

## Time Limit for Passing Draft Assessment Order - Sec 153 Limitation Applicable?

Apr 02, 2020



**Sumeet Khurana**

Chartered Accountant



**Aliasger Rampurawala**

Chartered Accountant

### Background

It is an old saying that time is a tyrant. This applies very well in the context of Income tax law as the assessments framed after the statutory time limit are held to be invalid and so is a return of income filed beyond permissible time limit. An issue worth examining is its relevance for a draft of an assessment order under section 144C of the Income tax Act ( the Act ). This article seeks to revisit the principles and examine the judicial precedents to ascertain applicability of time limitation under section 153 to the order passed under section 144C.

### Legislative framework

Section 143 of the Act prescribes procedure for framing an income tax assessment. Section 153 prescribes time limit for framing such assessment in different scenarios. Section 144C deals with two specific kinds of taxpayers, namely (i) a foreign company and (ii) other person having transfer pricing adjustment proposed by Transfer Pricing Officer (TPO) [cumulatively referred to as eligible assessee ]. Sub-section (1) of Section 144C provides that in the case of an eligible assessee, the assessing officer shall in the first instance forward a draft of the assessment order if he proposes to make a variation in the income or loss returned by the assessee. This provision is crafted as a non-obstante provision and it seeks to override rest of the statute<sup>[1]</sup>.

### Two schools of thought on the issue

There are two schools of thought on this issue.

One school of thought is that since the draft order is not forwarded to the assessee within the time limit prescribed under the third proviso to section 153(2A)<sup>[2]</sup> of the Act, the order is bad in law.

Contrasting school of thought is that the time limit for passing the order of assessment does not apply to cases covered u/s 144C of the Act. proponents of this school of thought argue that what has been mandated in section 153 is the time-limit for completion of assessment by means of passing an assessment order. An assessment can be said to be completed when an assessment order is passed

determining the total income and also the amount of tax payable or refundable, as the case may be. Whereas, the term 'draft order' is nothing but 'a draft of the proposed order of assessment' which does not determine the tax liability of the assessee. They further argue that with the insertion of section 144C, which led to the birth of the draft order, the legislature did not substitute the term 'order of assessment' with the term 'draft order' in section 153. In fact, the term 'draft order' is totally absent in section 153, which indicates that it has been treated as alien to section 153. Hence, the term 'draft order' cannot be read interchangeably with the term 'assessment order' in the context of section 153 or practically for any other purpose. However, it cannot mean that the draft order can be passed at any point time. In such a scenario the draft order must be passed within a reasonable time.

### **Analysis of authors in support of taxpayers position**

While the scholars are divided on this issue, the complexity of the riddle can be eased by considering the following:

#### **a) Scheme and intent of the law**

Section 144C was introduced in the legislation for transfer pricing disputes of Indian taxpayers and for all income tax disputes of foreign companies with a view to have a speedy dispute resolution mechanism<sup>[3]</sup>. It was conceived to have a mechanism which will facilitate expeditious resolution of disputes on a fast track basis as the existing system was considered to be time consuming<sup>[4]</sup>.

Given the objective of expeditious disposal, an interpretation which gives an uncertain and longer period for passing a draft order would run against the stated objective of the provision.

#### **b) Text of the provision**

Relevant text of sub-section (1) of section 144C reads as under:

The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, (emphasis supplied)

A closer reading of the above text reveals that the non-obstante provision operates only qua a contrary statement. In simple words, if any statement in any other provision of the Act contradicts with the statement in 144C(1) then the provisions of the latter will prevail over the former. Section 144C mandates forwarding a draft of the same assessment order as would otherwise have been passed under section 143 read with section 153. While section 153 provides a time limitation for passing an assessment order the provisions of section 144C(1) do not provide any express or implicit time limit hence cannot be said to be containing anything contrary to section 153.

Thus, it may be argued that the text of sub-section (1) of section 144C does not have the effect of fully obliterating the other provisions of the statute.

It is true that the provisions of section 153 do not specifically mention a draft of an assessment order ( draft order ), however the overall scheme suggests that its time limit should apply to a draft order. It is to be noted that but for an explicit override in section 144C(4) and 144C(13) the limitation of section 153 would have governed the respective orders. This demonstrates that legislative presumption is in support of applicability of section 153 limitation to section 144C orders. If, but for an explicit override Section 153 would have governed the final order under section 144C then but for a similar explicit override it should govern the draft version of that order as well.

#### **c) Principle of interpretation applicable in relation to limitation provisions**

Honourable Supreme Court in the case of *CIT v. Ranchhoddas Karsondas* held as under:

all laws of limitation lead to some inconvenience and hard cases. The remedy is for the Legislature to amend the law suitably. The courts can administer the laws as they find them, and they are seldom required to be astute to defeat the law of limitation.

Thus, the provisions dealing with limitation have to be observed with full vigor irrespective of the inconvenience they may cause in a given case.

Further, in the case of *CIT v. Umesh Chandra Gupta* [\[TS-111-HC-2014\(DEL\)\]](#) while interpreting a limitation provision held as under:

[An interpretation which] places reasonable fetters upon the jurisdiction of the concerned Assessing Officer who might otherwise be left with uncontrolled discretion, [has to be preferred over the one which confers uncontrolled discretion].

Based on the above cited precedents authors believe that it can be argued that the provisions of section 153 govern the draft of the assessment order dealt with under section 144C.

[\[1\]](#) Section 144C(1) contains the phrase notwithstanding anything to the contrary contained in this Act,

[\[2\]](#) Section 153(2A) determines the time limit for passing an order in the case of set aside proceedings

[\[3\]](#) Refer Introduction to the Budget Memorandum for Finance Bill 2009

[\[4\]](#) Refer the comments on section 144C in Budget Memorandum for Finance Bill 2009