

[In]eligible assessee in terms of section 144C (15) of the Income Tax Act, 1961

Hon'ble Bombay High Court has, while quashing the draft and the final assessment order passed by the assessing officer in the case of **Classic Legends (P.) Ltd.**[i], in a writ petition, upheld the view taken by the Hon'ble Gujarat High Court in the case of **Pankaj Extrusion Ltd**[ii]., wherein it was held that where there was no variation in income of assessee by virtue of order of TPO, assessee could not be stated to be an 'eligible assessee' as defined in section 144C(15)(b) of the Income Tax Act, 1961 ('the Act').

The pertinent facts of the present case were:

- a) Petitioner was not a non-resident or a foreign company, i.e. not falling within the sweep of section 144C (15)(b)(ii);
- b) However, the Assessing Officer had made a reference to the Transfer Pricing Officer ("TPO") under Section 92CA of the Act and pursuant thereto, the TPO passed an order accepting that the international transactions entered into by the Petitioner with its Associated Enterprises were at an Arm's Length Price (ALP); thus, no variation was proposed by the TPO

[1] Classic Legends (P.) Ltd. vs. Assessment Unit [2025] 178 taxmann.com 457 (Bombay)[09-09-2025]

[2] Pankaj Extrusion Ltd. v. Asstt. CIT (OSD) [2011] 10 taxmann.com 17/198 Taxman 6 (Gujarat)

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The moot and solitary question that arose was whether the Petitioner would fall within the definition of "eligible assessee" as contemplated under section 144C (15)(b)(i) of the Act.

The averments of the Revenue opposing the challenge were two fold (a) although the TPO did not propose any variation, it would not mean that the Assessing Officer was powerless to issue a Draft Assessment Order under Section 144C and a broader meaning has to be given which would include all Assesseees where a reference to the TPO is made by the Assessing Officer; and (b) since (the meaning of income includes loss, similar meaning of "variation" would also include "no variation" by the TPO.

Negating the submissions of the Revenue, the Hon'ble Court ruled that on a plain reading of the provisions of section 144C (15)(b)(i), the Petitioner can be stated to be an "eligible assessee" only if there is a case of variation, which arises as a consequence of the order passed by the TPO under Section 92CA(3). Since there was no variation in the income of the Petitioner by virtue of the order of the TPO. That being the position, the Petitioner cannot be stated to be an "eligible assessee" and accordingly, entire procedure for issuance of a draft order calling for assessee's objections therefore, would not apply.



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As a result, the procedural safeguard provided under section 144C—i.e., the opportunity to object to a draft assessment order before finalization—is available only if the assessee's income/loss is actually varied due to the TPO's order.

