counsel for the petitioner has relied upon the decision of the Bombay High Court in the case of **Vodafone Idea Limited vs. Deputy Commissioner of Income Tax** (supra) relating to the same assessment year. In fact, perusal of the judgment shows that the order passed under Section 148A(d) of the Act and

the notice under Section 148 of the Act both were dated 07.04.2022 relating to the assessment year 2018-19. The date of order under Section 148A(d) and the notice under Section 148 of the Act i.e., 07.04.2022 are exactly similar to the case of the petitioner and the Assessment Year 2018-19. The relevant paragraph of the said decision is profitably quoted hereunder:

> 3. The impugned order and the impugned notice both dated 7th April 2022 state that the Authority that has accorded the sanction is the PCIT, Mumbai-5. The matter pertains to Assessment Year (AY) 2018-19 and since the impugned order as well as the notice are issued on 7th April 2022, both have been issued beyond a period of three years. **Therefore, the sanctioning authority has to be the PCCIT as provided under Section 151(ii) of the Act. The proviso to Section 151 has been inserted only with effect from 1st April 2023 and, therefore, shall not be applicable to the matter at hand.**
>
> 4. In this circumstances, as held by this Court in **Siemens Financial Services Private Limited vs. Deputy Commissioner Income Tax and others [(2023) 457 ITR 647. (Bom)], the sanction is invalid** and consequently, the impugned order and impugned notice both dated 7th April 2022 under Section 148A(d) and 148 of the Act are hereby quashed and set aside.
>
> (emphasis supplied)

Therefore, it is held that the reopening of the assessment and the consequent reassessment order suffer from jurisdictional error.

III. Lack of jurisdiction for issue of Notice under Section 148A(b) of the Act and Notice under Section 148 of the Act by the Jurisdictional Assessing Officer when the law required that the said proceedings be undertaken by the Faceless Assessing Officer FAO in terms of the Notification No.18 of 2022 i.e. e-Assessment of Income Escaping Assessment Scheme, 2022 issued by the CBDT as per section 151A of the Act.

52. The petitioner has also assailed the reopening of the assessment on the ground of lack of jurisdiction of the Jurisdictional Assessing Officer (JAO). According to the petitioner, the proceedings could have been initiated only by the Faceless Assessing Officer (FAO) in terms of the Notification No.18 of 2022 i.e., e-Assessment of Income Escaping Assessment Scheme, 2022 issued by the CBDT as per Section 151 of the Act. In the instant case, the notice dated 07.04.2022 under Section 148 of the Act was issued

by the JAO holding charge of Circle 8(1) and not the FAO. This issue has been answered in favour of the petitioner/assessee by the High Court for the State of Telangana in the case of **Kankanala Ravindra Reddy vs. ITO** (W.P.No.25903 of 2022 and batch, decided on 14.09.2023). The judgement in W.P.No.13353 of 2023 was passed and is applicable to the case of the petitioner. The revenue went in Appeal against the judgment dated 29.08.2024 passed in W.P.No.23573 of 2024 in Special Leave Petition (C) Dairy No.33956 of 2025. The apex Court vide its decision dated 16.07.2025 has dismissed the Special Leave Petition holding that after going through the material on record, it does not find any good reason to interfere with the order passed by the this Court. Though learned counsel for the respondent has taken a plea that the matter is still *sub judice* before the apex Court, it is also not disputed that there is no stay on the decision rendered on the subject by this Court. Therefore, it is held that the notice dated 07.04.2022 issued under Section 148 of the Act by the JAO is without jurisdiction.

IV. Reopening is not justified in respect of a further issue, when the issues set out in the reasons recorded for reopening are dropped/have not resulted in an assessment of alleged escaped income.

53. On this proposition, the learned Senior Counsel for the petitioner has assailed the reopening of the assessment of an independent issue, which was not set out in the reasons recorded for reopening. The reason for reassessment for reopening as per the notice dated 23.03.2022 under Section 148A(b) of the Act were as under:

> (a) Employee contributions of Provident Fund amounting to Rs.7,89,84,973/- was remitted beyond the due dates by the assessee company, however, the same was not added back to the returned income. Hence, the said amount needs to be disallowed under Section 36(i)(va) of the Income Tax Act, 1961.
>
> (b) Assessee company debited an amount of Rs.9,80,26,042/- towards Corporate Social Responsibility (CSR) expenditure (which was incurred by way of donations given to various organizations) and an amount of Rs.57,79,894/- towards Donations. However, the assessee claimed the entire CSR expenditure of Rs.9,80,26,042/- as Donations and claimed the deduction of 50% of the expenditure i.e., Rs.4,90,13,021/- under Section 80G of the Act in the computation statement under Chapter VIA

> deductions as CSR expenditure is not an allowable expenditure, the same needs to be disallowed.
>
> In this regard, you are requested to furnish the information along with supportive documentary evidences for the above and to show cause as to why you case for Assessment Year 2018-19 should not be reopened under Section 148 of the Income Tax Act, 1961 based on the above transactions/ information.

54. Be it indicated here that in the reassessment order dated 16.01.2024, the Assessing Officer has accepted the submission of the assessee on the issue of claim of deduction under Section 80G in respect of CSR donation and made no addition thereto. On the second issue for reopening i.e., disallowance under Section 36(1)(va) of Rs.7,89,84,973/- on account of employee contribution to provident fund, the Assessing Officer has added aforesaid amount to the total income as per the provisions of Section 2(24)(x) read with Section 36(1)(va) of the Act for the Assessment Year 2018-19 after taking note of the submission of the petitioner that it had computed the additional income tax with respect to delay in employees contribution to provident fund and paid it as self-assessment tax. The company had withdrawn its appeal

before the CIT (Appeal) pursuant to the judgment of the Hon'ble Supreme Court in **Checkmate Services (Private) Limited** (supra).

55. It is worthwhile to indicate here that after processing of the original return of the petitioner filed on 30.11.2018, the intimation under Section 143(1) of the Act was issued on 24.02.2020 in which an addition of Rs.7,89,84,031/- under Section 43B read with Section 36(1)(va) of the Act was made. The petitioner had preferred appeal before the CIT (Appeals) which was dismissed by order dated 31.07.2023 based on the decision of the Supreme Court in **Checkmate Services (Private) Limited** (supra) by which the issue of belated payment of employees contribution to the provident fund reached finality. The petitioner, therefore, accepted the addition of the aforesaid amount to its income and paid additional tax in pursuant to the demand raised against it. The Assessing Officer, therefore, should not have added the said income to its return again as under-reporting of its income and initiated penalty proceedings under Section 274 read with Section 270A of the Act. It could amount to

addition of the same income under the same head twice when the petitioner had accepted it after dismissal of the Appeal by the CIT (Appeals). Apart from above, the Assessing Officer proceeded to determine the Arm's Length Price under the Advance Pricing Agreement by not accepting the modified return of income under Section 92CD of the Act. As held in answer to the proposition No.1 hereinabove, it is the jurisdictional TPO alone who is vested with the power to carry out the compliance audit of the agreement for each of the year covered under the agreement. The learned Senior Counsel for the petitioner has, in this regard, referred to the decision of the Bombay High Court in **CIT vs. Jet Airways (I) Limited** (supra) and **PCIT vs. Sunlight Tour and Travels (P) Limited** (supra) rendered by the Delhi High Court. He has referred to the un-amended Section 147[10], which was the subject matter of interpretation in the case of **CIT vs. Jet Airways (I) Limited** (supra). The Division Bench of the Bombay High Court in **CIT vs. Jet**

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[10] **147. Income escaping assessment.**—If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income **and also** any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Airways (I) Limited (supra) examined the expression "and also" contained therein and arrived at a finding that after issuing a notice under Section 148, if the Assessing Officer accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under Section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee. Learned Senior Counsel for the petitioner has also referred to the amended Section 147[11] substituted by the Finance Act, 2021, which according to him, though is worded differently, but the ratio of **CIT vs. Jet Airways (I) Limited** (supra) should also apply to such a situation under the amended applicable to the case of the petitioner.

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[11] **147. Income escaping assessment** - If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year).

Explanation.— For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of Section 148-A have not been complied with.

56. Apparently, the expression "and also" in un-amended Section 147 has been substituted with the expression "and such issue comes to his notice subsequently in the course of the proceedings under this Section". Therefore, the judgment rendered in the case of **CIT vs. Jet Airways (I) Limited** (supra), in our opinion, on the un-amended Section would not *ipso facto* apply to the present proceedings under Section 147 of the Act brought into being from 01.04.2021. However, since the first three propositions have been answered in favour of the petitioner/assessee holding that the reopening of assessment was without jurisdiction and consequently, reassessment order suffers from jurisdictional error, we do not deem it necessary to delve with this issue in the present proceedings leaving it open to the decided in an appropriate case.

V. Without prejudice to the above, erroneous computation of the ALP based on the erroneous interpretation of the APA has been made by the Respondent No.1.

57. The learned Senior Counsel for the petitioner has also questioned the erroneous computation of the ALP based on an erroneous interpretation of APA by respondent No.1. This issue invites the attention of this Court to examine the computation of the Arm's Length Price under the APA entered into by the petitioner. However, since we have affirmatively held against the Revenue that it was not open for the respondent No.1/Assessing Unit, to determine the Arm's Length Price in respect of transactions covered under the APA as jurisdiction to submit compliance audit report on the transactions covered under the APA lies with the Transfer Pricing Officer alone, we are not required to go into the question whether the respondent No.1 had erroneously computed the ALP based on the erroneous interpretation of the APA.

58. In view of the detailed reasons and findings referred to hereinabove, in answer to the proposition Nos.1, 2 and 3 by this Court, the impugned reassessment order dated 16.01.2024 passed by the respondent No.1/Assessing Unit

suffers from jurisdictional error and therefore, cannot be sustained in the eye of law. It is accordingly quashed.

59. The writ petition is allowed. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

SD/-M. OSMAN ALI BAIG
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
(For His Lordships Kind Perusal)
and
One Fair Copy to the Hon'ble SRI JUSTICE G.M. MOHIUDDIN
(For His Lordships Kind Perusal)

To,

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2. The Assistant Commissioner of Income-tax, Circle 8(1), Hyderabad.
3. 11 LR Copies
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
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BSR
BS

HIGH COURT

DATED: 25/09/2025

ORDER

WP.No.4061 of 2024



ALLOWING THE WRIT PETITION,

WITHOUT COSTS

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fcpr

27/10/25