

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE
BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
ITA No.698(Bang) 2015
(Assessment years : 2004-05)**

Shri D.S.Kumar,
Srinivasa Nilaya
Railway Station Road,
Tumkur
PAN No.ACRPS1774L

Appellant

Vs

The Commissioner of Income-tax,
Bangaluru-7,
Bengaluru

Respondent

Assessee by : Shri V. Srinivasan, Advocate
Revenue by : Miss Neera Malhotra, CIT DR

Date of hearing : 20-10-2016
Date of pronouncement : 03-11-2016

ORDER

PER SHRI A.K.GARODIA, AM

This appeal is filed by the assessee and it is directed against the order passed by the CIT, Bengaluru-7, Bengaluru dated 25-03-2015 u/s 263 IT Act, 1961 for A. Y. 2004-05.

2. The assessee has raised the following grounds:-

"1. The order passed by the learned C.I.T. u/s 263 of the Act, in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT is not justified in passing the impugned order u/s. 263 of the Act since the very notice issued u/s. 263 of the Act was illegal in as much as the same was only for the purposes of conducting fishing and roving enquires as there were no grounds stated by the learned CIT for invoking the provisions of section 263 of the Act and the appellant was merely called upon the appear before the learned CIT and give details and thus, the very initiation of the proceedings u/s. 263 of the Act, is illegal and

void ab-initio

3. Without prejudice to the above, the learned C.I.T. failed to appreciate that there was no error much less an error prejudicial to the interest of the revenue in the order passed by the learned Assessing Officer warranting revision u/s.263 of the Act and consequently, the order passed by the C.I.T. is opposed to law and facts of the appellant's case and requires to be cancelled.

4. The learned CIT, failed to appreciate that there was no requirement to set-aside the issue relating to the source of the amounts invested by the appellant in business as the same was explained by the appellant before the learned A.O. and thus, the assessment order passed cannot be considered as erroneous and prejudicial to the interest of revenue.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. At the very outset, it was submitted by the Id. AR of the assessee that the impugned order was passed by the CIT on 25-03-2015 i.e. in the financial year 2014-15 and therefore, the consequential order should have been passed by the AO within one year from the end of the FY: 2014-15 but till date, no consequential order has been passed by the AO. At this juncture, it was pointed out by the Bench that if no consequential order has been passed by the AO till now, the same is barred by limitation and now no consequential order can be passed by the AO and therefore, the appeal of the assessee has become infructuous. In reply, the Id. AR of the assessee had nothing to say.

4. The Id. DR of the revenue also submitted that the appeal has to be dismissed as infructuous.

5. We have considered the rival submissions. We find that as per the provisions of Sec.153 of the IT Act, 1961, consequential order should have been passed by the AO on or before 31-03-2016 and it was the submissions of the Id. AR of the assessee before us that no consequential order has been passed by the AO till now. Since the passing of consequential order has now become barred by limitation, this appeal of the assessee has become infructuous because whatever be the decision even if the appeal of the assessee is allowed, it will be of academic interest only as there was no consequential order can be passed by the AO even if the appeal of the assessee is dismissed. Therefore, we dismiss the appeal of the assessee as infructuous and do not enter into various specific grounds raised by the assessee.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SMT ASHA VIJAYARAGHAVAN
JUDICIAL MEMBER

Place: Bangalore:

D a t e d : 03.11.2016

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

By order

AR, ITAT, Bangalore

1.	Date of Dictation
2.	Date on which the typed draft is placed before the dictating Member
3.	Date on which the approved draft comes to the Sr. P. S.
4	Date on which the order is placed before the dictating Member for pronouncement
5.	Date on which the order comes back to the Sr. P.S.
6.	Date of uploading the order on website
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk
9.	Date on which order does for Xerox & endorsement
10.	Date on which the file goes to the Head Clerk.....
11	The date on which the file goes to the Assistant Registrar for signature on the order.....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....