

आयकर अपीलीय अधिकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri P. M. Jagtap, Vice President & Shri A. T. Varkey, Judicial Member]

I.T.A. No. 112/Kol/2021
Assessment Year: 2012-13

PCM Stresscon Overseas Ventures Ltd. (PAN: AAEC2571Q))	Vs	Principal Commissioner of Income-tax, - 1, Kolkata.
Appellant		Respondent

&

I.T.A. No. 2652/Kol/2019
Assessment Year: 2012-13

Income-tax Officer, Wd-1(1), Kolkata	Vs	PCM Stresscon Overseas Ventures Ltd
Appellant		Respondent

&

C.O. No. 15/Kol/2020
In I.T.A. No. 2652/Kol/2019
Assessment Year: 2012-13

PCM Stresscon Overseas Ventures Ltd	Vs	Income-tax Officer, Wd-1(1), Kolkata
Cross Objector		Respondent

Date of Hearing (Virtual)	11.08.2021
Date of Pronouncement	25.08.2021
For the Assessee	Shri Akkal Dudhwewala, FCA
For the Revenue	Shri Gaurav Kanauja, CIT & Shri Sanjoy Paul, Addl. CIT

ORDER

Per Shri A. T. Varkey, JM:

Both the appeal preferred by the revenue (ITA No. 2652/Kol/2019) and the Cross Objection preferred by the assessee (C.O No. 15/Kol/2020) are against the order of the Ld. CIT(A)-22, Kolkata dated 24.07.2019 for AY 2012-13; and ITA No. 112/Kol/2021 is assessee's appeal against the order of the Ld. Pr. CIT-1, Kolkata dated 23.03.2021 for AY 2012-13 passed u/s. 263 of the Income-tax Act, 1961 (*hereinafter referred to as the "Act"*). Appeal of revenue is time barred by 69 days and condonation petition has been filed. After considering the same and upon hearing both the sides, we condone the delay and admit the appeal for hearing.

2. At the outset, the Ld. A.R. for the assessee Shri Akkal Dudhwewala submitted that ITA No. 2652/Kol/2019 is preferred by the Revenue against the order of the Ld. CIT(A) for AY 2012-13 dated 24.07.2019, wherein the Revenue has challenged the action of the Ld. CIT(A) to have decided the appeal in favour of the assessee by upholding the legal issue raised by the assessee i.e. that since the AO's final assessment order u/s. 143(3) r.w.s. 144C(3) of the Act dated 28.12.2018 has been passed beyond the limitation time prescribed by the statute u/s. 153 of the Act, therefore, is *non-est* in the eyes of law. Against this action of the Ld. CIT(A) the Revenue has preferred the appeal numbered as ITA No. 2652/Kol/2019 and the assessee has filed a Cross Objection (C.O. No. 15/Kol/2020) against the merit of the addition made by the AO vide assessment order dated 28.12.2018.

3. Further the Ld. AR submitted that ITA No. 112/Kol/2021 has been preferred by the assessee against the order of the Ld. Pr. CIT passed u/s. 263 of the Act dated 23.03.2021 for AY 2012-13 wherein the Ld. Pr. CIT has interdicted the assessment order passed by the AO u/s. 143(3) read with section 144C of the Act dated 28.12.2018. According to the Ld. AR, while adjudicating these appeals, first of all if the Revenue appeal i.e. ITA No. 2652/Kol/2019 is decided and in case if the legal issue which has been assailed against the action of the Ld. CIT(A) who has held that the AO's order dated 28.12.2018 is bad in law since has been passed beyond limitation and so is null in the eyes of law, consequently then, the Ld. Pr. CIT's impugned action u/s. 263 of the Act dated 23.03.2021 against the *non est* order of AO dated 28.12.2018 passed u/s. 143(3) r.w.s. 144C of the Act would be *null* in the eyes of law. Therefore, the Ld. AR requested the Bench to hear first the legal issue upheld by the Ld. CIT(A) in favour of the assessee i.e. the Revenue Appeal numbered as ITA No. 2652/Kol/2019 to be first adjudicated. In the light of the aforesaid submission and since there is no objection on behalf of the Revenue; we are inclined to hear the Revenue Appeal (ITA No. 2652/Kol/2019) which stems from the AO's assessment order dated 28.12.2018.

4. The revenue has preferred appeal against the action of the Ld. CIT(A) in allowing the legal issue raised by the assessee as ground no. 1 before the Ld. CIT(A) which is reproduced as under:

“1. For that on the facts and in the circumstances of the case, the impugned order passed under section 143(3) was passed beyond the period of limitation and in that view of the matter the same be held bad in law and accordingly be quashed.”

5. From a perusal of the aforesaid ground no. 1 preferred by the assessee before the Ld. CIT(A) it is clear that the assessee had preferred this legal ground challenging the legal validity of the AO's assessment order dated 28.12.2018 on the ground that it was barred by limitation. In other words the time limit prescribed by Section 153 of the Act expired in any case on 30.11.2018 and therefore the AO lacked jurisdiction to pass the assessment order after that date (i.e. 30.11.2018) and so the assessment framed on 28.12.2018 by the AO was without jurisdiction and consequently the assessment order dated 28.12.2018 is *null* in the eyes of law.

6. Briefly stated, the facts of this case are that, the assessee is engaged in the business of manufacturing and trading of PSC sleepers. The assessee has two foreign branches situated in Abu Dhabi and Saudi Arabia. For the relevant AY 2012-13, the assessee had filed the return of income on 31.10.2013. The assessee did not file any Form 3CEB, since it had claimed that it did not have any international transactions u/s 92B of the Act with its foreign branches. The AO, vide order sheet entry dated 11.03.2015, stated that the assessee had entered into international transactions with its foreign branches and therefore proposed that the case may be referred for transfer pricing scrutiny u/s 92CA of the Act. The assessee by letter dated 24.03.2015 contended that the transfer pricing provisions were not applicable and therefore no reference ought to be made to the TPO. It is however noted that the AO referred the case to the TPO u/s 92CA of the Act. Thereafter, the TPO by notice dated 15.04.2015 issued u/s 92CA(2) of the Act calling upon the assessee company to furnish several details/information in connection with transfer pricing proceedings for the relevant AY 2012-13. Before the TPO, the assessee again objected to the reference made u/s 92CA of the Act on the same ground that it did not had carried out any international

transactions with its foreign branches within the meaning of Section 92B of the Act. The Ld. AR of the assessee pointed out that, the TPO without disposing off the objections raised against the exercise of jurisdiction and without even issuing any show cause notice unilaterally proposed transfer pricing adjustment of Rs.75,70,10,758/-to the total income of the assessee in his order dated 29.01.2016 passed u/s 92CA(3) of the Act. Consequent thereto, the AO served the order u/s 144C/143(3) of the Act dated 10.03.2016 on the assessee. Aggrieved by the aforesaid order of the TPO as well as the AO, the assessee preferred a Writ Petition No. 214 of 2016 before the Hon'ble Calcutta High Court, wherein the assessee challenged the notice dated 16.04.2015 issued by the TPO exercising jurisdiction u/s 92CA of the Act and the consequent orders passed by AO u/s 92CA(3) dated 29.01.2016 and u/s 143(3)/144C dated 10.03.2016. The Writ Petition was disposed of by the Hon'ble High Court by order dated 11.08.2017 and the relevant extracts of order are as follows:

“It appears from the records that, the petitioner had suffered a show cause notice dated March 11, 2015 from the assessing officer, calling upon the first petitioner to respond in writing with supporting evidence, as to the claim of the department that, there has been international transaction within the meaning of Section 92B between the branch units and the permanent establishment located in India. The first petitioner did reply thereto by its writing dated March 24, 2015. The assessing officer did not afford any opportunity of hearing to the petitioners thereafter. It did not decide the jurisdictional fact as whether there are transactions requiring the attention of the TPO. The TPO had issued a notice dated April 16, 2015 calling upon the first petitioner to participate in the proceedings for the assessment of transfer pricing. The first petitioner had apparently participated therein. The petitioners had approached the Writ Court by way of present writ petition. An interim order dated March 29, 2016 was passed. By such order the petitioners were allowed to file their objection before the dispute resolution panel. The dispute resolution panel was restrained from completing the assessment for the relevant year without the previous leave of Court. The circular dated March 10, 2016 has come into being subsequent to the decision of the assessing officer to refer the matter to the TPO.

As noted above, the assessing officer had invoked the provisions of Section 92CA of the Income Tax Act, 1961 in issuing the show cause notice. Section 92CA (1) of the Act of 1961 is as follows :

.....

By the circular dated March 10, 2016, the department is of the view that, the transactions noted in clause 3.3 thereof if involved, would give rise to a jurisdictional requirement. The assessing officer is required to record his satisfaction that, there is an income or a potential of an income arising and/or being affected on determination of the arm's length pricing of an international transaction or specified domestic transaction. The circular in clause 3.4 goes on to say that the assessing officer must provide an opportunity of hearing

to the assessee before recording his satisfaction or otherwise. He should also pass an speaking order so as to comply with the principles of natural justice. In the facts of the present case, although the circular was not in vogue at the material point of time, the applicability of the principles of natural justice and the requirement of the assessing officer deciding on a jurisdictional fact cannot be denied. The section as it stands requires the assessing officer to take a decision on a jurisdictional fact. That by itself implies that, the assessing officer while taking a decision on such jurisdictional fact, ought to afford a reasonable opportunity of hearing to the assessee concerned and thereafter pass a speaking order. The assessing officer not having afforded any opportunity of hearing to the first petitioner on the jurisdictional issue raised, it ought not to have transferred the matter to the TPO. The assessing officer has acted in breach of the principles of natural justice in doing so. The assumption of jurisdiction by the TPO and subsequently the ultimate reference to the dispute resolution panel are therefore at fault, in the facts of the present case

In the facts of the present case, interest of justice would be subserved by setting aside the writing dated April 16, 2015 of the TPO and the dispute resolution panel subsequent thereto. The assumption of jurisdiction by the TPO is set aside. The assessing officer is requested to proceed on the basis of the show cause notice issued by him dated March 11, 2015 and the reply given thereto by the assessing officer concerned contained in the writing dated March 24, 2015, in accordance with law and in consonance with the circular of the department dated March 10, 2016.”

7. From the above order, it is noted that the Hon’ble High Court had set aside the notice dated 16.04.2015 issued by the TPO and the consequent jurisdiction assumed by the TPO u/s 92CA(2) of the Act. The High Court accordingly directed the AO to proceed afresh on the basis of the initial show-cause issued by him dated 11.03.2015 and act in accordance with law and in consonance with the Board Circular dated 10.03.2016.

8. Perusal of the material placed on our record show that the assessee had served the copy of the above order of the Hon’ble High Court both upon the AO as well as the TPO on 29.08.2017. Subsequent thereto and acting in accordance with the directions contained in the order of the Hon’ble High Court, the AO issued a fresh notice dated 06.10.2017 requiring the assessee to explain as to why its case should not be referred for transfer pricing scrutiny. The objections filed by the assessee was disposed off by the AO vide order dated 20.11.2017 wherein he stated that it was his prerogative to make reference to the TPO for determination of Arms Length Price (ALP) u/s 92CA of the Act. The TPO accordingly issued fresh notices u/s 92CA(2) of

the Act and thereafter completed the Transfer Pricing assessment u/s 92CA(3) by order dated 31.10.2018 wherein he proposed an adjustment of Rs.4,57,20,215/-. Upon receipt of the transfer pricing order, the AO issued notice u/s 142(1) of the Act dated 26.11.2018 calling for several information/details and thereafter completed the assessment u/s 143(3)/144C by order dated 28.12.2018.

9. Before the Ld. CIT(A), the assessee had objected to the validity of the order dated 28.12.2018 passed by the AO and also the merits of the transfer pricing adjustment of Rs.4,57,20,215/-made therein. The Ld. CIT(A) found merit in the preliminary ground of the assessee that the order impugned was barred by limitation and therefore held the order dated 28.12.2018 to be bad in law and thus ab initio void. The Ld. CIT(A) also found merit in the assessee's contention that it did not have any international transactions with its foreign branches and therefore the reference made by the AO u/s 92CA(2) of the Act was held to be bad in law and in gross violation of the Board Instruction No. 3 of 2016 dated 10.03.2016. The Ld. CIT(A) accordingly held the consequent orders dated 31.10.2018 & 28.12.2018 passed by the TPO and AO respectively to be ab initio void. The Ld. CIT(A) further held that the TPO exceeded his jurisdiction u/s 92CA of the Act by assessing and verifying the profits earned by foreign branches despite that it did not qualify as an international transaction u/s 92B of the Act. The Ld. CIT(A) also took note of the fact that the Revenue in the earlier AYs 2007-08 to 2011-12 as well as succeeding AYs 2013-14 to 2015-16 had accepted that the assessee did not have any international transactions with the foreign branches and accordingly no transfer pricing adjustment was made in this regard. Hence, in absence of change in the factual matrix and following the principle of consistency, the Ld. CIT(A) held that there was no reason to adopt a contrary view in the relevant year. The Ld CIT(A) in respect of the aforesaid legal issue has noted the assessee's contention which has been reproduced from page 19 to 21 of his impugned order, which reads as under :-

"In this ground the appellant has objected to the legal validity of the order which bears the date of 28.12.2018 on the ground of being barred by limitation, In order to understand the issue involved in this ground, it would first be relevant to set out the facts of the case in proper context.

The appellant company is engaged in the business of manufacturer of pre-stressed concrete sleepers. The company had set up branches in the Kingdom of Saudi Arabia and United Arab Emirates which were also engaged in the same line of business. The contracts were obtained and executed by these foreign branches in the respective countries independently and no activities whatsoever were either carried out in India or by the Indian Head Office. The Head Office at India of the appellant company did not have transactions with these foreign branches during the relevant year. Both the branches prepared their standalone accounts which were audited in their respective countries. For accounting purposes in India the branch accounts were consolidated at the Head Office level and the consolidated financials of the Indian company were adopted at the annual general meeting and also reported for income-tax purposes. For the relevant year AY 2012-13 the appellant filed its income-tax return declaring loss of Rs.1,15,215/-. The case was selected for scrutiny u/s 143(3) of the Act, Along with the return of income, the company furnished tax audit report in Form 3CD as well. Since the Indian HQ of the company did not have 'international transactions' with the foreign branches within the meaning of Section 92B of the Act, the company did not file Form 3CEB. In the course of original assessment the appellant was show caused as to why it's case should not be referred for transfer pricing scrutiny. The appellant company vide letter dated 24.03.2015 Objected to the proposed reference u/s 92CA of the Act. It was contended that the company did not have any international transactions in terms of Section 92B of the Act and therefore no reference u/s 92CA was legally permissible. It was also explained that merely because the company had foreign branches did not ipso facto warrant transfer pricing scrutiny. The AO however without disposing off the objections raised by the appellant straightaway referred it's case for transfer pricing scrutiny without even spelling out the specific "international transaction" which in his opinion warranted transfer pricing scrutiny. Before the TPO also the appellant objected to the reference made by the AO u/s 92CA. The TPO however without giving any show cause or opportunity of hearing framed the order u/s 92CA(3) proposing adjustment to the extent of Rs. 75,70,10,548/- out of the profits of the foreign branches which were excluded from the computation of total income in terms of the DTAA between India and Saudi Arabia & UAE. Aggrieved by such arbitrary and high handed action of the Revenue authorities the appellant preferred a writ petition before the Hon'ble Calcutta High Court. One of the plea taken before the Hon'ble High Court was that both the AO as well as the TPO acted in violation of principles of natural justice. It was contended that the AO failed to dispose-off the objections raised to the proposed reference u/s 92CA which made the said reference to TPO bad in the eyes of law. It was further submitted that even the TPO was unable to spell out the international transaction which he allegedly benchmarked in the proceedings u/s 92CA(3) and that he recommended the adjustment of Rs.75,70,10,548/- without affording any opportunity of being heard. Appreciating the submissions put forth by the appellant, the Hon'ble High Court set aside the orders of the AO as well as the TPO and directed the AO to provide sufficient opportunity of being heard and thereafter pass a speaking order in terms of CBDT Instruction No. 5 of 2015 if he was of the view that transfer pricing scrutiny was warranted in the given facts of the present case The relevant extracts of the order of the Hon'ble Calcutta High Court in WP No.214 of 2016 dated 11.08.2017 is as follows:

"In the facts of the present case, although the circular was not in vogue at the material point of time, the applicability of the principles of natural justice and the requirement of the assessing officer deciding on a jurisdictional fact cannot be denied. The section as it stands requires the assessing officer to take a decision on jurisdictional fact. That by itself implies that, the assessing officer while taking a decision on such jurisdictional fact, ought to afford a reasonable opportunity of hearing to the assessee concerned and thereafter pass a speaking order. The assessing officer not having afforded any opportunity of hearing to the first petitioner on the jurisdictional issue raised, it ought not to have transferred the matter to the TPO. The assessing officer has acted in the breach of the principles of natural Justice in doing so. The assumption of the jurisdiction by the TPO and subsequently the ultimate reference to the dispute resolution panel are therefore at fault, in the facts of the present case.

In the facts of the present case, interest of justice would be sub served by setting aside the writing dated April 16, 2015 of the TPO and the dispute resolution panel subsequent thereto. The assumption of jurisdiction by the TPO is set aside. The assessing officer is requested to proceed on the basis of show cause issued by him

dated March 11, 2015 and the reply given thereto by the assessing concerned contained in the writing dated March 24, 2015, in accordance with the law, and in consonance with the circular of the department dated March 10, 2016. "

The certified true copy of the order of the Hon'ble Calcutta High Nigh Court was served on the Department on 25.08.2017, evidence thereof is enclosed at Page 134-138 of the paper book. Subsequent to receipt of the said order, the AO issued fresh show cause dated 06.10.2017 requiring the assessee to explain as to why the case should not be referred for transfer pricing scrutiny. Vide order dated 20.11.2017 the AO rejected the objections placed by the appellant and referred the matters to the TPO-II, Kolkata. Thereafter the TPO framed the order u/s 92CA(3) on 31.10.2018 proposing adjustment to the extent of Rs.4,57,20,215/- out of the profits of the foreign branches which were excluded from the total income chargeable to tax in India. The draft assessment order in terms of Section 144C was passed by the AO on 20.12.2018 and thereafter the final assessment order was passed on 28.12.2018.

With reference to the above facts, attention is now invited to the provisions of Section 153(6) of the Income-tax Act, 1961 which prescribes the limitation period for passing of assessment order pursuant to any order passed by the Hon'ble High Court other than by way of appeal or reference under the Income-tax Act, 1961. The relevant provisions are as follows:

"(6) Nothing contained In sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed-

- (i) where the assessment, reassessment or recomputation is made on the appellant or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263 or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or*
- (ii)*

In view of the above provision it shall therefore be observed that the time limit available with the Assessing Officer to pass the final order pursuant to the directions contained in the order passed in W.P. No.214 of the Hon'ble High Court was twelve months from the end of the month in which the order was received. In the facts of the present case the order of the Hon'ble Calcutta High Court was served on the Department on 25.08.2017. Accordingly the AO was required to pass the impugned order within a period of twelve months from the end of the month of August 2017. Hence the period of limitation ended on 31st August, 2018. The AO however passed the final assessment order on 28th December 2018. As a consequence and in terms of the extent provisions of Section 153(6), the impugned order was barred by limitation and hence bad in law. The appellant thus submits that the impugned order being passed beyond the period of limitation deserves to be cancelled and be held ab initio void."

10. On the aforesaid submissions of the Ld. AR in respect of the legal issue raised by the assessee, the Ld. CIT(A) has decided in favour of the assessee by holding as under:

"I have carefully considered the submission of the Ld. ARs of the appellant and also perused the findings of the Ld. AO in the impugned order. I have also gone through the material placed in the paper book and true factual background of the case. The issues involved in these grounds being interlinked and interconnected are dealt together. In Ground No.1 the appellant has objected to the validity of the Ld. AO's order dated 28.12.2018 on the ground of being barred by limitation. From the facts of the case and the sequence of events as narrated in the submissions of the Ld. ARs, it is apparent that the draft order u/s 144C was originally passed by

the Dy.CIT, CC-1(3), Kolkata on 10.03.2016. Being aggrieved by the said order, the assessee, besides filing objections before the hon'ble DRP, also filed a writ petition before the Hon'ble Calcutta High Court challenging the reference made u/s 92CA(2) by the Ld. AO without giving an opportunity of hearing as well as the manner in which the Ld. TPO framed the order u/s 92CA(3) in complete disregard of the provisions of Chapter X and principles of natural justice. The said writ petition was disposed by the Hon'ble Calcutta High Court in WP No. 214 of 2016 dated 11.08.2017. In its judgment the Hon'ble High Court set aside the assumption of jurisdiction made by the Ld. TPO and the Ld. AO was directed to proceed on the basis of show cause issued by him dated 11.03.2015 and the assessee's reply dated 24.03.2015 and in accordance with law as well as in consonance with Department's Circular dated 10th March, 2016 which mandated the Ld. AO to grant opportunity of hearing to the assessee before the reference is made. I, therefore note that the Hon'ble Jurisdictional Calcutta High Court found merit in the assessee's preliminary submission that reference for transfer pricing scrutiny made by the Ld. AO suffered from an apparent irregularity. Accordingly the matter was restored back to the point where the impugned irregularity had occurred. In the proceedings to give effect to the directions of the Court, therefore the Ld. AO was required to take all appropriate steps as permitted in law to remove the irregularity and thereafter proceed with the assessment from the stage where irregularity had earlier occurred. In other words, the fresh proceedings culminating in the assessment were required to be completed by the Ld. AO in the manner and within the time prescribed by law.

2. In the present case the Ld. TPO passed the order u/s 92CA(3) on 31.10.2018 and thereafter the Ld. AO passed the final assessment order on 28.12.2018. The preliminary issue to be decided in the present appeal is whether the order dated 28.12.2018 passed by the Ld. AO was within time prescribed in Section 153 of the Act. Before I deal with the submissions of the Ld. AR, it is relevant to refer to the relevant provisions of Section 153 (5) & (6) which read as follows:

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer, wholly or partly, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner :

Provided that where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of six months to give effect to the order :

Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).

(6) Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction

contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

(ii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed.

On careful reading of the sub-section (5) of Section 153, it is apparent that it deals with order passed by the Ld. AO with a view to give effect to an order u/s 250 or 254 or 260 or 262 or 263 or 264 of the Act. The provisos (1) & (2) provide for additional time to be availed by the Ld. AO if for the circumstances specified in these provisos the Ld. AO is unable to pass order giving effect to the findings of directions contained in the orders passed u/s 250, 254, 260, 262, 263 or 264 of the Act. In the present case admittedly the Ld. AO was called upon to pass a fresh order of assessment pursuant to the directions contained in the judgment of the Hon'ble Calcutta High Court passed on the writ petition filed by the assessee. It is admitted legal position that writ proceedings are extraordinary proceedings and not statutory appellate proceedings under the Act. Sub-section (5) specifying the period of limitation provides period of limitation for passing of orders by the AO to give effect to the orders of the specified authorities who are given powers to adjudicate appeals or revision applications preferred under the provisions of the I.T.Act. The period of limitation prescribed in sub-section (5) of Section 153 cannot therefore be pressed into service in deciding the issue where the Ld. AO has passed the order pursuant to the directions contained in the order of High Court passed on the Writ petition of the assessee, In the circumstances therefore no fault can be found with the Ld. AO's order with regard to period of limitation prescribed in sub-section (5) of Section 153 of the Act.

4. Coming to provisions of clause (i) of sub-section (6) of Section 153, I observe that this deals with assessment, reassessment, re-computation to be made on the assessee or any person in consequence of or to give effect to any finding or directions contained in an order under Section 250, 254, 260, 262, 263, 264 or in order of any Court in a proceedings otherwise than by way of appeal or reference under this Act. In such case order of assessment, reassessment or re-computation is required to be made on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Commissioner, as the case may be. From the material on record, it is evident that the order impugned in this appeal was passed with a view to give effect to the directions and the findings contained in the judgment of the Hon'ble Calcutta High Court passed in WP No.214 of 2016 dated 24.08.2017, The Ld. AR of the appellant filed evidence which showed that the said order of the Hon'ble Calcutta High Court was communicated to the Department on 29.08.2017. Upon receipt of the order, proceedings were initiated by the Ld. AO on 06.10.2017 for giving effect to the directions of the Hon'ble Calcutta High Court. These facts therefore prove beyond doubt that by October 2017, the Revenue was certainly aware of the order of the Hon'ble Calcutta High Court requiring the Ld AO to re-compute the income in terms of the directions contained therein, The Ld. AO was therefore legally bound to pass the order within the time prescribed in sub-section (6) of Section 153 of the Act. As per the provisions of Section 153(6), the period of twelve months from the end of the month in which order of the Hon'ble High Court was communicated ended on 31st August 2018, Even if the date of issuance of the notice by the Ld. AO is considered to be the date on which the order of the Hon'ble High Court is deemed to be the date of intimation, even then the period of twelve months as prescribed in Section 153(6) ended on 31st October 2018, I however find that the order impugned in appeal was passed by the Ld. AO on 28th December 2018 which was clearly beyond the period of limitation prescribed in Section 153(6) On this score, therefore, the order u/s 143(3)/144C dated 28.12.2018 is held to be bad in law being barred by limitation."

11. The aforesaid action of the Ld. CIT(A) upholding the legal issue raised by the assessee that the order of the AO dated 28.12.2018 passed u/s. 143(3)/144 pursuant to the Hon'ble High court's order in WP No. 214 of 2016 dated 11.08.2017 has been held to be bad in law being barred by limitation. This impugned action of the Ld. CIT(A) is being challenged before us by the Revenue.

12. We have heard rival submissions and gone through the facts and circumstances of the case. In order to appreciate the legal issue involved in this case, the date of events are of importance and, therefore, to have a bird's eye view to know the events which happened in this case, let us take the assistance of a chart which is reproduced as under:-

Chronology of Events

Sr. No.	Particulars	Date
1.	Return of Income in ITR 6 for AY 2012-13 filed on	31.10.2013
2.	Notice u/s. 143(2) issued by the AO on	02.09.2014
3.	Notice u/s. 142(1) issued by the AO on	06.08.2015
4.	Transfer Pricing Order passed u/s. 92CA(3) on	29.01.2016
5.	Draft Assessment order passed u/s. 144C on	10.03.2016
6.	Objections filed before the Dispute Resolution Panel	11.04.2016
7.	Order passed by the Hon'ble Calcutta HC in WP No. 214 of 2016	11.08.2017
8.	Intimation given to the AO regarding the above WP order on	29.08.2017
9.	Order passed by DRP disposing off appeal	26.09.2017
10.	Show Cause Notice issued by the AO on	06.10.2017
11.	Order passed by the AO disposing off objections on	20.11.2017
12.	Transfer Pricing Order passed u/s. 92CA(3) on	30.10.2018
13.	Notice u/s. 142(1) issued by the AO on	26.11.2018
14.	Order passed u/s. 143(3) by the AO on	28.12.2018

13. Before we controvert to the legal issue held in favour of the assessee by the Ld. CIT(A), let us look into section 153 which reads as under:

“Time limit for completion of assessment, reassessment and recomputation

153. (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable :

85[Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words “twenty-one months”, the words “eighteen months” had been substituted :

Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words “twenty-one months”, the words “twelve months” had been substituted.]

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served :

85[Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words “nine months”, the words “twelve months” had been substituted.]

(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner :

85[Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words “nine months”, the words “twelve months” had been substituted.]

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (2) and (3) shall be extended by twelve months.

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer, wholly or partly, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner :

Provided that where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of six months to give effect to the order :

86[Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).]

(6) Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

(ii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed.

(7) Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.

(8) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A or sub-section (1) of section 153B, the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A, shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B, whichever is later.

(9) The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016:

86a[Provided that where a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in Explanation 1, such assessment or reassessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016 (28 of 2016).]

Explanation 1.—For the purposes of this section, in computing the period of limitation—

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(iii) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, under clause (i) of the proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer; or

(iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

(b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(vi) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(vii) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or

(ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or

(x) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(xi) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,

shall be excluded :

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly :

Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly :

Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 87[***] 154, 155 and 158BE and for the purposes of payment of interest under section 244A, this proviso shall also apply accordingly.

Explanation 2.—For the purposes of this section, where, by an order referred to in clause (i) of sub-section (6),—

(a) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or

(b) any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed.]”

14. We note that section 153 of the Act contains the statutory time limits prescribed by the Parliament for the completion of assessment, reassessment and re-computation. It is noted that the provisions of Section 153 of the Act was amended by the Finance Act 2016. The earlier time limits for completion of assessment, reassessment or computation were substituted. The time limits prescribed there-under are as follows:

- Clause (1) of Section 153 provides that the time limit for completion of assessment under Section 143(3)/144 of the Act is twenty-one months from the end of the relevant assessment year. The words “twenty-one months” was substituted by the words “eighteen months” from 01.04.2018 and again substituted for the words “twelve months” and “nine months” w.e.f from 01.04.2019 and 01.04.2021 respectively.
 - Clause (2) of Section 153 of the Act states that the time limit for completion of assessment u/s 147 of the Act is nine months from the end of the Financial Year in which the notice u/s 148 of the Act is served. The words “nine months” was substituted by the words “twelve months” in relation to notices u/s 148 served on or after 01.04.2019.
 - Clause (3) of Section 153 provides that notwithstanding anything contained in sub-sections (1) & (2), any fresh assessment made in pursuance of an order of the Tribunal u/s 254 or an order passed by the Pr.CIT in exercise of his revisionary powers u/s 263 or 264, setting aside for cancelling an assessment, will have to be completed within nine months from the end of the Financial Year in which such order is passed. The words “nine months” was substituted by the words “twelve months” in relation to orders u/s 254 received or orders u/s 263 or 264 passed on or after 01.04.2019.
 - Clause (4) of Section 153 of the Act extends the time limits prescribed under sub-sections (1), (2) & (3) by a period of twelve months where a reference under section 92CA (1) has been made to the transfer pricing officer.
 - Clause (5) of Section 153 of the Act provides that, where the AO is required to give effect to an order u/s 250 passed by CIT(A) or order u/s 254 passed by Tribunal or order u/s 260 passed by High Court or order u/s 262 passed by Supreme Court or Revision order u/s 263/264 passed by Pr.CIT, otherwise than by way of making fresh assessment, such effect shall be given within a
-

period of three months from the end of the month in which the order is received. The proviso to sub-section (5) states that where the AO is unable to give effect to the order within the prescribed period of three months for reasons beyond its control, then upon making request in writing, the Ld. CIT may allow additional period of six months.

- Clause (6) of Section 153 of the Act is the residuary clause containing the time limit for all other classes of assessments, re-assessments & re-computations. The said sub-section provides that nothing contained in sub-section (1) & (2) shall apply to this residuary class of assessments, re-assessments & re-computations subject to the provisions of sub-sections (3) & (5) of the section. Sub-clause (i) of Clause (6) of Section 153 of the Act states that, where the assessment, re-assessment or re-computation is to be made on **(a)** the assessee or **(b)** any other person, in consequence of or to give effect to any finding or direction contained in, **(i)** order u/s 250 passed by CIT(A) or **(ii)** order u/s 254 passed by Tribunal or **(iii)** order u/s 260 passed by High Court or **(iv)** order u/s 262 passed by Supreme Court or **(v)** Revision order u/s 263/264 passed by Pr.CIT or **(vi)** in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, then such order has to be passed before the expiry of twelve months from the end of the month in which such order is received or passed by the CIT.
 - Sub-clause (ii) of Clause (6) of Section 153 of the Act states that where in case of a Firm, an assessment is to be made on its partner in consequence of an assessment made on the firm u/s 147 of the Act then, such order has to be passed within a period of twelve months from the end of the month in which the assessment order in case of the firm is passed.
 - Clause (7) of Section 153 of the Act states that where the effect to any order or finding or direction under clauses (5) or (6) is to be given in respect of orders
-

received or passed before 01.06.2016, then such order has to be passed on or before 31.03.2017.

- Clause (8) of Section 153 of the Act states that nothing contained in the foregoing clauses shall apply where the order of assessment or re-assessment relating to any year stands revised under Section 153A(2) of the Act which shall be made within a period of one year from the end of the month of such revival or within the time period specified in Section 153B(1), whichever is later.
- Clause (9) of Section 153 of the Act states that the provisions of this Section as it stood immediately before the amendment brought in by Finance Act 2016 shall apply to and in relation all orders of assessments, re-assessments & re-computations passed before 01.06.2016.
- Explanation 1 to Section 153 of the Act contains specific periods in clauses (i) to (xi) which is to be excluded for the purposes of computing the period of limitation under this Act.

15. Having regard to the above, the statutory time limits for completion of assessments, re-assessments & re-computations by the Assessing Officer, as prevailing at that material time, can be summarized below:

Sub-section	Nature of assessment/ re-assessment/ re-computation	Time Limit
(1)	Assessment u/s 143(3)/144	21 months from the end of relevant AY
(2)	Re-assessment u/s 147	9 months from the end of FY in which notice u/s 148 is served
(3)	Fresh assessment order to be passed consequent to setting aside of cancellation of assessment by order u/s 254/263/264	9 months from the end of the FY in which order of Tribunal u/s 254 is received by CIT or the order u/s 263/264 is passed by CIT
(4)	Where reference u/s 92CA(1) is made to TPO in the course of proceedings under the above sub-	The time limits set out above sub-sections (1), (2) & (3) stands extended by 12 months

	sections (1), (2) & (3)	
(5)	Order giving effect to order u/s 250/254/ 260/262/263/264 [other than fresh assessment or re-assessment]	3 months from the end of the month in which order of Tribunal u/s 254 or order of High Court u/s 260 or order of Supreme Court u/s 262 is received by CIT or the order u/s 263/264 is passed by CIT
(6)(i)	Any assessment, re-assessment or re-computation either of the assessee or any person in pursuance to finding or direction contained in order u/s 250/254/260/ 262/263/264 or an order of any Court in a proceeding other than appeal or reference under this Act [subject to provisions of sub-section (3) & (5)]	12 months from the end of the month in which order of Tribunal u/s 254 or order of High Court u/s 260 or order of Supreme Court u/s 262 or any order of the Court in a proceeding other than appeal or reference is received by CIT or the order u/s 263/264 is passed by CIT
(6)(ii)	Assessment of partner in consequence to an order of assessment made on firm u/s 147 of the Act	12 months from the end of the month in which the assessment order is passed in the case of the firm
(7)	Any order to be passed in terms of sub-section (5) & (6) in relation to such order which was received or passed prior to 01.06.2016	Applicable only to orders which were passed before 01.06.2016. The orders giving effect to such orders have to be passed on or before 31.03.2017

16. In view of the above provisions contained in Section 153 of the Act, let us now examine the facts of the present case. From the above table, it is undoubtedly clear that sub-sections (1) to (4) are not applicable in the facts of the present case. Sub-section (7) of Section 153 of the Act is applicable in relation to the orders passed on or before 01.06.2016 which is also not relevant in the present case. Therefore the only relevant sub-sections to be examined are (5) and (6) of Section 153 of the Act.

17. Sub-section (5) of Section 153 of the Act applies in relation to those orders which are to be passed by the AO to give effect to any direction or finding [other than fresh assessment/re-assessment] contained in the order of the CIT(Appeals) passed u/s 250 of the Act or order of this Tribunal passed u/s 254 of the Act or order passed in appeal or reference before the High Court u/s 260 of the Act or an order passed by the

Hon'ble Supreme Court u/s 262 of the Act or revisionary order passed by the Pr.CIT u/s 263/264 of the Act. The order covered by Section 153(5) is required to be passed within three months from the end of the month in which the order has been passed or received. In the present case, we note that the order impugned before us was passed in consequence of the direction contained in the order dated 11.08.2017 passed by the Hon'ble Calcutta High Court in Writ proceedings, which does not constitute an Appeal or Reference made u/s 260 of the Act. We therefore find merit in the finding of the Ld. CIT(A) that sub-section (5) of Section 153 of the Act cannot be pressed into service in the present case as the assessment order impugned before us was passed in pursuance of the directions given by the Hon'ble High Court in the Writ proceedings which are extra-ordinary proceedings and not statutory Appellate proceedings u/s 260 of the Act. So, sub-section (5) of Section 153 of the Act is not applicable in the facts of this case.

18. Coming to sub-section (6) of Section 153 of the Act it is noted that it is the residuary clause for all classes of assessments or re-assessments or re-computations which are otherwise not covered specifically in sub-section (3) or (5) of Section 153 of the Act. It is noted that the orders passed u/s 250/254/260/262/263/264 are found mentioned both in sub-section (5) and (6) of Section 153 of the Act. Plain reading of sub-section (6) shows that, if any order is covered by sub-section (5), then the period of limitation set out in the latter would prevail. Meaning thereby, only if the finding or direction contained in the aforesaid orders u/s 250/254/260/262/263/264 is not covered by the scope of sub-section (5) that the period of limitation set out in sub-section (6) shall come into play. As noted earlier, in the facts of the present case, the order impugned has not been passed in consequence of any order u/s 250/254/260/262/263/264 of the Act. It is noted that apart from the aforesaid orders, there is another class of order covered by sub-section (6) of Section 153 viz., an order passed by the AO in consequence of any finding or direction contained in an order by any Court in a proceeding *other than* appeal or reference under this Act. In such a case, the AO is required to pass the order *within twelve months from the end of the month in which the order has been received by the CIT.* As rightly observed by the Ld. CIT(A), the case

of the assessee falls under this sub-category contained in clause (i) of Section 153(6) of the Act. For the sake of convenience, the relevant dates to adjudicate this preliminary issue as to whether the impugned order was barred by limitation or not is summarized below:

Particulars	Date
Date of order passed by High Court in WP No. 214 of 2016	11.08.2017
Intimation given by the assessee to the AO	29.08.2017
Fresh Notice issued by the AO in consequence of the order of the High Court	06.10.2017
Order u/s 144C/143(3) was passed on	28.12.2018

19. Having regard to the fact that the AO had issued fresh show cause notice dated 06.10.2017 in consequence of the directions contained in the order passed by the Hon'ble High Court dated 11.08.2017 in Writ Petition No 214 of 2016, it can be safely inferred that the office of the CIT had received the order of High Court on or before the date of notice i.e. 06.10.2017. Accordingly, the period of twelve months for completion of assessment began from the end of the month of October 2017 which ended on 31.10.2018. It is noted that the impugned order was passed on 28.12.2018 which was well beyond the date on which the proceedings got time barred. We therefore do not find any infirmity in the order of Ld. CIT(A) holding that the AO did not had the jurisdiction to frame assessment after the limitation period has set in and therefore the assessment order passed by AO on 28.12.2018 was barred by limitation and therefore it is null in the eyes of law.

20. As far as the Ld. DR's contention that section 292BB of the Act, comes to the rescue of the AO in such events is concerned, we note that the provisions of Section 292BB only cures any defect in the service of any 'notice' issued under the provision of this Act and does not deal with 'orders' passed beyond the period of limitation prescribed under the Act. Section 292BB states that, any notice under this Act which is required to be served upon the assessee shall be deemed to have been served upon him in time and such assessee shall be precluded from taking objection that either the

notice was not served upon him or not served in time or served in an improper manner; provided the assessee had raised such objection before the completion of assessment. In the present case however, the assessee has objected to the validity of the 'order' impugned on the premise that it was barred by limitation in terms of Section 153 of the Act. The facts of the case are thus altogether different and the aforesaid provision relied upon by the Ld. DR has no relevance whatsoever.

21. For the reasons set out above, we thus uphold the order of the Ld. CIT(A) on the legal issue and confirm the action of the Ld CIT(A) holding that the AO did not had the jurisdiction to frame assessment after the limitation period has set in and therefore the assessment order passed by AO on 28.12.2018 was barred by limitation and therefore it is null in the eyes of law. and accordingly dismiss the appeal of the Revenue.

22. Coming to the Cross Objection of the assessee which is against the merit of the addition made by the AO, we are not inclined to decide the Cross Objection since it has become infructuous being academic in nature.

23. Coming to the appeal preferred by the assessee against the impugned order of the Ld. Pr. CIT passed u/s. 263 of the Act dated 23.03.2021 in AY 2012-13 (ITA No. 112/Kol/2020), we find that the Ld. Pr. CIT has interdicted with the assessment order passed by the AO dated 28.12.2018 u/s. 143(3) read with section 144C of the Act, which has been held to be non-est in the eyes of law by the Ld. CIT(A), which decision has now been upheld by us (supra). Therefore, the action of the Ld. Pr. CIT is unsustainable since the assessment order dated 28.12.2018 itself is bad in law. Therefore, the Ld. Pr. CIT has interdicted a non-est order of AO dated 28.12.2018. This issue is squarely covered by the legal maxim "*subleto fundamento credit opus*" meaning thereby in a case where foundation is removed the super structure falls. The Hon'ble Supreme Court in Badrinath Vs. Government of Tamil nadu & Ors. AIR 2000 SC 3243 had held that once the basis of the proceeding is gone, all consequential orders and action would fall on the ground automatically which is applicable to

judicial and quasi judicial proceedings. Therefore, since the foundation (*the order of the AO dated 28.12.2018*) has become non-est in the eyes of law, so the impugned action of the Ld. Pr. CIT dated 23.03.2021 to interdict a non-est assessment order is a nullity. Therefore, the impugned order of the Ld. Pr. CIT dated 23.03.2021 is quashed.

24. In the result, both appeal preferred by the revenue (ITA No. 2652/Kol/2019) and the Cross Objection preferred by the assessee (C.O No. 15/Kol/2020) against the order of the Ld. CIT(A)-22, Kolkata dated 24.07.2019 for AY 2012-13 stands dismissed; and ITA No. 112/Kol/2021 which is the assessee's appeal against the order of the Ld. Pr. CIT-1, Kolkata dated 23.03.2021 for AY 2012-13 passed u/s. 263 of the Act, stands allowed.

Order is pronounced in the open court on 25th August, 2021.

Sd/-

(P. M. Jagtap)
Vice President

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 25th August, 2021

Jd, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-1(1), Kolkata.
2. Respondent – M/s. PCM Strescon Overseas Venture Ltd., Swaika Centre, Room No 4104A, Pollock Street, Kolkata-700 001.
3. CIT(A)-22, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata