

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 1863/Del/2022  
(Assessment Year: 2018-19)  
Microsoft Corporation (India) Pvt. Ltd,  
807, New Delhi House,  
Barakhamba Road, New Delhi  
(Appellant)  
**PAN: AAACM5586C**

Vs. DCIT,  
Circle-16(1),  
New Delhi  
(Respondent)

Assessee by : Shri Nageswar Rao & Parth, Adv  
Revenue by: Shri Rajesh Kumar, CIT(DR)

Date of Hearing 22/02/2024  
Date of pronouncement 28/02/2024

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1863/Del/2022 for AY 2018-19, arises out of the order of the Assessing Officer [hereinafter referred to as 'Id. AO'], in short] in Appeal No. ITBA/COM/F/17/2022-23/1043700560(1) dated 30.06.2022.
2. Though the assessee has raised several grounds of appeal before us, it had raised a preliminary ground vide ground Nos. 2 and 3 that though the assessment order passed by the Id AO pursuant to the directions of the Id Dispute Resolution Panel (DRP) is barred by limitation. We deem it fit to address this preliminary ground as it goes to the root of the matter.
3. We have heard the rival submissions and perused the material available on record.
4. The assessee company is a wholly owned subsidiary of Microsoft Corporation USA and is engaged in manufacturing, replicating, marketing and distribution retail software products in India including online cloud based services.

The return of income for AY 2018-19 was filed by the assessee company on 30.11.2018 declaring total income of Rs. 15,32,17,51,320/- which was later revised on 31.03.2019 only to revise the claim of TDS. The case of the assessee was referred by the Id AO to Id TPO for benchmarking the international transaction of the assessee. The Id TPO passed order u/s 92CA(3) of the Act on 30.07.2021 **proposing an arm's length price (ALP) of Rs. 5,25,89,297/-** in respect of provision of marketing support services by the assessee referred to its associated enterprises (AE). A draft assessment order u/s 143(3) read with section 144C of the Act was passed by the Id AO on 28.09.2021 determining the total income of the assessee at Rs. 17,19,24,77,160/-. The assessee preferred objections before the Id DRP and the Id DRP disposed of the objections of the assessee by issuing directions u/s 144C(5) of the Act on 25.03.2022 giving partial relief to the assessee. The Id TPO pursuant to the directions of the Id DRP passed an order giving effect on 24.05.2022 reducing the ALP adjustment of Rs. 4,45,88,080/- u/s 143(3) read with section 144C(13) of the Act on 30.06.2022 determining the total income at Rs. 17,18,44,75,950/-.

5. Now the issue to be decided is whether the final assessment order dated 30.06.2022 passed by the Id AO is passed within the time limit prescribed u/s 144C(13) of the Act or not. For the sake of convenience the provision of section 144C(13) of the Act is reproduced below:-

*"144C(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. "*

6. The Id CIT DR placed on record a report from the Id AO wherein it had **been stated that the Id DRP's directions** dated 25.03.2022 were uploaded mainly on ITBA system on 02.05.2022 and in support of this he also placed on record the complete ordersheet noting wherein, it was noticed that on 02.05.2022 DCIT/ ACIT, NeAC-2(2)(2), Delhi has transferred the documents to Id AO/ Assessment Unit. This document was purportedly referred as DRP direction dated 25.03.2022.

Hence, it was vehemently pleaded by the Id DR that directions dated 25.03.2022 was made known to in the system of Id AO (Assessment Unit) only on 02.05.2022 by NeAC and as per section 144C(13) of the Act, the Id AO is bound to pass the final assessment order within one month from the end of the month in which the **Id DRP's direction were received. If reckoned** from 02.05.2022, the Id AO has got time till 30.06.2022 to pass the final assessment order which has been done in the instant case. Accordingly, it was placed by the Id DR that the final assessment order is not barred by limitation.

7. Per contra, the Id AR drew our attention to page 268 and 269 of the PB containing the letter written by Id DCIT, DRP-2, Delhi to assessee dated **29.07.2022 clearly confirming the fact that the Id DRP's direction were uploaded in** ITBA portal with computer generated DIN on 07.04.2022 itself. The letter also confirmed that the Id DRP direction were also dispatched through speed post to all the concern officers of the department i.e. PCIT; National e Assessment Centre, Delhi; CIT, Transfer Pricing Officer-2, Delhi; Additional/ Joint/ Deputy/ Assistant CIT; Transfer Pricing-2(2)(2), Delhi on 12.04.2022. For the sake of convenience the said letter dated 29.07.2022 issued by Id DCIT, DRP-2, Delhi to assessee is reproduced below: -

“GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
DCIT(DRP-2), Delhi (Sec)

To.  <i>MICROSOFT CORPORATION (INDIA PRIVATE LIMITED 807. NEW DELHI HOUSE, BARAKHAMBA ROAD NEW DELH NEW DELH 110001.Delhi India</i>	
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<i>PAN: AAACM5586C</i>	<i>Assessment Year: 2018-19</i>	<i>Dated: 29/07/2022</i>	<i>DIN &amp; Letter No : ITBA/COM/F/17/2022-23/1044273933(1)</i>
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Sir/ Madam/ M/s,

Subject: Online service of Orders - Letter

Inspection letter - reg-

Ref. - Microsoft Corporation India Private limited ('MCIPL' or 'the assessee')

PAN: AAACM5586C directions u/s 144C (5) of the Income Tax Act, 1961 issued by Dispute Resolution Panel ('Panel') on 25.03.2022, A.Y - 2018-19.

Please refer to your letter dated 22.07.2022 wherein it is requested to confirm the date of dispatch of DRP directions,

2. In this regard, it is informed that Directions of the Dispute Resolution Panel u/s 144 C (5) of the Income Tax Act, 1961 dated 25.03.2022 having Document No. (DIN) ITBA/DRP/M/144C(5)/2022- 23/1042628144(1) on the above referred case was uploaded on ITBA vide DIN & Document No. ITBA/DRP/S/91/2022-23/1042628419 (1) on 07.04.2022.

3. The above directions u/s 144 C (5) of the Income Tax Act, dated 25.03.2022 having Document No. (DIN) ITBA/DRP/M/144C(5)/2022-23/1042628144(1) was dispatched through speed post to the concerned officers; details of the same are as under:]

Sl. No.	Concerned Officer	Speed Post No.	Date
01.	The Pr. Commissioner of Income Tax, National e Assessment Centre, Delhi	ED071553665IN	12.04.2022
02.	The Commissioner of Income tax. Transfer Pricing -2, Delhi	ED071553753IN	12.04.2022 ,
03.	The Addl./Joint/Deputy/Asst. CIT, National e Assessment Centre, Delhi	ED071553682IN	12.04.2022
04.	The DCIT/ACIT, Transfer Pricing 2(2)(2), Delhi	ED071553767IN	12.04.2022

4. Further, it is informed that the above said direction was not sent through e mail.

SAURABH SHARMA  
DCIT(DRP-2),  
Delhi (Sec)"

8. Based on this it was argued by the Id AR that when the Id DRP's directions got uploaded in ITBA portal way back on 07.04.2022 itself, the Id AO ought to have been pass a final assessment order on or before 31.05.2022, whereas, the final assessment order was passed on 30.06.2022 which is barred by limitation. We find that pursuant to the faceless regime introduced in the income tax Act, a separate section was introduced vide section 130 mentioning the faceless jurisdiction of the Income Tax Authorities, which reads as under:-

**"Faceless jurisdiction of income-tax authorities.**

130. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of—

*(a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or*

*(b) vesting the jurisdiction with the Assessing Officer as referred to in section 124; or*

*(c) exercise of power to transfer cases under section 127; or*

*(d) exercise of jurisdiction in case of change of incumbency as referred to in section 129, so as to impart greater efficiency, transparency and accountability by—*

*(i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;*

*(ii) optimising utilisation of the resources through economies of scale and functional specialisation;*

*(iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.*

*(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:*

*Provided that no direction shall be issued after the 31st day of March, 2022."*

*(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament."*

9. In our considered opinion pursuant to the faceless regime introduced by the Govt. of India, National e Assessment Centre becomes Income Tax Authority vested with the powers of issuing notice, transferring the case, framing the assessment etc. Once, any document which is (Id DRP directions dated 25.03.2022 in the instant case) is uploaded in the ITBA portal which reaches the NeAC. In the instant case the NeAC had admittedly received the DRP directions dated 25.03.2022 on 07.04.2022 itself which fact has been duly confirmed by the Id DCIT, DCIT, Delhi vide its letter dated 29.07.2022 reproduced supra. Hence, the due date for reckoning for framing the final assessment order should be reckoned from that date in terms of section 144C(13) of the Act. Further, we also find that a separate provision of faceless assessment has been introduced in the statute vide section 144B of the Act which reads as under: -

**“Faceless Assessment.**

**144b.**<sup>6</sup> [(1) notwithstanding anything to the contrary contained in any other provision of this act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—

- (i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system;
- (ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;
- (iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit;
- (iv) where a case is assigned to the assessment unit, under clause (i), it may make a request through the National Faceless Assessment Centre for—
  - (a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;
  - (b) conducting of enquiry or verification by verification unit;
  - (c) seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit;
- (v) where a request under sub-clause (a) of clause (iv) has been initiated by the assessment unit, the National Faceless Assessment Centre shall serve appropriate notice or requisition on the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit and the assessee or any other person, as the case may be, shall file his response to such notice within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre which shall forward the reply to the assessment unit;
- (vi) where a request,—
  - (a) for conducting of enquiry or verification by the verification unit has been made by the assessment unit under sub-clause (b) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a verification unit through an automated allocation system; or
  - (b) for reference to the technical unit has been made by the assessment unit under sub-clause (c) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a technical unit through an automated allocation system;

- (vii) *the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, as the case may be, based on the request referred to in clause (vi) to the concerned assessment unit;*
- (viii) *where the assessee fails to comply with the notice served under clause (v) or notice issued under sub-section (1) of section 142 or the terms of notice issued under sub-section (2) of section 143, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;*
- (ix) *the assessment unit shall serve upon such assessee, as referred to in clause (viii), a notice, through the National Faceless Assessment Centre, under section 144, giving him an opportunity to show-cause on a date and time as specified in such notice as to why the assessment in his case should not be completed to the best of its judgment;*
- (x) *he assessee shall, within the time specified in the notice referred to in clause (ix) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre which shall forward the same to the assessment unit;*
- (xi) *where the assessee fails to file response to the notice served under clause (ix) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;*
- (xii) *the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing,—*
  - (a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre; or*
  - (b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;*
- (xiii) *the assessee shall file his reply to the show cause notice served under sub-clause (b) of clause (xii) on a date and time as specified therein or such time as may be extended on the basis of an application made in this regard, to the National Faceless Assessment Centre, which shall forward the reply to the assessment unit;*
- (xiv) *where the assessee fails to file response to the notice served under sub-clause (b) of clause (xii) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;*
- (xv) *the assessment unit shall, after considering the response received under clause (xiii) or after receipt of intimation under clause (xiv), as the case may be, and taking into account all relevant material available on record, prepare an income or loss determination proposal and send the same to the National Faceless Assessment Centre;*
- (xvi) *upon receipt of the income or loss determination proposal, as referred to in sub-clause (a) of clause (xii) or clause (xv), as the case may be, the National*

*Faceless Assessment Centre may, on the basis of guidelines issued by the Board,—*

- (a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order; or*
- (b) assign the income or loss determination proposal to a review unit through an automated allocation system, for conducting review of such proposal;*
- (xvii) the review unit shall conduct review of the income or loss determination proposal assigned to it by the National Faceless Assessment Centre, under sub-clause (b) of clause (xvi), whereupon it shall prepare a review report and send the same to the National Faceless Assessment Centre;*
- (xviii) the National Faceless Assessment Centre shall, upon receiving the review report under clause (xvii), forward the same to the assessment unit which had proposed the income or loss determination proposal;*
- (xix) the assessment unit shall, after considering such review report, accept or reject some or all of the modifications proposed therein and after recording reasons in case of rejection of such modifications, prepare a draft order;*
- (xx) the assessment unit shall send such draft order prepared under sub-clause (a) of clause (xvi) or under clause (xix) to the National Faceless Assessment Centre;*
- (xxi) in case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee, as mentioned in sub-section (1) under section 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;*
- (xxii) in any case other than that referred to in clause (xxi), the National Faceless Assessment Centre shall convey to the assessment unit to pass the final assessment order in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the National Faceless Assessment Centre;*
- (xxiii) upon receiving the final assessment order as per clause (xxii), the National Faceless Assessment Centre shall serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;*
- (xxiv) where a draft order is served on the assessee as referred to in clause (xxi), such assessee shall,—*
  - (a) file his acceptance of the variations proposed in such draft order to the National Faceless Assessment Centre; or*
  - (b) file his objections, if any, to such variations, with—*
    - (I) the Dispute Resolution Panel, and*
    - (II) the National Faceless Assessment Centre, within the period specified in sub-section (2) of section 144C;*
- (xxv) the National Faceless Assessment Centre shall,—*

- (a) upon receipt of acceptance from the eligible assessee; or
- (b) if no objections are received from the eligible assessee, within the period specified in sub-section (2) of section 144C, intimate the assessment unit to complete the assessment on the basis of the draft order;
- (xxvi) the assessment unit shall, upon receipt of intimation under clause (xxv), pass the assessment order, in accordance with the relevant draft order, within the time allowed under sub-section (4) of section 144C and initiate penalty proceedings, if any, and send the order to the National Faceless Assessment Centre;
- (xxvii) where the eligible assessee files objections with the Dispute Resolution Panel, under sub-clause (b) of clause (xxiv), the National Faceless Assessment Centre shall send such intimation along with a copy of objections filed to the assessment unit;
- (xxviii) the National Faceless Assessment Centre shall, in a case referred to in clause (xxvii), upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the assessment unit;
- (xxix) the assessment unit shall, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any, and send a copy of the assessment order to the National Faceless Assessment Centre;
- (xxx) the National Faceless Assessment Centre shall, upon receipt of the assessment order referred to in clause (xxvi) or clause (xxix), as the case may be, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment;
- (xxxi) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act;
- (xxxii) if at any stage of the proceedings before it, the assessment unit having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the National Faceless Assessment Centre stating that the provisions of sub-section (2A) of section 142 may be invoked and such case shall be dealt with in accordance with the provisions of sub-section (7).
- (2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.
- (3) The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:—

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

(ii) such assessment units, as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under this Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment, and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(iii) such verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board:

**Provided** that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit;

(iv) such technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under section 90 or 90A, which may be required in a particular case or a class of cases, under this section and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(v) such review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xvi) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues requiring addition or disallowance have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.

(4) The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:—

(i) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(iii) such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.

(5) All communications,—

(i) among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;

(ii) between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and

(iii) between the National Faceless Assessment Centre and various units shall be exchanged exclusively by electronic mode:

**Provided** that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this behalf.

(6) For the purposes of faceless assessment—

(i) an electronic record shall be authenticated by—

(a) the National Faceless Assessment Centre by way of an electronic communication;

(b) the assessment unit or verification unit or technical unit or review unit, as the case may be, by affixing digital signature;

(c) assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal;

(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of—

(a) placing an authenticated copy thereof in the registered account of the assessee;  
or

(b) sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or

(c) uploading an authenticated copy on the Mobile App of the assessee,  
and followed by a real time alert;

(iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;

(iv) the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;

(v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000);

(vi) a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under this section;

(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit;

(viii) where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;

(ix) subject to the proviso to sub-section (5), any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;

(x) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;

(xi) the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre and the units set up, in an automated and mechanised environment.

(7) (a) The Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 may be invoked in the case,—

(i) forward the reference received from an assessment unit under clause (xxxii) of sub-section (1) to the Principal Chief Commissioner or Chief

*Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case, and inform the assessment unit accordingly;*

*(ii) transfer the case to the Assessing Officer having jurisdiction over such case in accordance with sub-section (8);*

*(b) where a reference has been received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under sub-clause (i) of clause (a), he shall direct the Assessing Officer, having jurisdiction over the case, to invoke the provisions of sub-section (2A) of section 142;*

*(c) where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over the case, in a case referred to in sub-clause (i) of clause (a), the assessment unit shall proceed to complete the assessment in accordance with the procedure laid down in this section.*

*(8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.]*

*(9) [Omitted by the Finance Act, 2022, w.r.e.f. 1-4-2021.]*

*(10) [Omitted by the Finance Act, 2022, w.e.f. 1-4-2022.]*

*Explanation.—In this section, unless the context otherwise requires—*

*(a) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288;*

*(c) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;*

*(d) "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;*

*(e) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(f) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);*

*(g) "computer resource of assessee" shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered email address of the assessee with his email service provider;*

(h) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(i) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre;

(j) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of section 144C;

(k) "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;

(l) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

<sup>2</sup>[(la) "electronic verification code" means a code generated for the purpose of electronic verification as per the data structure and standards specified by the Principal Director General or Director General, as the case may be, in-charge of information technology;]

(m) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of section 144C;

(n) "email" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(o) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);

(p) "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;

(q) <sup>8</sup>[\*\*\*]

(r) "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;

(s) "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;

(t) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including—

(i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or

*(ii) the e-mail address available in the last income-tax return furnished by the addressee; or*

*(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or*

*(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or*

*(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or*

*(vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;*

*(u) "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;*

*(v) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time."*

10. From the perusal of the aforesaid provisions, we find that section 144B(5) of the Act clearly stipulates that all the communication shall be through National Faceless Assessment Centre. Further, section 144B(6)(v) clearly stipulates that the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provision of section 13 of the Information Technology Act, 2000. In this regard, the provision of section 13 of the Act National Information Act, 2000 requires to be reproduced which is as under: -

*"13. Time and place of dispatch and receipt of electronic record. (1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.*

*(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely (a) if the addressee has designated a computer resource for the purpose of receiving electronic records, -*

*(f) receipt occurs at the time when the electronic record enters the designated computer resource; or*

*(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee:*

*(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resources of the addressee." "*

11. We find that section 13 of the Information Technology Act, 2000 has been subject matter of consideration by the Hon'ble Supreme Court in the case of Union of India Vs. G. S. Chatha Rice Mills reported (2021) 2 Supreme court Cases 209 dated 23.09.2020 as under:-

*"The dispatch of a record occurs when it enters a computer resource outside g the control of the originator. The time of receipt of the electronic record is fixed by the provisions of sub-section (2) of Section 13. When the addressee has designated a computer resource, receipt occurs when the record enters the computer resource so designated. Otherwise, where no computer resource is designated, the receipt of the record is when it is retrieved by the addressee. These provisions have been incorporated in the law to enable the dispatch and receipt of a record in the electronic form to be defined with precision with reference to both time and place."*

12. On a cohesive reading of provision of section 130 and 144B of the Act read together with section 13 of the Information Technology Act, 2000, we hold that the moment document is uploaded by the originator (which in the present case Id DRP) on 07.04.2022 in ITBA portal that dispatch from the side of the Id DRP is complete and since the entire documents are uploaded through electronic mode, the same happens seamlessly and accordingly, the receipt of the said document also becomes instantaneously. Hence, the date of receipt of DRP direction also happened on 07.04.2022 itself and the due date in terms of section 144C(13) would start reckoning from that date. Merely, because the NeAC had retained the document receipt from Id DRP in the form of DRP directions for few months in its kitty and the later transfer the same to the assessment unit on 02.05.2022, the due date in terms of section 144C(13) of the Act for framing the final assessment order by the Id AO does not get automatically extended. Hence, we have no hesitation to hold that the final assessment order ought to have been passed by the Id AO on or before 31.05.2022 in the instant case. Since, the same was done on 30.06.2022 which is barred by limitation. Accordingly, ground Nos. 2 and 3 raised by the assessee are allowed. Since, the entire final assessment is quashed

as barred by limitation the adjudication of other grounds becomes academic in nature and they are left open.

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

Order pronounced in the open court on 28/02/2024.

-Sd/-  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 28/02/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi