taxmann.com
Research

[2025] 179 taxmann.com 113 (Article)

[2025] 179 taxmann.com 113 (Article)©
Date of Publishing: October 7, 2025

What's Equity Got To Do With It? Supreme Court's Forked Path of Divergence

PRIYA TANDON
Senior Associate, AZB & Partners.

It is oft said that statutes are many spender things – they are so tightly and precisely defined, that the Judiciary's predictive task is quite straightforward. Although the watertight manner in which a statute is typically drafted indicates that the Legislature wants minimum room for interpretation, however, there may still be some inherent ambiguity or lacuna. It is in a situation of this kind, where a statute operates in the shades of grey, that the Judiciary is constrained to abandon the literal or textualist method of interpretation, in the favour of a different method. The method so adopted to interpret a statute, along with the manner of interpretation thereof, is likely to affect the outcome. Application of an incorrect method or a correct method incorrectly, can equally be an impediment for accomplishing the intended outcome. Of course, since a "*no catastrophe*" method does not truly exist, a Judge is free to pick the risk s/ he prefers to take. This may result in differing voices speaking for the Bench, which may further perpetuate uncertainty by delaying the justice delivery process. It is against this context, that the author seeks to examine the divergent views in *Asstt. CIT* v. *Shelf Drilling Ron Tappmeyer Ltd*.[1].

In *Shelf Drilling Ron Tappmeyer Ltd*. (*Supra*), the question before the Supreme Court was regarding the applicable limitation for passing an order of assessment in cases involving an "*eligible assessee*", where effect is required to be given to an order of Appellate Tribunal, High Court or the Supreme Court. In other words, the question before the Supreme Court was whether the limitation under Section 144C of the Income-tax Act, 1961 ("**IT Act**"), for completion of the Dispute Resolution process, is subsumed within or stands excluded from the limitation under section 153 of the IT Act, for passing an order of assessment. The Division Bench of the Supreme Court has rendered a split view. Both the views are discussed hereinafter, *albeit* briefly. Before dwelling into the divergent views on the legal issue involved, it would be relevant to summarise the relevant provisions of the IT Act.

Section 143 of the IT Act states that when a Return of Income is filed and processed, it results in an order of assessment being passed by an Assessing Officer ("**AO**"). Section 143 deals with an order of assessment in cases involving ordinary assessees, which is required to conform to the timelines under section 153. Section 153(3) sets out the limitation for finalising fresh assessment as a result of setting aside or cancelling an assessment, *viz*.,12 months from the end of the Financial Year in which order is received by the Commissioner. Section 153(4) states that in the event a reference to a Transfer Pricing Officer is made, then, the period of limitation available for completion of assessment shall stand extended by 12 months.

Parallelly, Section 144C of the IT Act deals with reference to the Dispute Resolution Panel ("**DRP**"), in cases involving an "*eligible assessee*", as identified under Section 144C(15). Therefore, both Sections 143 and 144C deal with passing an order of assessment, depending on the category of assessee involved. Section 144C(1) states that an AO shall, notwithstanding anything contrary contained in the IT Act, forward a draft of the proposed order of assessment to an

eligible assessee. Section 144C(2) grants the eligible assessee a period of 30 days to either accept the variations proposed by the AO, or to file its objections against the same before the DRP and the AO. Section 144C(3) requires the AO to complete the assessment on the basis of the draft of the proposed order of assessment, in the event the eligible assessee intimates the AO of its acceptance of the variations, or in the event no objections are preferred within the prescribed time. Section 144C(4) states that the AO shall, notwithstanding anything contained in Section 153, pass an order of assessment under Section 144C(3), within 1 month from the end of the month in which acceptance is received, or within 1 month from the end of the month in which the period available for preferring objections under Section 144C(2) expires. Sections 144C(5) to 144C(7) and 144C(9) require the DRP, in the event objections are received by it, to issue directions as it deems fit, to enable the AO to complete assessment. Section 144C(8) empowers the AO to confirm, reduce or enhance the variations proposed in the draft of the proposed order of assessment. As per Sections 144C(10) and 144C(13), every direction issued by the DRP is binding on the AO, who shall, in conformity with the said directions, complete, notwithstanding anything contrary contained in Section 153, the assessment, within a period of 1 month from the end of the month in which such direction is issued. Section 144C(12) caps the time period for issuance of directions by the DRP at 9 months from the end of the month in which the draft of the proposed order of assessment is forwarded to the eligible assessee. In terms of the above construct, an AO has only 30 days to pass an order of assessment, irrespective of whether a draft of an order of assessment is accepted, or the DRP issues directions in the face of any objections raised.

It is undisputed that the assessees before the Supreme Court are eligible assessees, on whom Section 144C of the IT Act apply. Further, that even though the AO passed orders of assessment prior to the expiry of 30 days from the date of receipt of the directions issued by the DRP, but nonetheless, s/he breached the limitation prescribed under Section 153(3). On the said facts, High Courts concluded that Sections 144C and 153 are mutually exclusive, *inasmuch* as Section 153 provides for an outer timeline within which an order of assessment has to be passed, after concluding the entire Dispute Resolution process. The Revenue Department's Special Leave Petitions against the said conclusion of the High Courts were admitted and ultimately, while adjudicating the appeals, the Supreme Court rendered a split view, discussed hereinafter.

Hon'ble Justice S.C. Sharma:

For starters, the Hon'ble Judge observed that since the Special Leave Petitions raised an extremely important question of law having country-wide ramifications, the same could not be dismissed at threshold on account of low tax effect. On merits, however, he concluded that the timeline prescribed under Section 153 is applicable up to the stage of passing a proposed order of assessment under Section 144C(1). Further, once the procedure under Section 144C(1) stands triggered, the time available with the DRP to carry out the procedure under Sections 144C(5) to 144C(12) and the time available with the AO to carry out the procedure under Section 144C(13), is over and above the time envisioned under section 153. The *obiter dicta* underlying the said conclusion is summarised below:

- **Object and Purpose** - In the interest of tax certainty and resultant Foreign Direct Investment, there is a need to maintain a fine balance between the right of the Revenue Department to enable them ample time to assess income and the right of assessees to not have their Returns of Income scrutinised after a substantial period of time.
- **Interpretation of a Statute Strictly** - The Hon'ble Judge alluded to the precedents on the requirement to interpret provisions in a manner that brings about an effective result in conformity with the Legislative mandate, where strict interpretation paves way to absurdity. In this regard, in the event Section 153 subsumed the limitation under section 144C, then, there was no need for the Legislature to specifically mention Section 144C in Section 92CD(5), hence, providing for an alternative limitation where effect is required to be given to an advance pricing agreement.
- **Interpretation of a Statute Harmoniously** - Construing Sections 143, 144, 144C and 153 harmoniously, even though there is a reference to Sections 143 and 144 in Section 153, there is no reference of Section 144C therein. Therefore, it cannot be held that the limitation under Section 153 also includes the process under Section 144C. Further, Explanation 1 to Section 153 only deals with situations in which an AO's

quasi-judicial role stands eclipsed for a certain period of time. The said provision has no relevance in the context of Section 144C.

- **Interpretation of a Non-Obstante Provision** - The non-obstante clauses under Sections 144C(1) and Sections 144C(4)/ (13), are discussed hereinunder:

    a. The non-obstante clause contained in Section 144C should be given a harmonious construction, which would not defeat the provisions of the IT Act. The non-obstante clause contained in Section 144C(1) is limited to passing a proposed order of assessment, without subsuming the limitation attached to passing an order of assessment under Section 153.

    b. Sections 144C(4) and 144C(13), relating to an order of assessment, contain a non-obstante clause, which removes the application of Section 153. Therefore, the limitation contained in Section 144C is independent of and operates in addition to the limitation contained in Section 153, for the purpose of passing an order of assessment.

- **Interpretation of a Beneficial Provision** - Election to participate in the Dispute Resolution process is directory and as such, the same is at the discretion of an eligible assessee. An eligible assessee cannot aver prejudice on account of it participating in proceedings before the DRP, including the time that it takes.
- **Legislative Supremacy** - In the event the interpretation canvassed by the Respondents, as also upheld by the High Courts, is permitted to be sustained, an AO may eat into the limitation available to the DRP to issue its directions, effectively, amending the IT Act. This could not be the Legislative intent.
- **Difficulty in Implementation** - In the event the procedure contemplated under Section 144C is subsumed in the overall limitation under Section 153, it shall result in a catastrophe for recovery of tax, since the limitation available with an AO to pass an order of assessment would be negligible, consequently, rendering the entire procedure unworkable. An AO would have to complete assessments by working backwards to allow the DRP a period of 9 months to issue directions, anticipating that every eligible assessee would compulsorily prefer its objections. That apart, regardless of how long it takes for the DRP to issue directions, an AO would have a period of 1 month only to pass an order of assessment. This may be a practical impossibility in the event the DRP issues directions within a period of 1 month of preferring the same.

Hon'ble Justice B.V. Nagarathna:

At the very outset, the Hon'ble Judge also rejected the submission that the Special Leave Petitions were required to be dismissed at threshold on account of low tax effect, having regard to the important question of law raised thereunder. On merits, she upheld the view of the High Courts, that the procedure and the limitation under Section 144C stands subsumed in the limitation under Section 153 and consequently, even where Section 144C applies, an order of assessment is required to be passed within the limitation prescribed under Section 153. Further, she held that in the event an order of assessment is not passed within the limitation prescribed under section 153(3), then there would be no order of assessment and the Return of Income as filed, would have to be accepted as it is. The *obiter dicta* that underpins the said conclusion is noteworthy and is being summarised below:

- **Intent and Purpose** - The Legislative intent behind the DRP, an alternative dispute resolution mechanism within the Income Tax Department, is to usher in a regime of expeditious resolution of tax disputes involving eligible assessees, in the interest of Foreign Direct Investment.[2] Section 144C should be construed in a manner that avoids violence to the Parliamentary intent by inflating the time available to complete assessments in cases involving eligible assessees. Further, in a taxing statute, Parliamentary intent is entitled to be ascertained having regard to the internal and external aids and more significantly, without drawing reliance on any superlative or equitable consideration, or on the "*goal of recovering lost tax*".
- **Interpretation of a Statute Strictly** - Every unambiguous term of a statute should be given effect to, having regard to its Preamble, the mischief sought to be remedied, the existing state of law and other *pari materia* statutes. Mere consequences, in the nature of hardship, cannot be a ground for not giving effective and grammatical meaning to every unambiguous word of a provision of a statute. There is no unjustness involved if income-tax law is deficient due to the Legislature's failure to express itself clearly.

- **Interpretation of a Statute Harmoniously** - Sections 144C and 153should be harmoniously construed. Explanation 1 to Section 153 specifically excludes certain periods under certain circumstances for calculating the limitation of 12 months to pass an order of assessment under section 153(3). In the event the Parliament intended that the period for carrying out the Dispute Resolution process under section 144C also had to be excluded from the limitation under Section 153(3), then there would have been an express provision to that effect. Absent any such provision, Section 144C should be interpreted having regard to Section 153(3). Further, Sections 144C(13), 143 and 153(3), although applicable on different classes of assessees, harmoniously construed, inevitably imply that the procedure contemplated under Section 144C (specifically applicable to eligible assessees), has to be concluded within a period of 12 months, as stipulated in the Proviso to Section 153(3).
- **Interpretation of a Non-Obstante Provision** - A non-obstante provision gives an overriding effect to a provision of a statute, or to a statute as a whole. In the event of a conflict between what is stated in a non-obstante provision and the other provision of a relevant statute or any other law, the non-obstante provision gives an unimpeded operation to what is set out thereunder. Consequently, its utility is only in the event of a conflict. There are 3 non-obstante provisions contained in Section 144C. Sub-section (1) is notwithstanding anything contrary contained in the IT Act and sub-sections (4) and (13) are notwithstanding anything contrary contained in Sections 153 or 153B of the IT Act. The Legislative device of a non-obstante clause has been used by the Legislature in different ways to further different Legislative objectives, *viz*.,
    a. **Non-Obstante Provision, Section 144C(1)** - *Insofar* as an eligible assessee is concerned, its assessment is subject to a distinct procedure under Section 144C, wherein a draft of an order of assessment has to be made at the first instance. This is opposed to other categories of assessees, wherein such a draft of an order of assessment is not required to be made. In that view of the matter, the non-obstante provision, *i.e*., Section 144C(1), is not related to the overall limitation prescribed under Section 153, but only with the aspect of there being a distinct procedure for eligible assessees. This stands further reinforced since the non-obstante provision, *i.e*., Section 144C(1), is with regard to anything contrary contained in the IT Act *vis-à-vis* Section 144C(1). Ostensibly, Section 153 is not contrary to Section 144C.
    b. **Non-Obstante Provisions, Sections 144C(4)/ (13)** - It is apparent from a bare perusal of Section 144C(1) on the one hand and Sections 144C(4)/ (13) on the hand, that whereas Section 144C(1) is not relatable to Section 153, Sections 144C(4) and (13) have a bearing on the said Section 153. The overarching object and purpose of this is to curtail the limitation such that the Proviso to Section 153(3), prescribing an overall limitation of 12 months for completion of assessment, *inter-alia*, when Section 254 applies, stands complied with.
- **Interpretation of a Beneficial Provision** - A provision in the taxing statute, which is beneficial to an assessee, must be interpreted as it is and not based on hypothetical scenarios. Merely because an eligible assessee exercises the beneficial option of preferring objections before the DRP should not be a ground for leaving such assessee worse off, by extending the limitation relevant to its case.
- **Legislative Supremacy** - The Legislature has the wisdom and the knowledge to promulgate a provision and a provision cannot be held to be unworkable, or an interpretation cannot be held as giving rise to absurdity, only on account of asymmetry in time available to an AO to pass a proposed order of assessment for an eligible assessee, as compared to an order of assessment for an ordinary assessee. Therefore, whether or not an AO has adequate or negligible time to undertake the statutory obligation under Section 144C does not have a bearing on the interpretation of the provisions of the IT Act.
- **No Difficulty in Implementation** - It is not for a Court to import provisions in a statute to supply any assumed deficiency, specifically, when the statute is otherwise workable. The provisions of the IT Act are workable if the procedure under Section 144C is subsumed within the limitation under Sections 153(1) or (3). There is no difficulty in a scenario where AOs assessing a small number of eligible assessees have to work backwards and accommodate the timelines under Section 144C.

Given the divergent views, the Registry has been directed to place the matter before the Hon'ble Chief Justice of India, for constituting an appropriate Bench to consider the issue afresh.

Past experience, such as when a divergent view was rendered by Hon'ble Justice Indira Banerjee and Hon'ble Justice J.K. Maheshwari, in *National Petroleum Construction Co.* v. *Dy. CIT*[3] in July, 2022, is testimony to the fact that it may take several years for an appropriate Bench to be formulated and consequently, for the issue to be taken up and ultimately decided, one way or another. In the meantime, Income Tax Appellate Tribunals pan-India have been adjourning matters, more often than not, *sine-die*, to await the outcome of the issue before the Supreme Court. While the author is conscious of the anxiety of taxpayers, particularly, non-resident taxpayers, to get tax certainty, which more often than not only happens at the Income Tax Appellate Tribunal level, yet, in her considered opinion, taxpayers should not forego any jurisdictional ground that is otherwise available to them. This is more so in a scenario where a taxpayer's case does not stand covered by a judgment rendered in its own case for another year. In the present case, the Hon'ble Judges ventured into varied methods of interpretation on account of the fact that the standard text left them astray. Both the views rendered are entirely plausible – meticulously argued, appreciated and ultimately dealt with. Hence, a related question that arises is, whether, since as on date, two entirely plausible views exist, should the quasi-judicial and judicial authorities decide the cases pending before them basis the view favourable to taxpayers?[4] That apart, the author also refers to an interesting commonality in the views, *viz*., both the Hon'ble Judges looked beyond the circumstances of the case, *inasmuch* as they refrained from dismissing the Special Leave Petitions at threshold, on the undisputed factum of low tax effect. This begs the question, *viz*., is it more important that something be settled, or that something be settled right?

As far as the split judgment in *Shelf Drilling Ron Tappmeyer Ltd*. (*Supra*) is concerned, one view is that the entire process pursuant to which one cannot make out the ratio has been nothing, but an exercise in futility – an utter waste of taxpayer money and judicial time. The other view is that silencing a view is never justified, since such a view provides meaning to the assured freedom of speech and expression; operates as an intra-organ control; and contributes to the rule of law in the future. The split judgment rendered by the Division Bench of the Supreme Court demonstrates a significant tension in the choice as well as the applicability of various canons of interpretation, both within and beyond the text of the relevant statute, *i.e.*, the IT Act. The struggle to figure out what the relevant statute entails has opened up yet another question – it is open to a Court, determining a fiscal issue, to assume a policy role to make our legal order equitable, all things considered? In the considered opinion of the author, an answer in the affirmative shall be a dangerous invitation.[5]

■■

1. [2025] 177 taxmann.com 262 (SC).
2. Speech of the Hon'ble Finance Minister on 06 July, 2009; Clause 55 of the Memorandum on Delegated Legislation, for bringing into effect Section 144C; Notes on Clauses at the time of insertion of Section 144C; Explanatory Notes to the Finance Act, 2016, dated 20 January, 2017; Explanatory Notes to the Finance Act, 2017, dated 15 February, 2018; Memorandum to the Finance Bill, 2021 and Memorandum to the Finance Bill, 2022.
3. [2022] 140 taxmann.com 659/289 Taxman 87/446 ITR 382 (Supreme Court).
4. *CIT* v. *Vegetables Products Ltd*., [1973] 88 ITR 192 (SC).
5. Reliance is placed on *Rajasthan R.S.S. & Ginning Mills Fed. Ltd.* v. *Dy. CIT* [2014] 45 taxmann.com 1/223 Taxman 259/ 363 ITR 564 (SC), which states that "*there is no equity in a taxing statute*". At this juncture, it is also pertinent to direct the attention of the readers to Article 142 of the Constitution of India, which grants the Supreme Court the power to pass any decree or make any order as is necessary for doing complete justice in any cause or matter pending before it. The Supreme Court exercised the said power in *Union of India* v. *Ashish Agarwal* [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1 (SC), by regularizing notices for reopening assessments, which notices were issued beyond the prescribed period of limitation. This was done by the Supreme Court with a view to avoid further litigation by Revenue Authorities on the same issue and consequently, to reduce the overall case load.

Having regard to the said example, one may argue that the principle that "*there is no equity in a taxing statute*" stands diluted by the Supreme Court itself. Curiously, Hon'ble Justice B.V. Nagarathna, who authored the view in the favour of the assessees in *Shelf Drilling Ron Tappmeyer Ltd*. (*Supra*) concurred with the view of the Division Bench in *Ashish Agarwal* (*Supra*).