IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 13953 OF 2020 (T-IT)

C/W

WRIT PETITION NO. 13934 OF 2020 (T-IT)

WRIT PETITION NO.13946 OF 2020 (T-IT)

IN WRIT PETITION NO. 13953 OF 2020

BETWEEN:

UNITED SPIRITS LIMITED,
UB TOWERS,
#24, VITTAL MALLYA ROAD,
BENGALURU- 560001.
REPRESENTED BY ITS
VICE PRESIDENT,
MR. NAVIN JAIN.

...PETITIONER

(BY SRI. PERCY PARDIWALA, SENIOR COUNSEL FOR
SMT. TANMAYEE RAJKUMAR., ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER OF
INCOME-TAX CIRCLE 7 (1) (1)
2ND FLOOR, BMTC BUILDING, 6TH BLOCK,
80 FEET ROAD, KORAMANGALA,
BANGALORE – 560 095.

2. THE PRINCIPAL COMMISSIONER OF INCOME TAX-2
5TH FLOOR, BMTC BUILDING, 6TH BLOCK,
80 FEET ROAD, KORAMANGALA,
BANGALORE – 560 095.

...RESPONDENTS

(BY SRI. E. I. SANMATHI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED 6.11.2020 (ANNEXURE-F) BEARING NO. ITBA/COM/F/17/2020-21/1028508861(1) ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER AND THE PROCEEDINGS INITIATED THEREUNDER DURING THE PENDENCY OF THIS WRIT PETITION.

IN WRIT PETITION NO. 13934 OF 2020

BETWEEN:

UNITED SPIRITS LIMITED,
UB TOWERS,
#24, VITTAL MALLYA ROAD,
BENGALURU-560 001.
REPRESENTED BY ITS
VICE PRESIDENT
MR. NAVIN JAIN.

...PETITIONER

(BY SRI. PERCY PARDIWALA, SENIOR COUNSEL FOR
SMT. TANMAYEE RAJKUMAR., ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER
OF INCOME TAX
CIRCLE 7 (1) (1),

2ND FLOOR, BMTC BUILDING, 6TH BLOCK,
80 FEET ROAD, KORAMANGALA,
BANGALORE - 560095.

2. THE PRINCIPAL COMMISSIONER
OF INCOME TAX-2
5TH FLOOR, BMTC BUILDING, 6TH BLOCK,
80 FEET ROAD, KORAMANGALA,
BANGALORE-560 095.

...RESPONDENTS

(BY SRI. E.I.SANMATHI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED 5.11.2020 (ANNEXURE-G) BEARING NO. ITBA/COM/F/17/2020-21/1028500729(1) ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER FOR THE ASSESSMENT YEAR 2008-09 AS BEING BARRED BY LIMITATION AND THUS WITHOUT JURISDICTION;

IN WRIT PETITION NO. 13946 OF 2020

BETWEEN:

UNITED SPIRITS LIMITED,
UB TOWERS,
#24, VITTAL MALLYA ROAD,
BENGALURU – 560 001.
REPRESENTED BY ITS
VICE PRESIDENT MR. NAVIN JAIN

...PETITIONER

(BY SRI. PERCY PARDIWALA, SENIOR COUNSEL FOR
SMT. TANMAYEE RAJKUMAR., ADVOCATE)

AND:

1. ASSISTANT COMMISSIONER OF
   INCOME TAX CIRCLE 7 (1) (1)
   2ND FLOOR, BMTC BUILDING,
   6TH BLOCK, 80 FEET ROAD,
   KORAMANGALA,
   BANGALORE - 560095.

2. THE PRINCIPAL COMMISSIONER
   OF INCOME TAX-2
   5TH FLOOR, BMTC BUILDING,
   6TH BLOCK, 80 FEET ROAD,
   KORAMANGALA,
   BANGALORE - 560095.

...RESPONDENTS

(BY SRI. E.I.SANMATHI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED 6.11.2020 (ANNEXURE-G) ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER AND THE PROCEEDINGS INITIATED THEREUNDER DURING THE PENDENCY OF THIS WRIT PETITION.

THESE WRIT PETITIONS, COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has impugned the notices dated 05.11.2020 and 06.11.2020 issued by the first respondent to extend an opportunity of hearing after the Income Tax Appellate Tribunal's [*ITAT*] common Order dated 31.03.2015 in ***[a]*** ITA No.1277/Bang/2010, ***[b]*** ITA No. 424 & 605 [Bang] /2013 and ***[c]*** ITA No. 652 & 653[Bang] 2013. The petitioner further seeks directions to the respondents to refund certain amounts with applicable interest corresponding to the three assessment years.

2. A brief conspectus of facts leading to these impugned notices is stated thus. The petitioner is a public limited company, and the petitioner has filed its return on income with the claims for refund for the corresponding assessment years as follows:

Assessment Years	**2007-08 In Rs.**	**2008-09 In Rs**	**2009-10 In Rs**
Declared Income	346,41,78,725/-	525,86,44,940/-	496,63,97,797/-
Refund Claimed	2,74,12,043/-	21,14,04,480/-	21,82,43,000/-

The Assessing Officer [AO], after a scrutiny assessment under Section 143[3] of the Income Tax Act,1961 [for short, *the 'IT Act'*], has passed respective Assessment orders[1] dated 31.12.2009 [for the Assessment Year 2007-08], 29.12.2010 [for the Assessment Year 2008-09] and 30.12.2011 [for the Assessment Year 2009-10] making various disallowances.

3. The AO in the aforesaid Assessment orders has disallowed the following for the respective Assessment Years.

(i) For the Assessment Year 2007-08

Depreciation on building[Section 32 of the IT Act]	Rs. 2,45,116/-
Section 14A of the IT Act	Rs. 27,64,15,000/-
Bad Debts and Bad Advances written off	Rs. 1,48,85,308/-
Non consideration of brought forward loss	Rs. 16,13,58,199/-
Taxable Income	Rs. 391,70,82,437/-
Balance tax payable[including interest]	Rs. 22,70,56,315/-

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[1] *A copy of the respective order is produced as Annexure – A in each of the petitions.*

(ii) <u>For the Assessment Year 2008-09</u>

Disallowance of Foreign Exchange Fluctuation Loss	Rs. 5,68,45,363/-
Section 14A of the IT Act	Rs. 41,20,34,568/-
Bad Debts and Bad Advances written off	Rs. 95,39,284/-
Disallowance of amalgamation of expenses	Rs. 1,69,59,640/-
Taxable Income	Rs. 575,40,27,792/-
Balance tax payable[including interest]	Rs. 7,53,16,766 /-

(iii) <u>For the Assessment Year 2009-10</u>

Section 14A of the IT Act	Rs. 53,53,60,238/-
Bad Debts written off	Rs. 16,43,981/-
Taxable Income[R/O]	Rs. 550,34,02,020/-
Balance tax payable[including interest]	Rs. 9,89,96,390/-

4. The petitioner, being aggrieved by the aforementioned Assessment Orders, has filed appeals before the Commissioner of Income Tax [Appeals] [for short, '*the CIT [Appeals]*'] challenging the disallowances by

the A.O. The CIT [Appeals] by its order dated 06.10.2010 has dismissed the appeal for the AY 2007-08 [*against the order dated 31.12.2009*], and the CIT [Appeals] by its order dated 18.02.2013 has partly allowed the appeal for the AY 2008-09 [*against order dated 29.12.2010*] deleting the disallowance with respect to foreign exchange fluctuation loss while upholding the disallowance under Section 14A of the IT Act and disallowance of bad debts/advances written off. Similarly, the CIT [Appeals] by its order dated 18.02.2013 has partly allowed the appeal for the AY 2009-10 [*against the Assessment order dated 30.12.2011*] deleting the disallowance made with respect to bad debts while upholding the disallowance made under Section 14A of the IT Act.

5. It is undisputed that in the meanwhile Rectification Orders dated 30.04.2012 and 09.12.2013 under Section 154 of the IT Act are passed rectifying certain errors in the assessment order dated 29.12.2010 [for the AY 2008-09] and the assessment order dated

31.12.2009 [for the AY 2007-08] respectively permitting certain refunds. The petitioner has mentioned the details in the application filed for refunds, and these details are adverted to in the later paragraphs while discussing the petitioner's application for refund.

6. The petitioner has filed respective appeals under Section 253 of the IT Act before the Income Tax Appellate Tribunal [for short, '*the ITAT*'] against the orders of the CIT [Appeals], and the ITAT has disposed of these appeals by common order dated 31.03.2015 as contemplated under Section 254 of the IT Act stating that the appeals are allowed for statistical purposes with certain conclusions. The ITAT has directed the AO to reconsider, after due opportunity to the petitioner and in the light of all the facts placed on record, the petitioner's grievance against disallowing claims for bad debts/ advances written off and under Section 14A of the IT Act.

7. The petitioner, after the ITAT's order dated 31.03.2015, has filed its applications dated 21.11.2019

and 29.10.2020. In the first application, the petitioner has just stated that orders *to give effect to* the ITAT's order are pending, and because it has proved its case, the amount computed [*as per the appendix to this application*] must be refunded. In its next application, the petitioner has filed a detailed explanation contending that, because the proceedings pursuant to the ITAT's orders dated 31.03.2015 are not concluded, they are rendered time-barred under the provisions of Section 153 of the IT Act and, in view of the decision of the Hon'ble Supreme Court in ***CIT v. Shelly Products***[2], the amount paid over and above the admitted liability must be refunded. The petitioner has also reiterated its computation.

8. The details of the computation as furnished by the petitioner for each of the subject Assessment Years are set forth as hereinafter.

8.1 ***The petitioner's computation of Refund for the AY 2007-08***

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2 *[2003] 5 SCC 461*

Particulars	**Amount**
Admitted Tax liability with the respective Surcharge and Cess	Rs.1,22,03,55,759/-
Deduction Towards Advance Tax, TDS /TCS as per ROI and Self Assessment Tax paid	Rs. 1,03,00,00,000/-
	Rs. 4,54,58,975/-
	Rs.15,28,55,000/-
Total Deductions	Rs.1,22,83,13,975/-
Excess Tax paid	Rs. **79,58,216.00**

The petitioner, with the aforesaid amount of Rs.79,58,216/- as the base figure, has given credit to certain refunds allowed and demands paid with additions towards interest under Section 244A of the IT Act in claiming refund of Rs.22,57,55,400/-. Though the claim for refund in the ROI is for a sum of Rs.2,74,12,043/-, the amount is revisited because of the subsequent rectification. The petitioner, in the communication dated 29.10.2020, has restricted the claim for refund to a sum of Rs.22,55,72,973/- accepting that it has conceded to the disallowance on depreciation of building amounting to Rs.2,45,116/-.

8.2 ***The petitioner's computation of Refund for the AY 2008-09***:

Particulars	Amount
Admitted Tax liability with the respective Surcharge and cess	Rs. 1,78,73,63,021/-
Deduction Towards Advance Tax, TDS and TCS as per ROI	Rs.1,75,00,00,000/-
	Rs.19,33,25,912/-
	Rs. 5,54,40,230/-
Total Deductions towards Taxes	Rs.1,99,87,66,142/-
Excess Tax paid	**Rs. 21,14,03,121/-**

The petitioner with the aforesaid amount as the base figure has given credit to certain refunds allowed and demands paid with additions towards interest under Section 244A of the IT Act in claiming refund of Rs.29,46,92,541/-. However, in the Communication dated 29.10.2020, the petitioner has restricted the claim for refund to a sum of Rs.28,45,75,701/-[3] accepting that

[3] *As against a sum of Rs.21,14,03,121/- claimed in its Return of Income.*

it has conceded to the disallowance of amalgamation expenses amounting to Rs.1,69,59,640/-.

8.3 ***<u>The petitioner's computation of Refund for the AY 2009-10</u>***:

Particulars	Amount
Admitted Tax liability with the respective Surcharge and cess	Rs.1,68,40,01,348/-
Deduction Towards Advance Tax, TDS /TCS as per ROI and Self Assessment Tax paid	Rs.1,65,00,00,000/-
	Rs. 25,22,44,349/-
Total Deductions	Rs. 1,90,22,44,349/-
Excess Tax paid	**Rs. 21,82,43,001/-**

The petitioner with the aforesaid amount as the base figure has given credit to certain refunds allowed and demands paid with additions towards interest under Section 244A of the IT Act in claiming refund of Rs.36,37,90,129/-[4].

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[4] *As against a sum of Rs.21,82,43,000/- claimed in its Return of Income*

9. The first respondent has issued the impugned notices dated 05.11.2020 and 06.11.2020 after the petitioner's applications dated 21.11.2019 and 29.10.2020. The petitioner is called upon to appear on specific dates, but this Court, on 14.12.2020, has granted stay of the proceedings pursuant to the impugned notices. On 05.01.2023, these three petitions are clubbed because of the similarities in the questions and the interim order granted earlier is continued.

10. Sri Percy Pardiwala, the learned Senior Counsel for the petitioner, submits that after the ITAT's order dated 31.03.2015 admittedly there had to be reassessments for the AYs. 2007-08, 2008-09 and 2009-10 and in that event, if the provisions of Section 153 of the IT Act[5], as it stood prior to 01.06.2016 could be made applicable, the re-assessments had to be completed within a period of one year from the end of the financial year in which the orders dated 31.03.2015 are received.

5 *The provisions of Section 153 of the IT Act are substituted by the Finance Act, 2016 w.e.f 01.06.2016.*

The respondents are categorical in their Statement of objections that the ITAT's orders are received on 02.06.2015, and as such, the re-assessment had to be completed before 31.03.2017. The impugned notices are issued only in the month of November 2020 and hence, the proceedings stood time barred.

11. Sri Percy Pardiwala submits that if alternatively, the substituted provisions of Section 153 of the IT Act *vide* the Finance Act 2016 are made applicable, the subject proceedings before the AO, as of the date of the impugned notices dated 05.11.2020 and 06.11.2020, stood lapsed in view of the provisions of Section 153[7] of the IT Act. The learned Senior counsel elaborates that if the substituted provisions of Section 153[3] of the IT Act encompass the position that prevailed because of the provisions of Section 153[2A] prior to substitution, the position that prevailed because of the provisions of Section 153[3] of the IT Act prior to substitution is now

envisaged under the substituted Section 153[5] and 153[6] of the IT Act.

12. Sri Percy Pardiwala submits that consequent to this change, if the assessment is to be done entirely afresh the time limit would be as contemplated under substituted Section 153(3) of the IT Act, and on the other hand if the exercise is not an entirely fresh assessment but is for ***[a]*** giving effect to certain orders without a fresh assessment or ***[b]*** to give effect to a certain finding or direction, it must be within the timelines prescribed either under the substituted Section 153[5] or Section 153[6] of the IT Act. The time limit for the purposes of Section 153[5] will be three [3] months from the end of the month in which the ITAT's order is received, and the time limit for the purposes of Section 153[6] of the IT Act will be twelve [12] months from the end of the month in which the ITAT's order is issued.

13. Sri Percy Pardiwala canvasses that, however as regards the proceedings under Section 153[5] or Section

153[6] of the IT Act pending as of 01.06.2016, in view of the provisions of Section 153[7] of the IT Act, the final time line is until 31.03.2017, and if the concerned order or direction or order is not given effect to before this date, the proceedings stand lapsed[6]. The learned Senior counsel argues that in the present case the ITAT's orders dated 31.03.2015 irrefutably are before 01.06.2016 and therefore, the AO, had to give effect to ITAT's orders on or before 31.03.2017 and because this exercise is not completed within this time, the proceedings must lapse.

14. Sri E I Sanmathi, the learned counsel for the respondents, without contesting Sri Percy Pardiwala's reading of the provisions of the substituted Sections 153[3], 153[5], 153[6] and 153[7] of the IT Act, submits that the timeline for conclusion of the proceedings in the present case, pursuant to the ITAT's order dated 31.03.2015 would be under the provisions of Section 153[3] of the IT Act as it stood before the substitution by

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[6] *Sri Percy Pardiwala in canvassing this proposition does not insist that the ITAT's order is for a fresh assessment cancelling entirely the subject Assessment Orders.*

the Finance Act, 2016. He argues that the provisions of Section 153[3] of the IT Act, as it stood prior to substitution, stipulated that the assessment *to give effect* to a finding or direction could be completed *at any time* in a situation as in the present case where assessment is to be completed after considering a few specific aspects mentioned in the ITAT's order as against a situation where the assessment is cancelled or set-aside requiring a complete new assessment.

15. Sri E I Sanmathi argues that the Assessment orders which require a limited revisit in view of the ITAT's orders are dated 31.12.2009, 29.12.2010 and 30.12.2011, and the applicability of the provisions of Section 153[3] as it stood prior to substitution is saved in these cases because the assessment is before 01.06.2016. Sri E I Sanmathi, to buttress this submission, relies upon the provisions of Section 153[9] of the IT Act, which without the proviso and the explanation clauses, read as hereunder:

"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."

16. In the light of the rival submissions, this Court is called upon to decide on the following questions:

[a] Whether the ITAT by its Orders dated 31.03.2015 has entirely set-aside or cancelled the assessment orders dated 31.12.2009, 29.12.2010 and 30.12.2011, or has the ITAT in these orders issued certain directions for consideration of a few aspects for conclusion of the assessment; and

[b] Whether the proceedings before the AO for the Assessment Years 2007-08, 2008-09 and 2009-2010 consequent to the ITAT's common order dated 31.03.2015 stood time barred as of the date of the impugned notices irrespective of whether the earlier provisions of Section 153 of the IT Act or the substituted provisions thereof apply.

[c] If this Court's opinion insofar as the previous question is in the affirmative, what order should follow on the petitioner's request for refunds in terms of its applications dated 29.11.2020.

17. It must be observed that the first question is almost canvassed as an incidental question because if indeed the ITAT has set aside/cancelled the assessment orders [*as against certain directions being issued for consideration of a few aspects*] paving way for fresh assessment, the timeline within which the assessment has to be concluded is different be it under the provisions of Section 153 of the IT Act as it stood prior to the Finance Act, 2016 or the substituted provisions. There will have to be elaborate discussion on this aspect when the second question is considered, but to bring out the significance of the first question to the extent that is relevant, this Court must refer to a decision of the Division Bench of the High Court of Delhi in ***'Basu***

Distributors Private Limited v. Income Tax Officer Ward'[7].

18. The Division Bench, while referring to a decision of the Bombay High Court in ***'Rikhabdas Jhaverchand v. Commissioner of Income Tax'***[8] where it is held that the time line in Section 153[2A] of the IT Act is applicable when an assessment order is entirely set aside or cancelled and a host of other decisions, has ultimately held as follows:

> *"It is trite that Parliament is continuously concerned with the evils or undesirability of the proverbial sword hanging over the head of an Assessee. Parliament has, therefore, set-down the parameters within which an assessment must be completed, and over the years has shortened the span of time in this regard. It has, however, carved out an exception to the rule where a specific, limited or restricted direction is passed by an Appellate Authority which is of the opinion that*

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[7] *2007 [94] DRJ 495[DB]. This decision is also referred to by another Division Bench of the Delhi High Court in in* ***Nokia India Pvt. Ltd. v. Deputy Commissioner of Income Tax*** *[2017] 298 CTR 0334.*

[8] *[2001] 169 CTR [Bom] 196*

it would not be possible to decide the appeal before it without a clarification on this point. The Appellate Authority has also the power to set-aside the Assessment Order and direct a de novo enquiry, in which case every aspect, computation and dimension is open for consideration. This partake the nature of an assessment which is akin to the original assessment and, therefore, the period of limitation applicable to the original assessment must apply to the fresh assessment. Where the Appellate Authority remands the case for a determination on a selected issue or aspect of the assessment, the uncertainty or discomfort of the sword of uncertainty provides no peril to the assessee. All the parties are fully aware of the parameters within which the fresh enquiry is circumscribed and limited. It is obviously for this reason that the rigours of limitation are totally removed."

19. The ITAT by its common order dated 31.03.2015 has granted certain relief to the petitioner against disallowance of bad debts/advances written off and under Section 14A of the IT Act essentially because of its order on these very aspects in the petitioner's appeal against the authorities' orders for the AY 2006-2007. The

ITAT in its order[9] in the proceedings for the AY 2006-2007, both on the question of disallowance of bad debts/advances written off and under Section 14A of the IT Act, has concluded that the AO, in the factual matrix and in the interest of justice and equity, must re-examine all the relevant facts *'to ensure clarity'* in the adjudication, and the ITAT has restored these aspects to the AO for reconsideration observing thus:

> *'to be dealt with in the light of its observation' after affording to the petitioner 'adequate opportunity of hearing and to file details required and after considering the submissions already made and in the light of the judicial pronouncements cited'.*

The ITAT has directed the AO to consider the question of disallowance for bad debts/advances being written off and under Section 14A of the IT Act permitting the petitioner to produce further documents, and directing the AO to extend an opportunity of hearing to the petitioner and

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[9] *The details of this order are extracted in the ITAT's common order dated 31.03.2015.*

decide on the afore in the light of the judicial pronouncements.

20. This order is common to all the three subject assessment years, and in fact, it is in view of the ITAT's similar order for the previous assessment years. This Court, in view of the above, can only conclude that it is indubitable that the ITAT's common order dated 31.03.2015 do not set aside or cancel the subject assessment orders requiring a fresh assessment. The first question is answered accordingly, and this Court is of the considered view that the second question must necessarily be examined in the light of this definite opinion.

21. The merits of the respondent's case that the proceedings *to give effect* to orders, and to *give effect* to findings or directions pending as of 31.03.2017 pursuant to order under Section 254 of the IT Act, could be concluded *at any time* [*as contemplated under the provisions of Section 153 prior to substitution*] because of

the provisions of Section 153[9] of the IT Act must be firstly examined upon a conspectus reading of the substituted Section 153 of the IT Act, including the provisions of Section 153[9] and the proviso and explanation clauses appended to this subsection and secondly, with the assistance of the CBDT's Explanatory Note issued *vide* Circular 3/2017 dated 20.01.2017 on the changes brought about by the Finance Act, 2016

22. The legislature by the substitution has reduced the timelines for the completion of the assessment under Section 143, 144 and 147 of the IT Act[10] and for completion of fresh assessment upon intervention with the earlier assessment orders being

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[10] ***Section 153[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*

entirely cancelled or set aside in appeal and review. As regards the cases in which the assessment proceedings are to be completed by just *giving effect to certain orders or findings or directions* under Section 254 [and similar orders under other sections], the Parliament has now provided a bifurcation with separate timelines *i.e.* either three months or twelve months from the end of the month in which the order is received, and this is because of the substituted provisions of Section 153[5][11] and 153[6][12].

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[11] ***Section 153[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.*

[12] ***Section 153[6]*** *Nothing contained in sub-sections [1] and [2] shall apply to the following classes of assessments, reassessments and re-computation which may, subject to the provisions of sub-sections [3] and [5], be completed—*

[i] where the assessment, reassessment or re-computation 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*

23. Insofar as where assessment/re-assessment/ re-computation orders are made before 01.06.2016 but the further appeal and revision proceedings have not attained finality, it must be opined without much dilation as it would not be germane to the present decision, that the legislature has saved the timelines as contemplated before the substitution of Section 153 of the IT Act, and these timelines are also saved for cases where notices have been issued under Sections 142[1], 143[2] and 148 of the IT Act prior to 01.06.2016 but assessment proceedings are not completed due to the exclusion of time as mentioned in Explanation – I. However, as regards the timeline for completion of the proceedings pending as of 01.06.2016 to *give effect to an order or a direction and finding* as envisaged under Section 153[5] and 153[6] of the IT Act, the legislature has provided for Section 153[7] of the IT Act which read as under:

> *"Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to*

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passed by the Principal Commissioner or Commissioner, as the case may be.

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."

The Parliament, in incorporating Section 153[7] of the IT Act, is unequivocal that the proceedings *to give effect to orders or findings or directions* under Sections 250, Section 254, Section 260, Section 263 and Section 264 of the IT Act must be completed before 31.03.2017.

24. The CBDT's Explanatory Note issued *vide* Circular No.3/2017 dated 20.01.2017 on the changes brought about by the Finance Act, 2016 removes any doubt about the Parliament's intention in incorporating Section 153[7] of the IT Act. The Explanatory Note, as regards the substitution of the provisions of Section 153 of the IT Act, reads as under as regards the changes in the timelines:

- *The period, for completion of assessment under section 143 or section 144 has been changed from existing two years to twenty-one months from the end of the assessment year in which the income was first assessable.*

- *The period for completion of assessment under section 147 has been changed from existing one year to nine months from the end of the financial year in which the notice under section 148 was served.*

- *The period for completion of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, <u>setting aside or cancelling an assessment has been changed from existing one year to nine months from the end of the financial year in which the order under section 254 is received</u> by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, or the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner.*

- *It is further provided that the period for giving effect to an order under sections 250 or 254 or 260 or 262 or 263 or 264 of the Income-tax Act or an order of the Settlement Commission under sub-section (4) of section 245D of the Income-tax Act, where effect can be given wholly or partly otherwise than by making a fresh assessment or reassessment shall be three months from the end of the month in which order is received or passed, as the case may be, by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.*

- *It is also provided that where the assessment, reassessment or re-computation 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, 254, 260, 262, 263, or section 264 of the Income-tax Act or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Income-tax Act, then such assessment, reassessment or re-computation shall be made on or before the expiry of twelve months from the end of the month in which such order is received by the Principal Commissioner or*

Commissioner. However, for cases pending as on 1.6.2016, the time limit for taking requisite action is 31.3.2017 or twelve months from the end of the month in which such order is received, whichever is later.

- *The provisions of section 153 of the Income-tax Act as they stood immediately before their amendment by the Act shall apply to and in relation to any order of assessment, reassessment or re-computation made before the 1st of June, 2016.*

25. This Court must next refer to the reason for the substitutions *vide* the Finance Act, 2016 as set forth in this Explanatory Note. The reason read as under:

"It is desirable that proceedings under the Act are finalised more expeditiously as digitisation of processes within the Department has enhanced its efficiency in handling workload. In order to simplify the provisions of existing section 153 of the Income-tax Act by retaining only those provisions that are relevant to the current provisions of the Income-tax Act, section 153 of the Income-tax Act has been

amended by substituting the existing section changes in time limit from the existing time limits."

It is obvious from the reading of the reasons assigned that the substitution of Section 153 of the IT Act is to ensure that the assessment proceedings are finalized expeditiously and therefore, the timelines are reduced. Crucially, insofar as the proceedings pending as of 01.06.2016 for giving effect to orders under Section 153[5] of the IT Act or to give effect to a finding or direction under Section 153[6] of the IT Act, Explanatory Note also reiterates that the final timeline will be 31.03.2017 or twelve months from the end of the month in which such order is received, whichever is later. This clarification completely undermines the respondent's case, as canvassed by Sri E.I Sanmathi, that the proceedings pending to give effect to orders or findings/directions as of 31.03.2017 are saved under the provisions of Section 153 [9] of the IT Act. The second question is answered accordingly.

26. On the question of refund to the petitioner, Sri Percy Pardiwala refers to the decision of the Hon'ble Supreme Court in ***CIT v. Shelly Products*** *supra* and he canvasses that with the AO's failure to close the assessment after the ITAT's common order dated 31.03.2015 within the time line permitted and with such proceedings having lapsed, the AO cannot make a fresh consideration of the questions restored by the ITAT and consequentially, the petitioner's declaration of bad debts/advances written off and allowance claimed under Section 14A of the IT Act are restored. As such, the petitioner will be entitled for refund in terms of the computation annexed to the representations dated 29.10.2020 along with interest.

27. The Hon'ble Supreme Court in ***CIT v. Shelly Products*** *supra*, while examining the effect of the failure to make an order of assessment and the right to claim refund has observed as follows in paragraph 35 after holding that even if the tax paid is found to be less than

that payable, no further demand can be made for recovery of the balance amount when a fresh assessment is barred. The Hon'ble Supreme Court, in other words, has observed that the tax paid by the assessee must be accepted as it is and if any amount is paid in excess of the admitted tax liability, the same shall be refunded to the assessee since its retention may offend Article 265 of the Constitution, and the enunciation is thus:

> "***35.*** *What then is the effect of the failure to make an order of assessment after the earlier assessment made is set aside or nullified in appropriate proceedings? If the Assessing Authority cannot make a fresh assessment in accordance with the provisions of the Act it amounts to deemed acceptance of the return of income furnished by the assessee. In such a case the Assessing Authority is denuded of its authority to verify the correctness and completeness of the return, which authority it has while framing a regular assessment. It must accept the return as furnished and shall not in any event raise a demand for payment of further taxes. Accepting the income as disclosed in the return of income furnished by the assessee, it*

must refund to the assessee any tax paid in excess of the liability incurred by him on the basis of income disclosed. Even if the tax paid is found to be less than that payable, no further demand can be made for recovery of the balance amount since a fresh assessment is barred. In other words, the tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the Constitution."

28. It is apparent that the respondents have issued the impugned notices after the petitioner's applications dated 29.10.2020 as they were of the opinion that they could give effect to the ITAT's orders dated 31.03.2015, but the respondents, consequent to this Court's conclusion that the time for the AO to consider the question of disallowance of the claims of bad debts/ advances written off and under Section 14A of the IT Act stand lapsed as of 31.03.2017, must consider the petitioner's representation dated 29.11.2020 for refund.

The details of the petitioner's claim for refund in these petitions are as follows:

Writ Petition	**Assessment year**	**The amount claimed for refund**
13946/2020	2007-2008	Rs.22,55,72,973/-
13934/2020	2008-2009	Rs.28,45,75,701/-
13953/2020	2009-2010	Rs.36,37,90,129/-

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The petitioner's case for refund as aforementioned is not considered, and it must be considered in the light of the exposition in ***CIT v. Shelly Products*** *supra,* and this Court must emphasize that the respondents must consider the question of interest as well as refund. For the foregoing, the following:

ORDER

[A] The petitions are allowed in part and the impugned notices dated 05.11.2020 and 06.11.2020 [***Annexure–G*** in WP No. 13946/2020 and WP No. 13934/2020 and**,** ***Annexure - F*** in WP No. 13953/2020] are quashed on the ground that they are issued

after 31.03.2017 which would be impermissible because of the provisions of Section 153[7] of the Income Tax Act,1961 as amended by the Finance Act 2016.

[B] The respondents are directed to consider the petitioner's representations dated 29.10.2020 [***Annexure – F*** in WP No. 13946/2020 and WP No. 13934/2020 and***,*** ***Annexure - E*** in WP No. 13953/2020] for refund along with interest in the light of the decision of the Hon'ble Supreme Court in ***CIT v. Shelly Products*** reported in [***2003] 5 SCC 461***. The respondents shall so consider the representations within a period of 3 [three] months from the date of receipt of a certified copy of this order.

Sd/-
JUDGE

AN*