

## Time Limit Dilemma (Shelf Drilling) - riddle before the Larger Bench!

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### Background

The Hon'ble Supreme Court on August 08, 2025, passed a split verdict in case of ACIT vs. Shelf Drilling Ron Tappmayer Ltd etc (SLP (Civil) Nos.20569-20572 of 2023) [\[TS-460-SC-2025-TP\]](#) on the time limit dilemma. This also emerged from Hon'ble Madras High Court's decision in case of DCIT v/s Roca Bathroom Products Private Limited (W.A. Nos. 1517 and 1519 of 2021) [\[TS-473-HC-2022\(MAD\)\]](#) (hereinafter referred to 'Roca Bathroom' or 'Roca'). The Roca decision was in context of remand back matter, wherein it was held that the outer time limit under Section ('u/s') 153 of Income-tax Act, 1961 (the Act), would not refer to draft order of assessment (*referred to as 'draft order' hereafter*), but only to final order of assessment (*referred to as 'final order' hereafter*). Hence, the entire proceedings would have to be concluded within the said time limit prescribed u/s 153.

The Roca ruling had been referred by the Hon'ble Bombay High Court in the case of Shelf Drilling (Writ Petition No. 2340 of 2021) [\[TS-431-HC-2023\(BOM\)\]](#), wherein Hon'ble Bombay High Court supported the decision in case of Roca Bathroom and held that the provisions of Section 153 are not excluded by the operation of Section 144C. Accordingly, the Hon'ble Bombay High Court held that the assessment will be time barred in cases where the final order is not passed within the timelines prescribed u/s 153.

**This issue has now been highly debated in courts. Further, with the recent split verdict of Hon'ble Supreme Court the dilemma is far from over and now placed before the Larger Bench of Hon'ble Supreme Court.**

**The Shelf Drilling case was a case of non-resident taxpayer and did not involve transfer pricing matter, further Roca Bathroom case was in connection of the remand back matter, so the specific facts of these cases are different. However, the overarching principal arising out these decisions have far reaching impact generally in all cases involving transfer pricing adjustments.**

**Given the situation, it would also be interesting to see if Govt (through Parliament) proposes to bring clarificatory amendment in the law, but meanwhile one might wonder about the mystery and the riddle that the larger bench of Hon'ble Supreme Court is going to deal with. So, lets reflect upon some critical aspects and questions on and around the subject that are likely to have material bearing on the final interpretation:**

### Comparative analysis of the critical aspects:

Honb'ble Supreme Court in its split judgement held that whether assessing officer has adequate time available to or not, cannot have bearing on interpretation by the Courts. Thus, practicalities of the interpretations are not discussed in this article. Only an attempt has been made to summaries & comment on the key differences in the technicalities of the two interpretations and additional aspects that have material bearing on the final interpretation, in my view. The same is tabulated below:

Sr. No.	Broad point	Interpretation in favor of Taxpayers	Interpretation in favor of Revenue	Author's Comments
1	<p>Timeline as per Section 153(1) is applicable to which order?</p> <p>What is the meaning of the term "assessment order"</p>	<p>153(1) timeline is applicable to Final Order of assessment [u/s 143(3)]</p> <p>The Supreme Court in <i>CIT v. JK Commercial Corpn Ltd [1976] 4 SCC 517</i> (Supreme Court) has held that the term "assessment" is the process of determining the total income of and the sum payable by the taxpayer.</p> <p><i>Going by the aforesaid past decision of Hon'ble Supreme Court, "draft order of assessment" cannot be considered as "order of assessment"</i></p>	<p>153(1) timeline is applicable to Draft Order of assessment [u/s 143(3) read with section 144C]</p> <p>Passing of the Draft Order of Assessment within 153 timelines is sufficient compliance. Further, timeline to pass final order of assessment gets extended with non-obstante clauses as per Section 144C(4) and 144C(13).</p>	<p>Section 153(1) refer to the "order of assessment" but does not expressly mention whether it should be "<b>final</b> order of assessment" or "<b>draft</b> order of assessment". This seems to be the root cause of different interpretations.</p> <p>The law does not provide any separate timelines for passing the draft order, nor does law provide any remedy for not passing such draft order in time limit.</p> <p><b><i>Here, the important question arises as to whether the lawmakers did not intend to provide any timeline for passing the draft order? Or it is reasonable to say that lawmaker did not provide separate timeline because they intended to apply the 153 timelines to the draft order being an order of assessment?</i></b></p> <p>For this purpose, let's look at Section 143(3) with different lens. Section 143(3) requires AO:</p> <ul style="list-style-type: none"> <li>• To make an order</li> </ul>

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		<p>The provisions of Section 144C cannot be considered to mean that overall time limits prescribed u/s 153 have been given a go by in the process.</p>		<p>in writing including an <b>assessment of the total income or loss</b> (<i>I will refer this as a <b>Step1</b></i>);  <b>AND</b></p> <ul style="list-style-type: none"> <li>• Determine the sum payable/refund due <b>on the basis of such assessment</b> (<i>I will refer this as a <b>Step2</b></i>).</li> </ul> <p>The term “assessment” is defined in Section 2(8) only to say "assessment" includes reassessment. However, 143(3) to my mind indicates that, the term assessment i.e. “assessment of total income and loss” and determination of the sum payable/refund due are two separate actions &amp; Step 2 is followed by Step 1.</p> <p>Also, Section 144C(1), in certain cases, requires AO to <b>pass a draft order (can we say without step 2?)</b> as it specifically uses wordings <b>“notwithstanding anything contained in the Act”</b>.</p> <p><b>The Supreme Court decision in case of JK Commercial Corpn Ltd</b></p>

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				<p><i>was prior to insertion of Section 144C. The question thus arises whether non-obstante clause of section 144C(1), precludes the AO from performing Step 2 i.e. determine sum payable/refund due but follow only Step 1 i.e. make a draft order of assessment? If so, whether draft order can also satisfy the meaning "order of assessment" as expected in per 153(1)?</i></p>
2.	Interpretation aligned with the intent of the legislator	<p>The object is to conclude the proceedings and make an assessment as expeditiously as possible. The object and purpose of narrower limitation periods is to ensure that overall limitation of 153 applies.</p> <p>DRP was envisioned as an alternative dispute resolution mechanism "within the</p>	<p>The non-obstante clauses in Section 144C must be harmoniously construed. The timelines prescribed u/s 153 will be applicable upto the stage of passing the draft order u/s 144C(1). Thereafter, the non-obstante clause in 144C(4) and 144C(13) provides timelines which are over and above the timelines provided in Section 153.</p> <p>Had Section 153 subsumed the timelines prescribed u/s 144C, there was no occasion for the Parliament to specifically mention</p>	<p>The DRP proceedings are considered as an extension the assessment proceedings and not as appellate proceedings, this point tilts the discussion in favor of taxpayers that overall time limit of Section 153 cannot be extended for procedures of Section 144C.</p> <p>If expeditious assessment is an objective, narrowing the timeline u/s 153 is justified, but here whether the object/intent is expeditious assessment or expeditious dispute resolution?</p> <p>The intent/object of the law here is to provide <b>alternative &amp;</b></p>

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		<p>income tax department” .</p> <p>Inflating the timelines (u/s 144C) would be doing violence to the intent implicit from the text.</p> <p>Non-obstante clause u/s 144C(4) and 144C(13) further narrows the timeline provided u/s 153. So Final order shall be passed within the timeline prescribed u/s 153 as the time limit u/s 144C are subsumed in time limit prescribed u/s153.</p>	<p>Section 144C in Section 92CD(5) which too provided alternate timelines, contrary to the timelines prescribed u/s 153, This is an indication of the intention of the Parliament to operate the timelines u/s 144C over and above Section 153</p>	<p><b>expeditious dispute resolution.</b> Based on practical experience:</p> <ul style="list-style-type: none"> <li>• In case DRP provides relief, the dispute is anyways resolved expeditiously.</li> <li>• Further, in case of adjustments sustained post DRP proceedings, the law provides faster access to Income-tax Appellate Tribunal (“ITAT”) i.e. <b>alternative to CIT(Appeals).</b></li> </ul> <p>Given this context, one may argue that even with the interpretation of the Revenue, the dispute resolution happens on a <b>fast track/expeditious manner as compared to the CIT(A) proceedings.</b></p> <p><b>Thus, one of the probable question before Larger Bench of Supreme court would be:</b></p> <p><b>Whether Revenue’s interpretation does or does not conflict with intent/objective of the law; Given that, in DRP cases</b></p> <ul style="list-style-type: none"> <li>• <b>Either the</b></li> </ul>

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				<p><b>dispute resolution is expeditious (in cases of relief), OR</b></p> <ul style="list-style-type: none"> <li><b>Expediently provides access to ITAT; as compared to CIT(Appeals), AND</b></li> <li><b>In any case it is alternative to CIT(Appeals)</b></li> </ul>
3.	<p>Timeline for TPO to pass the order u/s 92CA(3)</p> <p>Interplay of interpretation with timeline given u/s 92CA(3A) and provisions of 92CA(4)</p>	<p><i>No specific decision by Hon'ble Supreme Court on this particular timeline as the Hon'ble Supreme Court's decision in case of Shelf Drilling did not involve transfer pricing reference or order.</i></p> <p><i>Thus it appears that Hon'ble Supreme Court did not have specific occasion to deal with interplay of the provisions of</i></p>	<p>TPO can pass order 60 days before outer timeline of Section 153. Thus, from the date of reference, TPO has approximately 10 months (at least) to pass his order u/s 92CA(3).</p> <p><i>Apparently, on account of this significant difference in available timelines for TPO, DRP, AO; the revenue has argued that the interpretation of Hon'ble High Courts makes machinery provisions unworkable.</i></p> <p><i>However, as practicality is</i></p>	<p>As per Section 92CA(3A) TPO shall pass order u/s 92CA(3), at any time before sixty days prior to period of limitation referred u/s 153. Let's understand the interlinkage:</p> <ul style="list-style-type: none"> <li><b>The TPO can pass order 60 days before time limit of Section 153</b></li> <li><b>As per Shelf &amp; Roca, interpretation 153 timeline is for passing the final order. It means TPO can pass order 60 days before the final order?</b></li> <li><b>The AO has to pass draft order by reverse working approx. 10-11 months' timeline for the DRP</b></li> </ul>

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		<p>Section 92CA(3A) or 92CA(4).</p> <p>Given the wider implication of the overarching principle laid down by the Hon'ble courts, I believe, harmonious reading of provisions of 143, 153 and 144C in view of provisions of Section 92CA(3A) and 92CA(4) likely to aid the interpretation further.</p>	<p>supposed to be not considered while interpreting law as per the Hon'ble Supreme Court, this particular point is analyzed with some technicalities as per the next column, by referring to the timelines and obligations in other sections like 92CA(3A) and 92CA(4).</p>	<p><b>proceedings, but the AO has to compute the total income of Taxpayer after receipt of the TPO order, as per Section 92CA(4)</b></p> <ul style="list-style-type: none"> <li>• <b>So, while TPO order can be passed 60 days before the Final order, the AO has to refer to that TPO's order 10-11 months before the Final order (i.e. while passing the draft order)</b></li> </ul> <p><b>Does this mean the TPO has to waive off his right of timeline given by the Act and reverse workout timeline for passing his order? Is this resulting in provisions of Section 92CA(3A) unworkable?</b></p> <p><b>Or does this mean, AO can ignore the TPO order at the time of passing draft order (<u>as it may not be available at that time, if TPO passes order as per outer timeline available to him</u>)? Is this resulting in provisions of Section 92CA(4) unworkable?</b></p>

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				<p><b>Even though there is no specific discussion on Sections 92CA(3A) and 92CA(4) in the Shelf Drilling decision of Hon'ble Supreme Court, the interlinkage and harmonious construction of these provisions is likely to aid the final interpretation of various provisions discussed above. It would be important to see whether these questions are referred to the Larger Bench!</b></p>

### **Closing Remarks**

As the dilemma revolves around time limits, below is the comparison of the relevant order's timelines implied as per the two interpretations:

Action/order	Interpretation in favor of Taxpayers	Interpretation in favor of Revenue
Passing the final order	Within the time limit of 153(1)	Gets extended by non-obstante clauses, to accommodate the DRP proceedings and need to be passed as per provisions of Section 144C(13)
Passing the draft order	AO need to anticipate the scenario and reverse work out the timeline!	Within the time limit of 153(1), as AO's quasi-judicial powers & duties ends here. Post the draft order, AO has only executionary role as per Section 144C
Passing of the order by the TPO	No discussion in the decision. But to my understanding the interpretation implies that the TPO has to waive off	No discussion in the decisions. But it implies that the TPO can pass the order 60 days before time limit of passing the draft order as the timeline u/s 153(1) is

his right of timeline given by the Section 92CA(3A) and reverse workout timeline for passing his order.

applicable for the draft order.

*Because, as per Section 92CA(4) while passing Draft order AO has to compute the income of taxpayer in conformity with Arm's Length Price determined by the TPO.*

Divergent views expressed by the Hon'ble judges of the Supreme Court reflects the complexity involved in the statutory interpretations. Taxpayers & more so Revenue in this matter still awaits the clarity & finality. I believe, most of the above-mentioned questions and aspects will have considerable bearing on the decision of the Larger Bench of the Hon'ble Supreme Court.

*Views expressed are personal.*