

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA**(समक्ष) श्री पी. एम. जगताप, उपाध्यक्ष एवं श्री ए. टी. वर्की, न्यायिक सदस्य)  
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]**I.T.A. No. 278/Kol/2020**

Assessment Year: 2016-17

Century Plyboards (India) Limited (PAN: AABCC1682J)	Vs.	Assistant Commissioner of Income-tax, LTU-2, Kolkata.
Appellant		Respondent

Date of Virtual Hearing	11.12.2020
Date of Pronouncement	18.12.2020
For the Appellant	Shri Akkal Dudhwewala, FCA
For the Respondent	Smt. Ranu Biswas, Addl. CIT

**ORDER****Per Shri A. T. Varkey, JM:**

This is an appeal preferred by the assessee company against the order of the ACIT, Circle – 2 LTU, Kolkata (hereinafter referred to as the “AO”) passed u/s. 143(3) read with section 144C(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 27.01.2020.

2. The assessee has raised legal issue of jurisdiction of the AO to pass final assessment order u/s. 143(3) read with section 144C(3) of the Act without awaiting for the direction of the Dispute Resolution Panel (hereinafter referred to as “DRP”) when the fact remains that assessee has filed its objection before it (the DRP) within the prescribed time; and brought this fact of filing of objection before the DRP to the notice of the AO. Since the jurisdictional issue if found correct would go to the root of the assessment order itself, it is taken up first and we reproduce the grounds of appeal raised by the assessee regarding the legal issue which is as under:

*“1. For that on the facts and in the circumstances of the case and in law, the AO erred in law and on facts in passing the final assessment order without following the mandatory*

*procedure prescribed in section 144C of the Income Tax Act, 1961 and in that view of the matter the impugned assessment order passed u/s. 143(3) r.w.s. 144C dated 27.01.2020 be declared void ab initio.*

*2. For that on the facts and in the circumstances of the case and in law, the Ld. AO erred in passing the final assessment order in gross violation of the provisions of 144C particularly in view of the fact that the appellant had exercised the option available under section 144C and filed objections before DRP within the prescribed time and in that view of the matter it is prayed that the impugned assessment order be held as void ab initio, bad in law and illegal and consequently the entire assessment be quashed.”*

3. The Ld. AR Shri Akkal Dudhwewala assailing the action of AO on the aforesaid legal issue submitted that in this case assessee had received a draft assessment order dated 28.12.2019 as per sub-section (1) of section 144C of the Act on 28.12.2019. According to the Ld. AR, section 144C is a complete code in itself which has set out a separate assessment mechanism for eligible assessee's whose income are subject to transfer pricing variation or who are non-residents or foreign companies. According to him, this code entitles these eligible assessee's to first receive a draft assessment order from the AO, and gives them the option to decide the forum to prefer objection against the draft assessment order or the choice to accept the draft assessment order and retain the liberty to prefer regular appeal route before the Ld. CIT(A). So, according to the Ld. AR, as per sub-section (2) of section 144C of the Act the assessee is given a choice as to whether they wish to object to such order (draft assessment order of AO) before the DRP or whether to accept the draft assessment order [*and then if it desires later to file regular appeal against the final order before the Ld. CIT(A)*]. And according to the Ld. AR if the assessee chooses to file objection before the DRP, then the AO is duty bound to wait for the direction of the DRP; and then only on receipt of the DRP direction that AO is legally empowered to pass the final assessment order. The Ld. AR further elaborating on the scheme/procedure envisaged in section 144C of the Act, submitted that once the AO passes the draft assessment order, the assessee has 30 days time period for approaching the DRP to file objection if it desire; and the 30 days starts from the date on which the assessee receives the draft assessment order; and in case if the assessee files the objection before the DRP within 30 days, then the AO has to await the decision/direction of the DRP and thereafter the AO can frame the final assessment order u/s. 144C(13) of the Act in conformity with the direction given by the

DRP as per sub-section (5) of section 144C of the Act. In the alternative, if the assessee accepts the draft assessment order or if it does not file objection before the DRP within 30 days of receipt of the draft assessment order, then the AO is empowered to pass the final assessment order under sub-section (3) of section 144C of the Act that also according to Ld AR, the AO can do within the time period prescribed in sub-section (4) of section 144C of the Act i.e. *within one month from the end of the month in which the AO receives the acceptance from the assessee regarding the draft assessment order or the period of filing of objection before the DRP expires*. So, according to the Ld. AR, in this case the draft assessment order has been passed on 28.12.2019 and to prove this fact, he drew our attention to page 2 of paper book which fact we find it to be correct. Thereafter, the Ld. AR drew our attention to page 12 of the paper book which we find is a letter dated 24.01.2020 and on perusal of its content we find that it is the objection filed by the assessee before the DRP (Delhi) against the draft assessment order of AO dated 28.12.2019 u/s. 144C(2)(b) of the Act. Thereafter, the Ld. AR drew our attention to page 14 of the paper book which is a letter dated 27.01.2020 addressed to the AO wherein the assessee has brought to the notice of the AO that assessee has exercised its option on 24.01.020 as envisaged under sub-section (2)(b)(i) of section 144C of the Act by filing an objection before the DRP against the draft assessment order dated 28.12.2019 and also filed before the AO a copy of the Form 35A which was filed before the DRP [*along with acknowledgment that it has been received in the office of the DRP-II, Delhi on 24.01.2020*]. According to the Ld. AR, even though assessee had brought to the notice of the AO that it has exercised its option to file objection before the DRP within the statutory limitation prescribed by the statute i.e. *within 30 days of receipt of the draft assessment order*, the AO erroneously proceeded to issue the final assessment order u/s 144C(3) of the Act, on the same date i.e. on 27.01.2020 without awaiting for the DRP's direction which was binding on the AO as per sub-section (13) of section 144C of the Act. Even otherwise, according to the Ld. AR in any case the AO could not have passed the final assessment order u/s 144C(3) of the Act. According to Ld AR, even if for argument sake it is taken that the assessee had not filed any objection before the DRP, then also the AO could not have passed the final assessment order u/s 144C(3) of the

Act, since the time period to pass the final order is prescribed in sub-section (4) of section 144C of the Act i.e. within one month from the end of the month i.e. in this case AO can pass only final order only u/s. 144C(3) of the Act from 01.02.2020 to 28/29.02.2020. So, in any case, according to Ld. AR, the AO has erred in passing the final assessment order on 27.01.2020 without following the mandatory law governing the subject which is prescribed u/s. 144C of the Act, so the action of the AO smacks of arbitrariness and was whimsical per se. Therefore, according to Ld. AR, the impugned action of AO to have passed the final assessment order on 27.01.2020 was without jurisdiction, since he failed to follow the mandatory procedure prescribed in section 144C of the Act, which omission on the part of AO show that the AO have scant regards for the principle of “Rule of Law” which is a basic feature of the Constitution of India and, therefore, the action of the AO to draft the final assessment order without awaiting for the DRP direction as mandated by law makes the impugned final assessment order of the AO dated 27.01.2020 null in the eyes of law and prays to quash it.

4. Per contra, the Ld. DR for the revenue Smt. Ranu Biswas though conveyed her reservation to represent this case since it involves transfer pricing issues, however, when clarified by the Ld. AR that there was no transfer pricing issue being adjudicated by this Tribunal at this stage and at present only the assessee’s preliminary objection as to jurisdiction of the AO to have passed the final assessment order as on 27.01.2020 is the only issue being assailed, the Ld. DR, Additional Commissioner vehemently opposed the submissions made by the Ld. AR of the assessee and contended that the AO has passed the final order on 27.01.2020 in accordance to law. According to her, the AO has passed the final order on 27.01.2020 i.e. within 30 days after passing the draft assessment order on 28.12.2019 as per sub-section (2) and (3) of section 144C of the Act; and according to her the assessee might have filed the acknowledgment of filing objection before the DRP only after the AO has passed the final order u/s 144C(3) on 27.01.2020, so the final order passed by the AO is valid and thus she does not want us to interfere in the final order passed by the AO. In the alternative it was contented by Ld DR that in any case, even if there is any

procedural violation then it is curable defect and so the impugned order may be set aside back to the AO for rectifying the mistake and suitable direction may be given to AO to pass the final assessment order in accordance to law.

5. In his rejoinder, contesting the submission of Ld DR, the Ld. AR elaborated the procedure/mechanism prescribed by section 144C of the Act which according to him, should be followed by AO scrupulously. According to Ld. AR, section 144C of the Act is not merely procedural in nature, it prescribes mandatory provisions to be followed by the AO because it gives valuable right to assessee to opt for reference to DRP or to accept the draft order. According to him, the AO has to first of all issue the draft assessment order as per sub-section (1) of section 144C of the Act and thereafter provide 30 days time to the assessee to file objection before the DRP as prescribed in sub-section (2) of section 144 of the Act and thereafter, if the assessee accepts the draft assessment order or if it does not prefer any objection before the DRP, in that event the AO can pass the final assessment order as envisaged u/s 144C(3) and then also the AO can legally frame the final order within the time period prescribed in sub section (4) of section 144C of the Act *i.e, within one month from the end of the month in which the acceptance is received by the AO from the assessee or 30 days' time period for filing of objection before DRP expires*. So, in this case since the draft order was passed by the AO on 28.12.2019, the 30 days expires on 27.01.2020 and, therefore, as per sub-section (4) of section 144C of the Act, the AO can legally frame the final assessment order u/s. 144C(3) only between 01.02.2020 and 28/29.02.2020 and not before that as done in this case on 27.01.2020. However, it was pointed out by the Ld. AR that in this present case the AO cannot frame the final assessment order u/s 144C(3), since the assessee had opted to file an objection before the DRP on 24.01.2020 as envisaged in sub-section (2) (b) of section 144C of the Act and this fact was brought to notice of the AO within 30 days of receipt of the assessment order *i.e. on 27.01.2020*, in such an event, according to Ld. AR, the AO does not have jurisdiction to pass the final assessment order because once the objection is filed before the DRP within 30 days *i.e. in this case 24.01.2020* before the DRP, the AO loses his power to pass the final

order because the DRP has already taken cognizance of the draft assessment order on 24.01.2020 and it will remain within the DRP's jurisdiction till it passes direction as per sub-section (5) of section 144C of the Act. In other words, since the assessee has preferred its objection before DRP on 24.01.2020, till the time the DRP passes the direction as per sub-section (5) of section 144C of the Act, (i.e. during the interregnum period 24.01.2020 till DRP direction) the AO does not enjoy jurisdiction over the assessee's case so he cannot pass the final assessment order during the interregnum period. Therefore, the action of the AO to have framed the final order before the DRP's direction is wholly without authority of law and since passed without sanction of law is non-est in the eyes of law. Thus, according to Ld AR, the contention of the Ld. DR that the action of AO to have passed the final assessment order before the DRP direction is a curable defect and it is only a procedural irregularities cannot be accepted because it is legally flawed and erroneous and so untenable. According to him, the AO has to mandatorily follow the procedure prescribed u/s. 144C of the Act and for this proposition of law he relied upon the decision of the Hon'ble Madras High Court in Vijay Television Pvt. Ltd. Vs. DRP 369 ITR 113 (Madras High Court) as well as CIT Vs. C Sam India Pvt. Ltd. 398 ITR 182 (Guj. High Court). In the light of the law and ratio laid in above cited decisions, and the facts discussed the Ld AR pleaded that the legal issue may be allowed and the final assessment order passed by the AO dated 27.01.2020 be held as null in the eyes of law.

6. For completeness the Ld.AR also drew our attention to page 15 to 23 of the paper book which is the impugned final assessment order passed by the AO dated 27.01.2020 wherein the AO has issued the demand notice of tax u/s. 156 of the Act dated 27.01.2020 which is placed at page 23C paper book (PB) along with the computation sheet of income from page no. 23A to 23B of the (PB). According to the Ld. AR, once an order was passed by the AO assessing the total income and the AO determines the tax payable thereon, such an order can only be termed as a final order of assessment as held by the Hon'ble Supreme Court in Kalyan Kumar Roy Vs. CIT 191 ITR 634. The Ld. AR submitted that AO in the present case had passed along with the final order dated 27.01.2020 had issued the demand

notice u/s. 156 of the Act, thus, the taxable amount has been determined by serving the demand notice simultaneously upon the assessee. So in the eyes of law the final order of assessment has been passed in this case by the AO. Therefore, according to the Ld. AR, the statutory violation in not following the mandatory procedure prescribed which infringes the rights of the assessee's cannot be cured since the AO lacked jurisdiction to frame the final assessment order when the DRP was *in seisin* of the draft order and so the action of AO to pass the final order was null in the eyes of law.

6. We have heard rival submission and gone through the facts and circumstances of the case. In order to adjudicate this legal issue it would be useful to have a look at the chronology of date of events which would be clear by looking at the following chart:

Sl. No.	Event	Remarks, if any
1.	Return of Income in ITR 6 for AY 2016-17 filed on	28.11.2016
2.	Notice u/s. 143(2) issued by the AO on	20.09.2017
3.	Notice u/s. 142(1) issued by the AO on	01.08.2018
4.	Notice u/s. 92CA(2) issued by the TPO on	05.12.2018
5.	Show cause Notice issued by the TPO on	15.10.2019
6.	Transfer pricing Order passed u/s. 92CA(3) on	31.10.2019
7.	Draft Assessment Order passed by AO u/s. 144C on	28.12.2019
8.	Objections filed by assessee in Form 35A before the Dispute Resolution Panel on [within the time limit prescribed in section 144C(2)]	24.01.2020
9.	Intimation given to the AO regarding the objections filed before the DRP on	27.01.2020
10.	Final Assessment order u/s. 143(3)/144C(3) passed by the Assessing Officer on	27.01.2020
11.	Time period for the AO to have passed final assessment order in case if assessee accepts the draft assessment order or does not file objection before DRP as per sec. 144C(3) & (4) of the Act	Between 01.02.2020 to 28/29.02.2020
12.	Since the assessee had filed the objection before the DRP on 24.01.2020, the AO should have await the direction DRP (refer section 144C(5) & (13) of the Act).	AO to pass final order within one month from the end of the month of DRP direction

7. The short question which needs to be answered is whether the AO could have framed the final assessment order on 27.01.2020 when the admitted facts are that the assessee has received the draft assessment order on 28.12.2019 and the assessee had filed objection before the DRP on 24.01.2020. For answering this legal issue, it would be gainful to refer to the legal provision which governs the issue i.e. section 144C of the Act which is reproduced as under:

**“Reference to dispute resolution panel.**

**144C.** (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

- (a) file his acceptance of the variations to the Assessing Officer; or
- (b) file his objections, if any, to such variation with,—
  - (i) the Dispute Resolution Panel; and
  - (ii) the Assessing Officer.

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

- (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or
- (b) no objections are received within the period specified in sub-section (2).

(4) The Assessing Officer shall, notwithstanding anything contained in [section 153](#) or [section 153B](#), pass the assessment order under sub-section (3) within one month from the end of the month in which,—

- (a) the acceptance is received; or
- (b) the period of filing of objections under sub-section (2) expires.

(5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—

- (a) draft order;
- (b) objections filed by the assessee;
- (c) evidence furnished by the assessee;
- (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
- (e) records relating to the draft order;
- (f) evidence collected by, or caused to be collected by, it; and



- (g) result of any enquiry made by, or caused to be made by, it.
- (7) The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—
- (a) make such further enquiry, as it thinks fit; or
  - (b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in [section 153](#) or [section 153B](#), the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

(14) The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

The following sub-section (14A) shall be inserted after sub-section (14) of section 144C by the Finance Act, 2013, w.e.f. 1-4-2016.

(14A) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in sub-section (12) of [section 144BA](#).

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose;

(b) "eligible assessee" means,—

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of [section 92CA](#); and

(ii) any foreign company.”

8. So, in order to answer the legal issue, we need to understand the legal provision/mechanism envisaged in section 144C of the Act to the fact of the case. We note that section 144C of the Act is a complete code in itself which has set out a separate assessment mechanism for eligible assessee's whose income are subject to transfer pricing variation or who are non-residents or foreign companies. This code entitles these eligible assessee's to first receive a draft assessment order from the AO, and gives them the option to decide the forum to prefer objection against the draft assessment order or to accept the draft order so that they retain their right to pursue regular appeal against the final order before the Ld. CIT(A). As per section 144C of the Act once the assessee receives the draft assessment order from AO u/s 144C(1) of the Act, the AO is duty bound to thereafter give the assessee 30 days time to make-up its mind either to accept the draft order or to object to such order (draft assessment order of AO) before the DRP as per sub-section (2) (b) of section 144C of the Act. And if the assessee chooses to file objection before the DRP, then the AO is duty bound to wait for the direction of the DRP; and then only on receipt of the DRP direction u/s. 144C(5) of the Act that AO is legally empowered to pass the final assessment order as per section 144C(13) of the Act. So, we note that as per the scheme/mechanism envisaged in section 144C of the Act, once the AO passes the draft assessment order, the assessee has 30 days time period for approaching the DRP to file objection if it desire; and the 30 days starts from the date on which the assessee receives the draft assessment order; and in case if the assessee files the objection before the DRP within 30 days, then the AO has to await the decision/direction of the DRP and thereafter the AO can frame the final assessment order in conformity with the direction given by the DRP as per sub-section (5) of section 144C read with 144C(13) of the Act. In the alternative, if the assessee accepts the draft assessment order as per section 144C(2)(i)(a) of the Act or if it does not file objection before the DRP within 30 days of receipt of the draft assessment order, then the AO is empowered to pass the final assessment order under sub-section (3) of section 144C of the Act (*which the AO in this case had erroneously done*). However, it has to be kept in mind that there is a time period prescribed within which only the AO can frame

the final order u/s. 144C(3) of the Act. The time period to legally frame final assessment order u/s. 144C(3) of the Act is prescribed in sub-section (4) of section 144C of the Act i.e. *within one month from the end of the month in which the AO receives the acceptance from the assessee regarding the draft assessment order or the period of filing of objection before the DRP expires*. So in the present case on a perusal of the dates of event as discerned from a perusal of the chart it is clear that the draft assessment order in this case was passed by the AO under sub-section (1) of section 144C of the Act on 28.12.2019 and it is admitted by the assessee that it had received it on the same date i.e. on 28.12.2019. Then, as per sub-section (2) of section 144C of the Act, the AO is duty bound to give the assessee 30 days of time to either file objection before the DRP (against the draft order) or to accept the draft order. Either ways the statute prescribes 30 days to the assessee to accept the draft order or to go before the DRP. However, as aforesaid, this 30 days prescribed in sub-section (2) of section 144C of the Act *is not the time limit* to pass the final assessment order even under sub-section (3) of section 144C of the Act as erroneously done by the AO by framing the impugned final assessment order u/s. 144C(3) of the Act on 27.01.2020 within 30 days of receipt by assessee of the draft order. Even in such a scenario i.e. in the event the assessee accepts the draft order or does not prefer to go before the DRP within 30 days and time expires, then also the time prescribed to the AO to frame final order u/s. 144C(3) of the Act is given in sub-section (4) of section 144C of the Act which in the facts of this case AO can legally do between 01.02.2020 to 28/29.02.2020. So even if for argument sake, we accept the contention of the Ld. DR, that since the assessee having received the draft order on 28.12.2019 did not turn up before the AO within 30 days and 30 days expires on 27.01.2020 the AO is legally entitled to frame the final assessment order on 27.01.2020 u/s. 144C(3) of the Act and if the assessee turned up later on the same date i.e. 27.01.2020 before the AO after the AO had framed the final order, does not affect the legality of the order cannot be countenanced because it is erroneous. Because even if the assessee had accepted the draft order or the period of 30 days expired or as suggested by Ld. DR or in the event of the assessee's failure to bring to the notice of AO of its filing the objection before DRP before AO has passed the final order on 27.01.2020, then also AO could not have passed the final

order u/s. 144C(3) of the Act as per the time limit prescribed in sub-section (4) of section 144C of the Act. In that event also the AO could have passed the final assessment order u/s 144C(3) only within the time period as prescribed in section 144C(4) of the Act *i.e. within one month from the end of the month* i.e. in this case AO can pass only final order only u/s. 144C(3) of the Act from 01.02.2020 to 28/29.02.2020. So, the AO erred in passing the final order on 27.01.2020. So the contention of the Ld. DR fails. However, that is not the case of the assessee before us. We note that in this case the draft assessment order as per section 144C (1) of the Act was passed on 28.12.2019 and the assessee had time of 30 days from the date of receipt of draft order to file objection before the DRP as per sub-section (2)(b) of the Act or acceptance of the draft assessment order as per sub-section (2)(a) of the Act. In any case, this period of time i.e. 30 days gets over on 27.01.2020. Meanwhile, we note that the assessee had preferred an objection before the DRP (Delhi) within 30 days of receipt as per sub-section (2)(b) of section 144C of the Act on 24.01.2020 which fact was intimated to the AO by physically filing the letter dated 27.01.2020 at the office of AO (On query the Ld. AR explained that the reference/objection had to be filed before DRP (Delhi) on 24.01.2020 which was Friday and 25<sup>th</sup> January & 26<sup>th</sup> January being Saturday and Sunday, the assessee physically filed the acknowledgment of filing objection at DRP before AO on 27.01.2020). So in this case, the AO ought to have awaited the decision of the DRP as envisaged under sub-section (5) of section 144C of the Act and which direction of DRP was binding on the AO as per sub-section (13) of section 144 of the Act and it is to be noted that after the direction of DRP, the AO could have framed the assessment without providing any opportunity to the assessee as envisaged in sub-section (13) of section 144C of the Act. In this case, the AO failed to await for the direction of the DRP and has arbitrarily framed the final assessment order which vitiates the final assessment order passed by him. Thus, we note that AO had no jurisdiction to frame the final assessment order on 27.01.2020 u/s. 144(3) of the Act, since he was divested of jurisdiction to pass final order between 27.01.2020 to 31.01.2020. And thus we find that even the AO could not have framed the final order u/s. 144C(3) on 27.01.2020 because the assessee had filed its objection before the DRP on 24.01.2020, the DRP is *in seisin* of the case of assessee and between 24.01.2020

and till the DRP gives direction as per section 144C(5) of the Act, the AO does not enjoy jurisdiction over the assessee's case for AY 2016-17. Therefore, the assessee succeeds in its challenge which it has raised against the jurisdiction of AO to frame the final assessment order u/s. 144(3) of the Act dated 27.01.2020 along with demand notice u/s. 156 of the Act is therefore, null in the eyes of law and is quashed.

9. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 18th December, 2020

Sd/-  
(P. M. Jagtap)  
Vice President

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 18th December, 2020

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Century Plyboards (India) Limited, P-15/1, Taratala Road, CPT Colony, Kolkata-700 088.
- 2 Respondent – ACIT, Circle-2, LTU, Kolkata.
3. DR, ITAT, Kolkata.

/True Copy,

By order,

Senior Pvt. Secy/DDO.