

## SC: 50 Key Excerpts from SC's split verdict in Shelf Drilling controversy

Aug 08, 2025

Shelf Drilling Ron Tappmeyer Limited [TS-460-SC-2025-TP]

### Conclusion

Delivering a split verdict in [Shelf Drilling case](#) on Sec. 144C-153 interplay qua limitation period, SC Division Bench offers differing interpretations of non-obstante clause in Sec. 144C; Both Justice B.V. Nagarathna and Justice Satish Chandra Sharma endeavour to provide a statutory analysis that avoids an 'absurd outcome' in the interplay between both the sections; Justice Satish Chandra Sharma factors in the stakes involved in the matter - Rs. 1.3 lakh crores and cautions that if the argument canvassed by assessee is accepted, then *"... it would result in a complete catastrophe for recovering lost tax"*, whereas, Justice B.V. Nagarathna dismisses any arguments that rely on the goal of 'recovering lost tax'; Both judges also consider legislative intent in their reasoning, cite Apex Court judgments to guide their interpretation and underlined the importance of precedents in statutory interpretation; Upholding HC's decision, Justice Nagarathna opines that it is the duty of the courts to avoid a clash between two sections of the same Act and *"whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise"*; In view of the differing opinions, SC Bench directs the Registry to place these matters before Hon'ble the Chief Justice of India for constituting an appropriate Bench to consider the issues afresh:SC

### Decision Summary

The judgment was delivered by SC Bench comprising Justice B.V. Nagarathna and Justice Satish Chandra Sharma.

The assessee was represented by Senior Advocate Jehangir D. Mistry while Revenue was represented by ASG N. Venkataraman and AOR Raj Bahadur Yadav.

### Portal Summary:

**Following are the key observations made by Justice B.V Nagarathna and Justice Satish Chandra Sharma:**

#### Justice Nagarathna's observations:

1. Justice B.V Nagarathna observed that assessee relied upon the Budget Speeches of the Finance Ministers of the relevant years in support of their submission that it has been the intention of the Parliament to reduce the time consumed in making an assessment order in the case of eligible assesseees.
2. Perusing the speech of the Finance Minister dated 06.07.2009 in support of the Finance (No.2) Bill, 2009, Justice B.V Nagarathna stated that the intent of the parliament behind Sec.144C is to expedite the final disposal of tax disputes pertaining to an eligible assessee.
3. Referring to the 3 judges bench in Shree Sajjan Mills Ltd, she observed that the principle that a taxing statute should be strictly construed does not exclude a reasonable construction which gives effect to the purpose or intention of a provision as apparent from the scheme of the Act. She explained, *"It goes without saying that such reasonable construction is to be achieved only with the assistance of the internal and external aids permissible under the law and not by drawing reliance on any superlative or equitable considerations or, even, the goal of "recovering lost tax"*.
4. The 2009 Bill's Memorandum (clause 55) specifically aimed for encouraging foreign investment by

ensuring a speedy dispute resolution mechanism. It highlighted that tax uncertainty impacts foreign investment and the new framework addresses delays in transfer pricing audits and foreign company taxation. Sec. 144C was introduced to ensure speedy disposal through DRP within the income-tax department. In this regard, Justice B.V Nagarathna observed, *"The import of this conspectus approach is a stricter interpretation of the timelines of Section 144C. To read it otherwise, would only inflate the timelines for completion of assessment order of an eligible assessee which would be doing violence to the intent implicit from the text"*.

5. Justice B.V Nagarathna elaborated on the relevant principles of statutory interpretation from authoritative sources. Zeroing in on the doctrine of purposive interpretation, she emphasized on the view that courts should avoid a construction which would reduce the provision to futility and rather accept a construction based on the view that Parliament or any Legislature would legislate only for the purpose of bringing about an effective result.

6. Justice B.V Nagarathna highlighted that while interpreting a statute it must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make out a consistent enactment of the whole statutes.

7. Justice B.V Nagarathna also observed that courts should avoid a clash between two sections and both should be interpreted to give effect to each, avoiding reducing one to a 'useless lumber'. In case of conflicting provisions, the more specific should be read within the scope of the general one. If absolute contradiction exists, the latter provision may prevail.

8. On the interpretation of non-obstante clause, Justice B.V Nagarathna observed, *"..in a case of a conflict, a provision in an enactment containing a non-obstante clause, would be given its full operation and what is stated in the non-obstante clause will not be an impediment for the operation of the particular provision in the enactment. This would mean that what is stated in the non-obstante clause would not take away the effect of any provision of the Act which follows the same"*.

### **Analysis of the provisions:**

1. Justice B.V Nagarathna referred to the provisions relevant to the present matter and explained, *"..what is of significance is the date of the commencement of the limitation period of twelve months which commences from the end of the financial year in which the order passed under Section 254 by the Tribunal, setting aside or cancelling an assessment is received by the Principal Chief Commissioner or Chief Commissioner etc."*. She exemplified by stating that if the order is passed by the Tribunal on 01.02.2021 and it is received by the concerned commissioner on 01.03.2021, then the limitation period of twelve months would be from the end of the financial year in which the order under Section 254 was received, i.e., twelve months from 31.03.2021, which would be 31.03.2022, within which the fresh assessment order would have to be made. This would effectively mean thirteen months in total from the date of receipt of the order.

2. Further, Justice B.V Nagarathna stated that where Sec. 144C applies, a time frame of 11 months is given for conclusion of proceedings from the date of passing the draft order. It is for two categories of eligible assessee: those affected by TPO's orders and non-residents or foreign companies. The proviso excludes individuals under Sec. 158BA or 158BD from this procedure.

3. Justice B.V Nagarathna delved into how the limitation period prescribed u/s. 153(3) can be reconciled with the procedure as well as the period contemplated u/s, 144C in a case where Section 254 of the Act applies.

4. Dilating on the scheme of Sec. 144C that contains a non-obstante clause, she clarified that the provision for forwarding of a draft of the proposed order of assessment speaks plainly that this sub-section is only concerned with a 'draft order' and cannot be a final order of assessment.

5. Justice B.V Nagarathna stated that any provisions that would relate to an order of assessment have no bearing on any interpretation to be given to such a draft order.

6. Justice B.V Nagarathna also noted that the co-joint reading of relevant sub-sections u/s. 144C and 153

reflect that AO only has thirty days' time to pass a final assessment order, irrespective of whether the draft assessment order is accepted or in the face of objections raised by the eligible assessee, the DRP issues directions to the Assessing Officer.

7. Justice B.V Nagarathna observed, "*...it is noted that there are three non-obstante clauses in Section 144C. Sub-section (1) is notwithstanding anything to the contrary contained in the Act, while sub-section (4) and (13) are notwithstanding anything contained in Section 153 or 153B of the Act. The object and purpose of having the non-obstante clause in the aforesaid manner has to be ascertained inasmuch as the interpretation to sub-section (3) of Section 153 in light of Section 144C has to be made in the present cases in order to answer the rival contentions advanced at the Bar.*"

8. She observed that the non-obstante clause in sub-section (1) of Sec. 144C implies that it overrides all sections of the Act contrary to the procedure contemplated u/s. 144C inasmuch as it contemplates a special procedure insofar as eligible assesseees are concerned. Thus, insofar as the eligible assesseees are concerned, their assessment is subject to a distinct procedure u/s. 144C, wherein a draft assessment order has to be made in the first instance.

9. Justice B.V Nagarathna pointed out that the requirement of a non-obstante clause vis-à-vis eligible assesseees has been met by the Parliament u/s. 144C of the Act as a legislative device.

10. In this context, she explained that because the procedure and process of assessment/re-assessment in the case of eligible assesseees is different from that of other categories of assesseees inasmuch as a draft order has to be made and communicated to an eligible assessee under sub-section (1) of Sec. 144C in the first instance, which is not so in the case of other category of assesseees. That is the precise object for insertion of a non-obstante clause under sub-section (1) of Sec. 144C of the Act.

11. Justice B.V Nagarathna stated that the non-obstante clause in Sec. 144C(1) must be read alongside Sec.143, as both deal with assessment orders based on the assessee's category. If the assessee is eligible, Sec. 144C(1) applies, and if a variation is to be made, Sec. 143(3) applies.

12. Justice B.V Nagarathna also observed that an assessment order involves the entire process from filing a return to determining taxes, as outlined in Sec. 153., however, u/s.144C(1), only a draft assessment order is made, unlike the final orders u/s. 143(3) or 144C(13). Despite differences in procedure, the term "assessment" in these sections have to be given an identical meaning u/s.153 of the Act, i.e., final assessment order although, the assessment orders are made in a distinct manner and under a different procedure as they apply to different categories of assesseees.

13. Thus, Justice B.V Nagarathna upheld Bombay HC's conclusion that no final assessment orders can be passed in these cases as the same would be time barred and hence the return of income filed by the respondents-assesseees have to be accepted and thus, dismissed the SLP.

### **Justice Satish Chandra Sharma observations**

1. Justice Satish Chandra Sharma noted that Sec.153 has been a part of the IT Act for a significantly longer period of time, whereas Sec.144C is a relatively new provision, introduced in 2009. Both these provisions have a common salutary objective in mind, which aims to restrict or regulate the powers of revenue authorities to take appropriate steps against assesseees.

2. Justice Satish Chandra Sharma noted that in the given case, ITAT passed a remand order on 04.10.2019. The end of the FY insofar as this order is concerned would be 31.03.2020. In this regard, Justice stated that if Sec.153(3) is to be strictly construed, it would mean that the fresh assessment order had to be passed by or before 31.03.2021.

3. Justice Satish Chandra Sharma also noted that FY ended on 31.03.2020 at a time when the entire world was in lockdown as a result of the spread of the COVID pandemic and in view of delays and disruptions caused by it, CBDT issued Notification being S.O. 966(E) dated 27.02.2021, in which the time limit for the completion of assessments, reassessments, and recomputation under Sec.153 or Sec.153B was extended till 30th day of September 2021.

4. He stated that Sec.144C is applicable to the given case since assessee is a foreign company.
5. On examining the scope, object, and purpose behind the introduction of Sec.144C, Justice Satish Chandra Sharma observed that *"These provisions make it abundantly clear that Section 144C of the Income Tax Act contemplates and prescribes a specific procedure and also prescribes very specific fixed timelines for the completion of assessment."*
6. Justice Satish Chandra Sharma further stated that from the date of the draft assessment order proposing variations, the entire procedure contemplated will result in an order being passed within an outer limit of roughly 11 months, depending on the date on which the directions, if any, are passed by the DRP.
7. In this regard, Justice Satish Chandra Sharma stated that the question which arises for consideration of this court is whether this 11-month period contemplated in Sec.144C is subsumed within the outer limit of time to pass an assessment order as prescribed u/s.153 of or any of its Sub-Sections?
8. Regarding Revenue's objection that the present SLP ought to be dismissed on account of the fact that there is a low tax effect, Justice Satish Chandra Sharma stated, *"This submission need not detain me any further. Obviously, there is an extremely important question of law which has to be decided by this Court and has country-wide ramifications. The Court is not compelled to dismiss a petition merely because it has a low tax effect."*
9. Justice Satish Chandra Sharma viewed that impugned order is liable to be set aside and judgement of the Madras High Court also deserves to be set aside, as this interpretation of the interplay between Sec.153 and 144C of the Income Tax Act seems wholly incorrect, and unworkable.
10. The observation made by HC in [Roca Bathroom](#) i.e. in view of the additional time period of 12 months provided, the proceedings before DRP, the passing of draft assessment and thereafter final assessment order ought to have taken place within this extended period of limitation was found to be erroneous.
11. Justice Satish Chandra Sharma observed, *"In interpreting the provisions that form the subject matter of the present controversy, this Court is alive to the fact that a fine balance has to be maintained between ensuring that the revenue authorities have ample time and opportunity to assess income and ensure that those who attempt tax evasion, are prosecuted, and the income escaping taxation, is brought within the tax fold."*
12. Justice Satish Chandra Sharma held that if the entire procedure prescribed and contemplated in terms of Sec.144C must be subsumed within the overall time period prescribed u/s.153 then it would result in a complete catastrophe for recovering lost tax. The time period within which the AO would have to pass orders would be negligible.
13. In context of aforesaid, Justice Satish Chandra Sharma observed, *"this would be totally unworkable. The total time prescribed for passing the assessment orders in the ordinary course is only 12 months from the end of the financial year in which the remand order has taken place from the tribunal. In most of the illustrations and situations dealt with in Section 153 and its many sub-sections, a specified timeline has been prescribed within which the assessment order must be passed"*.
14. It was explained that proceedings before DRP are initiated at the option of the assessee and it is always open for an assessee to accept variations proposed by the AO in its draft order, so therefore it cannot be said that an assessee is prejudiced by proceedings before DRP or the time that it takes because it is something that an assessee will initiate and not something that he/she must mandatorily go through.
15. Agreeing with the High Courts of Bombay and Madras view that the fact that no exception has been carved out for Sec.144C in any of the sub-sections of Sec.153, he pointed out that the time of Sec.144C proceedings must necessarily conclude within the time period prescribed u/s.153. However, he clarified, *"I agree with this view only to a limited extent, insofar as the timelines prescribed under Section 153 of the Income Tax Act must apply to proceedings under Section 144C of the Income Tax Act, but only insofar as they relate to the passing of the Draft Assessment Order contemplated under Sub-Section (1)*

*of Section 144C of the Income Tax Act.”*

16. Further, Justice Satish Chandra Sharma stated that no doubt Sub-Section (4) and Sub-Section (13) of Sec.144C prescribe very specific timelines for the AO to complete and pass the final assessment order, but these timelines are independent of the timelines contemplated in Sec.153 and operate in addition to the timelines contemplated in Sec.153.

17. Justice Satish Chandra Sharma held that HCs have rightly taken the view that the non obstante clauses are only limited to the actual final passing of the order, but the conclusions drawn are incorrect. He observed, *“the requirements of Section 153 of the Income Tax Act in terms of timeline are strictly applicable to Section 144C (1) of the Income Tax Act, that is the stage at which the Draft Order has to be passed by the Assessing Officer. The non-obstante clauses contained in Sub-Section (4) and Sub-Section (13) of Section 144C of the Income Tax Act only extend the timeline for the passing of the final order and not that of the Draft Order.”*

18. Justice Satish Chandra Sharma even stated that the time available to AO would extend from 31st March of any year to 30th April of that year. In context of given case, it was observed that this would mean that the AO ought to have passed his draft assessment order before 30th September 2021, and in case acceptance was received or no objections were filed, the final assessment order by or before 30th October 2021.

19. Justice Satish Chandra Sharma also stated that if the DRP disposes of the objections and issues directions within a period of one month from the date of filing of objections, the final assessment order must be passed within one month from such date which will be practically impossible.

20. Justice Satish Chandra Sharma rejected assessee’s submission that the non-obstante clause in Sec.144C(1) is limited to provisions contrary to what is contained elsewhere in the Act and that the only aspect contrary in Sec.144C is passing of a draft assessment order instead of a final assessment order. He stated that if Sec.144C(1) operates notwithstanding the Sec.143(3) procedure, it also operates notwithstanding the timelines prescribed under Sec.153 for such Sec.143(3) procedure. Thus, this construction would preserve the sanctity of the provision and would not result in any absurd outcome.

21. Separately, he also stated that if contentions of the Respondents were to be accepted, and assuming a scenario where AO does not accommodate for the entire nine-month period for the DRP to issue directions, it would result in a scenario where an AO would eat into the time available for the DRP to issue directions, which would effectively result in amending the Income Tax Act and the timeline of nine months available with the DRP available u/s.144C(12).

22. Justice Satish Chandra Sharma also viewed, *“Once the procedure under Section 144C(1) gets triggered, the time available with the Dispute Resolution Panel to carry out the process conceived under Section 144C(5) to Section 144C(12) and the time available with the assessing officer under Section 144C(13), will be over and above the timelines prescribed under Section 153. This interpretation would ensure a smooth functioning of Section 153 and Section 144C.”*

23. Justice Satish Chandra Sharma clarified that once a draft assessment order is issued u/s.144C, the AO is incapacitated to conduct further independent enquiries or raise any fresh issue in the final assessment order that was not part of the draft assessment order.

24. Justice Satish Chandra Sharma, thus, stated that since AO acts in an executory role once the draft assessment order is issued u/s. 144C(1), Explanation 1 to Sec.153 has no relevance in the context of Sec.144C. He viewed, *“when Section 144C operates notwithstanding Section 153, and since the timelines under Section 144C are over and above the timelines under Section 153, Explanation 1 to Section 153 has no relevance.”*

25. Referring to Hon’ble SC judgment in case of Hindustan Bulk Carriers, Constitution Bench in the case of Franklin Templeton Trustee Services Private Limited, Vivek Narayan Sharma & Ors, Justice Satish Chandra Sharma viewed, *“It is settled law that while interpreting statutes the Court must avoid an absurd interpretation and must always strive to interpret the provisions to ensure that the Legislation is not reduced to a futility, and the interpretation must ordinarily be such that it brings about an effective result*

*which was intended by the Legislature.”*

26. He further explained that the two situations contemplated under the Income Tax Act in terms of assessment u/s.144C are vastly different and will obviously take varying amounts of time depending on whether objections are filed before the DRP or not. Justice Satish Chandra Sharma clarified that *“At the cost of repetition, it must be remembered that this option is only exercised by the Assessee.”*

27. Thus, Justice Satish Chandra Sharma held that if adequate opportunity or time is not granted to an assessee or if the DRP is forced to decide the objections in a very quick manner inhibited by the timelines prescribed u/s.153, it would amount to a violation of the principles of natural justice and accordingly, rejected HCs view.

28. He clarified that since this issue has arisen in a large number of appeals pending in various forums across the country, it is appropriate to clarify and specify meaning of Sec.144C and its applicability alongside Sec.153(3) including situations where Sec.92C is invoked.

29. Justice Satish Chandra Sharma held that *“In cases of assessment proceedings under Section 144C, Section 153 of the Income Tax Act and all its sub-sections are fully applicable, and the timelines prescribed therein apply to the Draft Assessment Order, which is to be passed under SubSection (1) of Section 144C of the Income Tax Act. If proceedings under Section 92C are also invoked, the time period in view of Section 153(4) of the Income Tax Act would be extended by a period of 12 months.”* As also *“fixed time periods prescribed under Section 144C of the Income Tax Act must be adhered to, and a final assessment order must be passed either within one month of the Draft Assessment Order if the situation contemplated under SubSection (4) takes place, or within a period of 11 months from the passing of the Draft Assessment Order if the Assessee opts to file objections before the Dispute Resolution Panel.”*

### **Court's order**

SC directed the Registry to place these matters before Hon'ble Chief Justice of India for constituting an appropriate Bench to consider the issues which arise in these matters afresh.

### **Appeal History**

- HC: Sec.153 limitation binding despite Sec.144C 'complete code'; Follows Madras HC's Roca Bathroom
- [TS-485-HC-2023\(BOM\)-TP](#)

### **Case Law Information**

#### **Taxpayer Name**

- Shelf Drilling Ron Tappmeyer Limited

#### **Judicial Level & Location**

- Supreme Court

#### **Appeal Number**

- SLP (Civil) Nos.20569-20572 of 2023

#### **Date of Ruling**

- 2025-08-08

#### **Ruling in favour of**

- Both, Partially

### **Section Reference Number**

- [144C](#)
- [153](#)

### **Nature of Issue**

- Time limit for completing the assessment

### **Judges**

- Justice B.V. Nagarathna
- Justice Satish Chandra Sharma

### **Counsel for Tax Payer**

- Shri Jehangir D. Mistri

### **Counsel for Department**

- ASG N. Venkataraman
- Raj Bahadur Yadav