

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि. एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.175/Viz/2017
(निर्धारण वर्ष/Assessment Year:2007-08)

Chaparala Babu Rao
7-17-1, Main Road
Kirlampudi Layout
Visakhapatnam
[PAN : ADCPC4435G]

Vs. Dy. Director of Income Tax
(IT&TP)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

आयकर अपील सं./I.T.A.Nos.180-182/Viz/2018
(निर्धारण वर्ष/Assessment Year:2007-08)

Chaparala Babu Rao
Rep. Assessee of
(i) Sri K.Vemlata Rao
(ii) Sri G.Hari Prasad
(iii) Smt.S.Sailaja Naidu
D.No.10-50-19, 4th Floor
"Soudamani" Siripuram
Visakhapatnam

Vs. Income Tax Officer
(International Taxation)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से/ Revenue by
निर्धारिती की ओर से/ Assessee by

: Smt. Suman Malik, DR
: Shri C.V.S.Murthy, AR

सुनवाई की तारीख / Date of Hearing

: 26.11.2018

घोषणा की तारीख/Date of Pronouncement

: 28.11.2018

आदेश / ORDER**Per Bench :****I.T.A.No.175/Viz/2017**

In this case, there was a delay of 90 days in filing the appeal and the assessee was unable to explain the reasons for delay in filing the appeal. During the appeal hearing, the assessee has not pressed this appeal. Therefore, the appeal is dismissed as withdrawn.

I.T.A. Nos.180-182/Viz/2018

2. These appeals are filed by the assessee against the orders of the Commissioner of Income Tax (Appeals) [CIT(A)]-10, Hyderabad dated 29.06.2017 for the Assessment Year (A.Y.) 2007-08. Since the grounds raised in the appeals are common, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience. The assessee has filed five identical grounds in the capacity of the representative assessee in all the said appeals along with Form No.36 and the same are extracted from I.T.A 180/Viz/2018 which reads as under :

1. The Order of the Commissioner of Income Tax (Appeals)-10, Hyderabad, is contrary to law and facts of the case.
2. The Commissioner of Income Tax (Appeals)-10, Hyderabad, is not justified in upholding the decision of the Assessing Authority to treat the appellant as the representative assessee of Sri K. Venkata Rao, without accepting the appellant's contention in this regard. Hence, the order passed by the Assessing Authority and

confirming the said order by the Commissioner of income Tax (Appeals)-10, Hyderabad, is not in accordance with law and it should be cancelled.

3. The Commissioner of income Tax (Appeals)-10, Hyderabad, is not justified in confirming the levy of interest U/s.234A and 234B of the I.T. Act, under the facts and in the circumstances of the case, as the appellant was treated, as representative assessee long after the assessment year and he is not the regular assessee and in such cases the provisions relating to Advance Tax and other provisions relating to Sec.234A are not applicable. Hence, upholding of interests levied by the Assessing Authority under section 234A and section 234B of the IT. Act, was not correct Hence, the same may kindly be cancelled.

4. The case law relied upon by *the* Commissioner of Income Tax (Appeals)-10, Hyderabad, in confirming levy of interest u/s 234A and Sec.234B are not applicable in the appellant's case and the facts of the said case are distinguishable and the case law cited by the appellant are only to be accepted and the interests may be cancelled. Hence, the appellant prays for relief.

5. For these and other grounds that may be urged at the time of appeal hearing, the appellant prays for relief.

3.0 During the appeal hearing, the assessee raised the following additional ground:

The order of the Assessing Officer and also the order of the learned Commissioner of Income Tax (A) were invalid as the said orders were passed on the basis of a notice issued by the Assessing officer U/s148 of the Act, which was an in valid notice as per law. As the said notice issued by the Assessing Officer was barred by limitation, the order passed on the basis of said in valid notice is void-ab-initio. Hence the orders passed may kindly be cancelled.

4. The assessee requested for admission of additional ground , since the ground raised was legal ground which goes to the root of assessment. The Ld.DR vehemently opposed for admission of additional ground.

5. On hearing both the sides and in the interest of justice, we admit the additional ground.

The additional ground is related to the time limit for issue of notice u/s 148 to the representative assessee. As per the information available to the Income Tax Department, the representative assessee had purchased the immovable property for a sum of Rs.34,84,000/- vide document No.589 registered on 03.02.2007 before the SRO, Madhurawada, Visakhapatnam from Sri Kota Venkata Rao, Smt. Sappa Sailaja Naidu and Sri Gaddam Hari Prasad, all being non-residents. The assessee is required to deduct tax at source on payments made to the non-residents as per section 195 of I.T Act. But the assessee did not comply with the statutory requirement u/s 195 of the Act. Therefore, the AO issued the notice u/s 163 and passed orders on 28.03.2014 treating the assessee as the representative of the aforementioned nonresidents for the A.Y.2007-08 and issued the notices u/s 148 of Income tax act. The details of cost of acquisition of the property, assessment of capital gains in the hands of the sellers are furnished by the AO as under :

Sl.No.	Name of the non-resident	Share in the property	Cost of acquisition (Rs.)	Share in sale consideration (Rs.)	Short term capital gains (Rs.)
1.	Sri Kota Venkata Rao	1/3	2,25,870	11,61,600	9,35,730
2.	Smt.Sappa Sailaja Naidu	1/3	2,25,870	11,61,600	9,35,730
3.	Sri Gaddam Hari Prasad	1/3	2,25,870	11,61,600	9,35,730

Accordingly, the AO issued notice u/s 148 on 29.03.2014 and completed the assessment u/s 143(3) taxing the resultant short term capital gains in the hands of the assessee, Shri Chaparala Babu Rao.

6. Aggrieved by the order, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of the AO and dismissed the appeal of the assessee.

7. Against the order of the Ld.CIT(A), the assessee is in appeal before us. The Ld.AR pressing the additional ground argued that in this case, the assessee is a representative assessee representing non residents and the notice u/s 148 was issued on 29.03.2014 beyond the time limit allowed u/s 149(3) of the Act as per which the time limit for issue of notice u/s 148 is only two years and the word 'six years' was inserted w.e.f. 1.7.2012 by Finance Act, 2012 in sub section 3 of the Act. Therefore contended that the amendment made in the Act is not applicable for the assessments of earlier years. Though in explanation, it was made applicable from the beginning of the A.Y. on or before 01.04.2012, the courts have taken decision in favour of the assessee and held that the time limit allowable is only two years in the cases, where, by the time the notice issued, the limitation period of two years has expired. The assessee also relied on the decision of this Tribunal in the

case of V.Pratima Rao and others in I.T.A No.69-74/Viz/2018 dated 06.06.2018.

8. On the other hand, the Ld.DR supported the orders of the lower authorities.

9. We have heard both the parties and perused the material placed on record. In the instant case, for the relevant A.Y. 2007-08, notice u/s 148 was issued on 29.03.2014. The assessee is representative assessee as per section 163 of the Act. By the time, the amendment was made effective, the time limit of two years was expired and the issue is dead. On the similar facts, this Tribunal in the case of V.Pratima Rao and others for the A.Y.2007-08 cited supra held that the notice issued u/s 148 was barred by limitation. For ready reference, we extract relevant part of the order of this Tribunal in the case of V.Pratima Rao and Others as under :

"7.1. We have carefully considered the arguments made by both the parties. In the instant case, the assessment year involved was 2007-08 and the time limit for issue of notice u/s 148 in the case of agent of non- resident was two years from the end of the relevant assessment year, which was expired on 31.03.2010. As argued by the Ld.AR the issue was dead as on 31.03.2010. The amendment has come into force w.e.f. 1.7.2012 and the amendment was also not retrospective effect. The amendment made subsequent to the expiry of the time limit cannot be made applicable to the assessments which was already time barred by that date and the issue stands dead. The issue which was already dead cannot be revived with a subsequent amendment unless the same amendment is made with retrospective effect. Similar issue has come up before the Hon'ble ITAT Coordinate Bench of Hyderabad, relied upon by the Ld.AR and

the ITAT expressed similar view and held that the time limit for issue of notice u/s 148 was barred by limitation.

For sake of clarity and convenience we extract relevant part of the order of ITAT Hyderabad Bench in the case of Madhucon Sino Hydro JV Vs. DCIT in ITA No.246/Hyd/2015 dated 15/07/2015.

13. We also notice from the material on record, one more fundamental flaw in the reassessment proceedings of this case, which is not even pointed out by the Appellant, is barred by limitation prescribed under provisions of sub-section (3) of Sec. 149 of the Act. The provisions of sub-section (3) of Section 149 of the Act as they stood at the relevant point of time read as follows:-

*"(3) if the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or re-computation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of *[six] years from the end of the relevant assessment year.*

[Explanation—For the removal of doubts, it is hereby clarified that the provisions of sub-section (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the J day of April, 2012.]"

**Substituted for 'two" by the Finance Act, 2012, w.e.f 1-7-2012.*

Thus, the provisions of sub-section (3) of Section 149 mandates that where the income escaping the assessment belongs to a non-resident, and the reassessment is to be made on agent of non-resident in accordance with the provisions of Sec. 163 of the Act, the notice u/s.148 should be issued only within the period of two years from the end of the relevant assessment year up to 30.06.2012 or within a period of six tears subsequent to 30.06.2012. In this case, the relevant assessment year is 2006-07. Reassessment notice was required to be issued on or before 31.3.2008. Whereas, in the case on hand the reassessment notice was issued on 30.03.2013, which is clearly beyond the period of limitation prescribed under sub-section (3) of Section 149 of the Act. The amended period of six years is applicable only from the assessment year 2012-13 onwards as per the Explanation to the above sub-section.

The Hon'ble Supreme Court in the case of Claggett Bronchi Co. Ltd. v. CIT [1989] 177 ITR 409 (para 9) had held as under:-

".....The issue of notice under section 148 of the Act to the agent after the expiry of two years from the end of the relevant assessment year is prohibition by the statute.

The same ratio was followed in the following two cases

- (i) CIT v. S.G. Sambandam & Co., (2000) 242 ITR 708, 718 (Mad);*
- (ii) Ingram Micro India Ltd. v. Deputy CIT (2012) 347 ITR 221 (Bom)."*

14. Respectfully following the ratio laid down in the above cases, we hold that the re-assessment proceedings in this case are also barred by limitation and therefore void ab initio.

The Hon'ble Supreme Court in the case of S.S.Gadgil Vs. Lal&Company (supra) held that limitation having expired under the old provision before coming into force of the amending law and the amending law having not been made retrospective, notice under section 34 was barred by limitation.

For ready reference, we extract relevant para of the order of Hon'ble Supreme Court in para No.9 of the order which reads as under :

9. As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the IT Act before it was amended, ended on 31st March, 1956. It is true that under the amending Act by s. 18 of the Finance Act, 1956, authority was conferred upon the ITO to assess a person as an agent of a foreign party under s. 43 within two years from the end of the year of assessment. But authority of the ITO under the Act before it was amended by the Finance Act of 1956, having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act, This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to s. 18 of the Finance Act, 1956, only a limited retrospective operation, i.e, up to 1st April, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision greater retrospectively than is expressly mentioned, nor to authorise the ITO to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred.

7.2. *Hon'ble AP High Court in the case of Addl.CIT Vs. Watan Mechanical and Turning Works (supra) held as under :*

It is well-settled that the IT Act as it stands amended on the 1st day of April of any financial year, must apply to the assessment of that year. Any amendments in the Act which come into force after the first day of April of financial year, would not apply to the assessment of that year, even if the assessment is actually made after the amendments come into force.'

In the instant case, the assessment year involved is 2007-08 and the time limit for issue of notice u/s 148 was barred by limitation on 31.10.2010. The amendment to sub section 149(3) has come into force from 01.04.2012 i.e. after expiry of time limit for issue of notice u/s 148 in the case of the assessee. Therefore, we hold that the amendment is not applicable for enlargement of the time limit for issue of notice u/s 148 and the case is squarely covered by the decision of the Coordinate Bench of ITAT Hyderabad cited (supra) and the ratio laid down by the Hon'ble Supreme Court in the case of S.S.Gadgil (supra). Therefore, respectfully following the view taken by the Coordinate Bench, Hyderabad, we hold that reassessment proceedings initiated by the AO in this case is also barred by limitation. Therefore, the notice u/s 148 is squashed and the consequent assessments made are held to be void ab initio. Since we have quashed the notice issued u/s 148 we are of the view that the remaining grounds are considered not necessary to be adjudicated."

10. Since the facts are identical, respectfully following the view taken by this Tribunal, we hold that the notice issued u/s 148 is beyond the limitation period provided u/s 149(3) and accordingly quash the notice and allow the appeals of the assessee.

11. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 28th November, 2018.

Sd/-

(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 28.11.2018

L.Rama, SPS

Sd/-

(वी.दुर्गा राव)
(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant –Chaparala Babu Rao, 7-17-1, Main Road, Kirlampudi Layout, Visakhapatnam
 - (ii) ChaparalaBabuRao, Rep.Assessee of
 - (a) Sri K.VemlataRao (b) Sri G.Hari Prasad (c) Smt.S.Sailaja Naidu, D.No.10-50-19, 4th Floor, “Soudamani” Siripuram Visakhapatnam
2. प्रत्यार्थी / The Respondents–Dy.Director of Income Tax (IT&TP), Visakhapatnam, (ii) Income Tax Officer (International Taxation), Visakhapatnam
3. The Pr.Commissioner of Income Tax (IT&TP), Hyderabad
4. The Commissioner of Income Tax (Appeals)-10, Hyderabad
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM