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Friday Tax Alert

Most awaited question of whether time taken for Dispute Resolution Panel (DRP) process under section 144C is to be subsumed within or excluded from limitation period prescribed under section 153 for completing an assessment to be placed before Chief Justice of India for constituting an appropriate Bench to consider issues afresh: Supreme Court

FACTS OF THE CASE:

1. The respondents in this case are **non-resident** assessees, which are engaged, *inter alia*, in the business of providing services or facilities in connection with prospecting for or extraction or production of mineral oils. For **A.Y. 2014-15**, the respondents had filed an appeal before the Income Tax Appellate Tribunal ("Tribunal") which by way of its order dated 04.10.2019 **allowed the appeal and remanded the matter to the Assessing Officer for fresh adjudication**. Thereafter, an assessment order was passed in remand on **28.09.2021**, which **was clarified on 29.09.2021 to be a draft assessment order**.
2. In compliance with Section 144C(2), the respondent filed its **objections before the DRP** on 27.10.2021 and also filed the **writ petitions before the High Court** impugning the draft assessment order dated 28.09.2021 by contending that **no final assessment order could be passed now as the period of limitation expired on 30.09.2021** under Section 153(3) of the Act read with the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ("TOLA") and the Notification issued thereunder.
3. The High Court of Bombay, following **Madras High Court in *Roca Bathroom Products* held that the entire Section 144C process must be completed within the time limits in Section 153**.
4. Revenue appealed to the Supreme Court.

DIVERGENCE OF JUDICIAL OPINIONS BY THE SUPREME COURT:

1. As per the view of **Justice B.V. Nagarathna**, the procedure under Section 144C **must conclude within the period prescribed under Section 153(1) or (3)**, as applicable. Sub-sections (4) & (13) of Section 144C **deal only with how the final order is passed**, not with granting extra time beyond Section 153. No statutory provision excludes DRP time from Section 153; if the Parliament intended, it would have explicitly said so.
2. As per the view of **Justice Satish Chandra Sharma**, the 12-month limit in Section 153(3) **applies only to the draft assessment order**; the DRP process and final order timelines in Section 144C **are separate and not curtailed by Section 153**. If DRP process were forced into Section 153's limit, it would be **unworkable and risk revenue loss**. Sub-sections (4) & (13) of Section 144C (non-obstante clauses) **override Section 153**, giving extra time after draft order for DRP and finalisation. Thus, limitation extends beyond 12 months if DRP is involved.
3. Following table gives a **comparative summary of the views** of the both the judges:

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Aspect	Justice B.V. Nagarathna (Assessee-friendly view)	Justice Satish Chandra Sharma (Revenue-friendly view)
Core Position	Section 144C procedure must be completed within the time limits of Section 153(1) or 153(3); no extra time .	Section 144C is a self-contained code ; timelines under Section 144C are in addition to Section 153 timelines.
Effect on DRP time	Time taken for DRP process is subsumed within the Section 153 limitation period.	DRP process time is outside Section 153 period; can extend final assessment beyond Section 153's limit.
View on Sub-sections (4) & (13) of 144C	Deal only with procedure/manner of passing final assessment order; do not create a separate limitation period.	Contain non-obstante clauses overriding Section 153; timelines under these sub-sections run independently of Section 153.
Draft Assessment Order (DAO) Timing	DAO and final order both must be within Section 153 limit.	Section 153 limit applies only to DAO ; final order after DRP can be beyond Section 153 if within 144C timelines.
Final Assessment Order Timing	Must be within Section 153's limit , regardless of DRP directions.	Final order can be passed after Section 153 period if within 1 month of DRP directions (per 144C(13)).
Interpretation Principle Applied	Strict interpretation of limitation in fiscal statutes; no implied extensions without express provision.	Harmonious reading to ensure both Revenue's need for adequate time and assessee's rights; avoid making DRP scheme "unworkable".
Impact on Revenue	Reduces time available; may cause some assessments to be time-barred if DRP takes long.	Preserves Revenue's ability to complete assessments after DRP without limitation risk.
High Courts' Rulings Followed	Agrees with Madras & Bombay HCs (<i>CIT v. Roca Bathroom Products</i> approach).	Disagrees with Madras & Bombay HCs ; says they wrongly curtailed AO's time.
Outcome Suggested	Appeals by Revenue should be dismissed; assessment orders beyond Section 153 period invalid .	Appeals by Revenue should be allowed; AO can pass final order beyond Section 153 if 144C timelines are met .

Conclusion

In view of **divergent opinions of judges of Supreme Court** on question of whether time taken for Dispute Resolution Panel (DRP) process under section 144C is to be subsumed within or excluded from limitation period prescribed under section 153 for completing an assessment, **matters were to be placed before Chief Justice of India for constituting an appropriate Bench to consider issues afresh**

*ACIT (International Taxation) v. Shelf Drilling Ron Tappmeyer Ltd. etc.*3 [2025] 177 taxmann.com 262 (SC)*

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Where assessee, a Dubai based company, entered into an agreement with Indian hotel to provide strategic planning and ‘know-how’ to ensure that hotel was developed and operated efficiently, since assessee exercised pervasive and enforceable control over hotel’s strategic, operational and financial dimensions, hotel premises satisfied criteria required to be classified as a “fixed place of business” or PE within meaning of article 5(1) of DTAA and, thus, income received by the Dubai based company was attributable to such PE and was taxable in India: Supreme Court

FACTS OF THE CASE:

1. The assessee, a company incorporated in Dubai, entered into two **Strategic Oversight Services Agreements (SOSA)** with one AHL, India - one for AHL, Delhi and another for AHL, Mumbai. Under the SOSA, the assessee agreed to provide **strategic planning services and ‘know-how’ to ensure that the hotel was developed and operated as an efficient and a high-quality international full-service hotel.**
2. For the relevant assessment years, the Assessing Officer passed assessment orders taxing the hotel related services rendered by the assessee, inter alia, on the ground that **the assessee had a Permanent Establishment (PE) in India in the form of a place of business under article 5(1) of the DTAA.**
3. The assessee filed its **objections before the DRP.** However, **DRP upheld the Assessing Officer's findings.** Consequently, the Assessing Officer passed a final assessment order.
4. On appeal, the **Tribunal upheld the order of the Assessing Officer.**
5. On appeal, the **High Court held that the assessee had a PE in the form of a place of business in India as contemplated under article 5(1) of the DTAA.**
6. The assessee filed an **appeal before the Supreme Court:**

DECISION OF THE SUPREME COURT:

1. Article 5(1) of the India-UAE DTAA defines a PE as **a fixed place of business through which an enterprise carries on business &** Article 7 of the said DTAA allows taxation in India only if such PE exists.
2. The SOSA granted **long-term control to the assessee over the Indian hotel’s strategy, branding, marketing, HR policies, bank accounts, procurement and appointment of key personnel.**
3. The assessee earned **“Strategic Fees”** tied to hotel revenues and profits, indicating commercial involvement rather than advisory services.
4. In *Formula One World Championship Limited. v. CIT, International Taxation [2017] 80 taxmann.com 347/248 Taxman 192/394 ITR 80 (SC)*, the Supreme Court had unequivocally held that for a Permanent Establishment (PE) to exist, two essential conditions must be satisfied:
 - a. the place must be **“at the disposal”** of the enterprise, and
 - b. the business of the enterprise must be **carried on through that place.**

The Court further held that a PE must demonstrate the three core attributes of: **stability, productivity, and a degree of independence.** Among these, the “disposal test” is pivotal, meaning thereby the enterprise must have a **right to use the premises** in such a way that **enables it to carry on its business activities.** This test is to be applied contextually, taking into account the **commercial and operational realities** of the arrangement.

5. Substance of control and operations overrides legal form i.e. the **Indian Hotel’s separate existence does not negate the Assessee’s PE.**

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6. The assessee exercised **pervasive, enforceable and continuous control** over hotel operations in India, **beyond policy advice**. Its employees frequently visited and worked at the hotel, ensuring continuity of presence.
7. **Revenue-linked fees** and **long-term operational role** show assessee's core business functions were carried out from the hotel premises. Hence, the hotel constituted a Fixed Place PE for the assessee in India.

Hyatt International Southwest Asia Ltd. v. Add. Director of Income-tax [2025] 176 taxmann.com 783 (SC)

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