



ITA No.4541/Mum/2014
Puranmal Delhiwala
Assessment Year 1993-94

आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 4541/Mum/2014
(निर्धारण वर्ष / Assessment Year: 1993-1994)

Puranmal Delhiwala C/o M/s. Kabra Associates, CAs 204, Niranjana 99, Marine Drive, Mumbai – 400 002.	बनाम/ Vs.	Income Tax Officer 14(3)(3) Earnest House Nariman Point Mumbai – 400 021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAFFP-5709-C		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)
पीलार्थी की ओर से / Appellant by	:	Nitesh Joshi, Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	B.S.Bist, Ld. DR
सुनवाई की तारीख / Date of Hearing	:	12/05/2017
घोषणा की तारीख / Date of Pronouncement	:	17 /05/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by the assessee for the Assessment Year [AY] 1993-94 assails the order of the Ld. Commissioner of Income-Tax (Appeals)- 25 [CIT(A)], Mumbai dated 16/05/2014 by raising following grounds of appeal:-

1. *The Learned Commissioner of Income Tax(Appeals)-25, Mumbai, hereinafter referred to as the "CIT (Appeals)", erred in holding that the order dated 30.04.2012 passed by the Assessing Officer pursuant to the Hon'ble ITAT's order dated 10.10.2006 was not barred by any limitation and hence was valid.*
Your appellants submit that, on the facts and in the circumstances of their case, the order made by Assessing Officer dated 30.04.2012 is barred by limitation and is invalid.
2. *Without prejudice, it is submitted that, the CIT(Appeals) erred in coming to the conclusion that the Assessing Officer was not supposed to give any opportunity to the appellant before making the impugned order.*
Your appellants submit that, on the facts and in the circumstances of their case, the appellant ought to have been given an opportunity of being heard in the matter before the Assessing Officer made the order dated 30.04.2012
3. *Without prejudice to the grounds of appeal Nos.1 &2, it is submitted that, the CIT(Appeals) erred in coming to the conclusion that since in the assessment year 1994-95, there are no issues of long term capital gains and adopting of fair market value as on 01.04.1981 and that the said issues are not the subject matter of the order of Assessing Officer under appeal, no such issues are required to be adjudicated under the appeal before him.*
Your appellants submit that, on the facts and in the circumstances of their case, the CIT(Appeals) ought to adjudicated in respect of the issues relating to long term capital gains and adopting of fair market value as on 01.04.1981.

The assessee is in second round of appeal before us.

2. Briefly stated, the assessee, being *resident firm*, was assessed for impugned AY u/s 143(3) at Rs.49,79,670/- vide Assessing Officer [AO] order dated 12/12/1996 after certain additions / disallowances under the



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head *capital gains, business income & income from other sources* which were contested without any success before Ld. CIT(A) since the assessee failed to appear before Ld. CIT(A) and could not adduce any evidence in support. The assessee preferred second appeal before Tribunal vide ITA No. 5385/Mum/2003 order dated 10/10/2006 where the matter was restored back to the file of AO to decide afresh following Tribunal's earlier order dated 17/08/2006 in assessee's own case for AY 1994-95.

3. Pursuant to the order of Tribunal, Ld. AO passed an order dated 30/04/2012 u/s 143(3) *read with section 254*, where the income was re-computed at Rs.38.91 Lacs on the basis of outcome of assessee's appeal for AY 1994-95 before Ld. CIT(A) which was passed on 13/05/2009. The said order of Ld. AO, upon appeal in second round, was confirmed by Ld. CIT(A) vide impugned order dated 16/05/2014 where the assessee contested the order on the grounds of limitation as per the provisions of Section 153(2A) and also on merits but the same got dismissed, against which the assessee is in appeal before us. The Ld. CIT(A) after perusing assessee's submissions, came to the conclusion that the provisions of sub-section 153(3)(ii) *read with explanation-2* applied to the case of the assessee and since there was no prescribed time limit, the order of Ld. AO was perfectly in order so far as the ground of limitation was concerned.

4. The Ld. Counsel for Assessee [AR] while drawing our attention to the provisions of Section 153(2A) *read with second proviso* contended that earlier assessment was set aside by the Tribunal in the first round of appeal



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and the matter was restored for fresh assessment before Ld. AO and therefore, time limit as provided in Section 153(2A) applies in the instant case and since the same has been violated by the Ld. AO, the assessment order stood vitiated on grounds of limitation and liable to be quashed. Our attention has been drawn to the factual matrix that Tribunal's order in the first rounds of appeal was passed on 10/10/2006 and presuming that the same was received in Financial Year 2006-07, the order of fresh assessment should have been passed within 9 months i.e. by 31/12/2007 as per second proviso as against 30/04/2012 passed by the Ld. AO. Stretching it further, consequential order for AY 94-95 was passed by Ld. CIT on 13/05/2009 pursuant to directions of Tribunal for 1994-95 and therefore, even taking this date as the relevant date, the order should have been passed latest by 31/12/2010 and since it was beyond limit from any angle and therefore, bad in law. Our attention is further drawn to the fact that the assessee, upon receipt of Ld. CIT(A)'s order dated 13/05/2009 for AY 94-95, submitted the same to Ld. AO on 19/05/2009 for adjudication of the matter for AY 93-94 and despite that the Ld. AO failed to pass the necessary consequential order within time for impugned AY.

5. Per *contra*, Ld. DR placed reliance on the finding of Ld. CIT(A) and contended that consequential order was passed pursuant to findings and directions of the Tribunal and therefore, there was no time limit for passing the order as per Section 153(3)(ii) and hence the same was perfectly valid.



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6. In the rejoinder, Ld. AR has contended that there were no finding / direction by Tribunal in the first round of appeal and the matter was simply restored for fresh assessment and therefore the provisions of Section 153(2A) squarely applied to the assessee. Reliance has been placed on the judgement of Apex Court in *Rajinder Nath Vs. CIT [120 ITR 14 13/08/1979]* for the meaning of the expression 'finding' & 'directions'.

7. We have heard rival contentions and perused relevant material on record. First of all, we note that the matter in impugned AY was restored to the AO by the Tribunal vide order dated 10/10/2006 in first round by making the following observation:-

"2. At the time of hearing, the Ld. Counsel for the assessee submitted that identical issue raised by the assessee in his appeal bearing ITA No. 5458/Mum/2004 for AY 1994-95 has already been heard by 'F' bench of this Tribunal on 08.08.2006 and that the Assessing Officer should therefore be directed to dispose of this matter also in accordance with the decision of the Tribunal in the aforesaid appeal filed by the assessee. We order accordingly."

Further, the Tribunal in ITA No. 5458/Mum/2004 order dated 17/08/2016 for AY 1994-95, restored the matter back to the file of Ld. CIT(A) with following observations:-

"3. Heard both the parties we find that the CIT(A) has passed impugned order without giving proper and sufficient opportunity to the assessee to explain the case. In view of this position, we are of the considered view that if one more opportunity is given to the assessee to submit his say would meet ends of justice and no harm would be caused to the interests of the revenue. We, therefore remit this appeal to the file of the CIT(A) and direct the CIT(A) to give fair and reasonable opportunity to the assessee and decide the appeal afresh."

(emphasis, being supplied by us)



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Therefore, it is pertinent to note that the matter in AY 94-95 has been restored back to the file of Ld. CIT(A) to decide the appeal afresh and the matter for AY 93-94 has been restored on similar lines to the file of AO for fresh adjudication. At this juncture, it would be relevant to reproduce relevant statutory provisions as contained in Section 153 which are as follows:-

"153. Time-limit for completion of assessments and reassessments.

(1)

(2)

(2A) Notwithstanding anything contained in sub-ss. (1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under s. 250 or s. 254 or s. 263 or s. 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under s. 250 or s. 254 is received by the Chief CIT or CIT or, as the case may be, the order under s. 263 or s. 264 is passed by the Chief CIT or CIT :

Provided

Provided further that where the order under section 254 is received by the Principal Chief Commissioner, 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 on or after the 1st day of April, 2005 but before the 1st day of April, 2011, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted.

.....

(3) The provisions of sub-ss. (1), (1A), (1B) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-s. (2A), be completed at any time-

(i)

(ii) 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 ss. 250, 254, 260, 262, 263, or 264 or in an order of any Court in a proceeding otherwise than by way of appeal or reference under this Act."

.....



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Explanation 2.—Where, by an order referred to in clause (ii) of sub-section (3), 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.

Upon perusal of statutory provisions, we find that in case of cancellation or setting aside of assessment, the provisions of sub-section (2A) applies whereas assessment pursuant to *findings or directions* are governed by sub-section (3) where there is no time limit prescribed to pass the order. We have already perused the order of Tribunal in AY 93-94 where we have noted that the matter has been restored back to AO for fresh adjudication which was on similar lines as held by Tribunal in assessee's own case for AY 94-95.

8. So far as the meaning of expressions '*findings or directions*' are concerned, the apex court in the cited case laws has observed as under:-

2. The expressions "finding" and "direction" are limited in meaning. A finding given in a appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in s. 153(3)(ii) of the act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give



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while deciding the case before it. The expressions “finding” and “direction” in s. 153(3)(ii) of the act must be accordingly confined. S.153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order under S. 143 or S. 144 or S. 147: ITO V Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC) and N.K.T. Sivalingam Chettiar v. CIT[1967]66 ITR 586(SC). The question formulated by the Tribunal raises the point whether the AAC could convert the provisions of S. 147(1) into those of s. 153(3)(ii) of the Act. In view of S. 153(3)(ii) dealing with limitation merely, it is not easy to appreciate the relevance or validity of the point.

9. Therefore after appreciating the factual matrix vis-à-vis statutory provisions, we find that the Tribunal in the impugned AY had restored the matter to the Ld. AO simplicitor for fresh adjudication without any finding or direction since the assessee assailed the assessment on the ground of principle of natural justice. There were no findings or directions by the Tribunal and hence, the provisions of sub-section (2A) applied to the assessee and the consequential order was subject to the prescribed time limitation. Accordingly, the consequential assessment order passed by Ld. AO dated 30/04/2012 stood vitiated on the grounds of limitation and hence liable to be quashed. We order accordingly and allow assessee's appeal on legal grounds.

10. Since, we have already allowed assessee's appeal on legal ground, we find no reason to delve into the matter any further on merits or other grounds of appeal.



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11. The assessee's appeal stand allowed in terms of our above order.

Order pronounced in the open court on 17th May, 2017

Sd/-

(Joginder singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 17 .05.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**