

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.737/PUN/2004
निर्धारण वर्ष / Assessment Year : 1992-93

Ekata Padamchand Raka, Vs. ITO, Ward -1(1),
S.G. Bhutada & Associates Solapur
Chartered Accountants,
104, Sakhar Peth,
Solapur – 413 005

आयकर अपील सं. / ITA No.738/PUN/2004
निर्धारण वर्ष / Assessment Year : 1992-93

Sarita Padamchand Raka, Vs. ITO, Ward -1(1),
S.G. Bhutada & Associates Solapur
Chartered Accountants,
104, Sakhar Peth,
Solapur – 413 005

आयकर अपील सं. / ITA No.739/PUN/2004
निर्धारण वर्ष / Assessment Year : 1992-93

Neelam Premchand Raka, Vs. ITO, Ward -1(1),
S.G. Bhutada & Associates Solapur
Chartered Accountants,
104, Sakhar Peth,
Solapur – 413 005

आयकर अपील सं. / ITA No.740/PUN/2004
निर्धारण वर्ष / Assessment Year : 1992-93

Niraj Premchand Raka, Vs. ITO, Ward -1(1),
S.G. Bhutada & Associates Solapur
Chartered Accountants,
104, Sakhar Peth,
Solapur – 413 005

आयकर अपील सं. / ITA No.741/PUN/2004
निर्धारण वर्ष / Assessment Year : 1992-93

Manish Premchand Raka,
S.G. Bhutada & Associates
Chartered Accountants,
104, Sakhar Peth,
Solapur – 413 005

Vs.

ITO, Ward -1(1),
Solapur

आयकर अपील सं. / ITA No.742/PUN/2004
निर्धारण वर्ष / Assessment Year : 1992-93

Akash Vijaykumar Raka,
S.G. Bhutada & Associates
Chartered Accountants,
104, Sakhar Peth,
Solapur – 413 005

Vs.

ITO, Ward -1(1),
Solapur

आयकर अपील सं. / ITA No.743/PUN/2004
निर्धारण वर्ष / Assessment Year : 1992-93

Abhishekh Vijaykumar Raka,
S.G. Bhutada & Associates
Chartered Accountants,
104, Sakhar Peth,
Solapur – 413 005

Vs.

ITO, Ward -1(1),
Solapur

Appellant (s) by Shri V.L. Jain
Respondent by Ms. Shabana Parveen

Date of hearing 26-02-2019
Date of pronouncement 27-02-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These seven appeals by different but connected assesseees relating to assessment year 1992-93, involve a common issue. We are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. It is a recalled matter in as much as the earlier order passed by the Tribunal was subsequently recalled vide its order dated 08-07-2008 in M.A.No.39/PN/2008 for disposal of the following ground:

“The ld. CIT(A)-III, Pune has erred in coming to the conclusion that penalty order of the AO passed u/s.271(1)(c) of the Act is legal, not bad in law and thus time limit prescribed u/s.275 of the Income-tax Act, 1961 (hereinafter also called ‘the Act’).”

3. The facts necessary for the disposal of the appeal in Ekata Padamchand Raka are that the Tribunal passed the quantum order in respect of these seven assesses on 13-11-2002 in ITA No.1084/PN/2001 etc. The AO passed penalty order on 30-09-2003 upholding penalty of Rs.49,831/-. The assessee contended before the AO that the order dated 13-11-2002 passed by the Tribunal in quantum proceedings was received by the

Commissioner on 13-12-2002. Relying on the provisions of section 275(1)(a) of the Income-tax Act, 1961 (hereinafter also called 'the Act'), the assessee contended that penalty order could not be passed as having become time-barred. The AO vide Para 6 of his penalty order observed that the order of the ITAT was received by CIT-IV, Pune on 13-05-2003, which was, in turn, received by him on 14-05-2003 and hence, the penalty order was not time-barred. No relief was allowed in the first appeal. The assessee has approached the Tribunal contending that the penalty order passed by the AO was time-barred.

4. We have heard both the sides and gone through the relevant material on record. Relevant part of section 275 containing bar of limitation for imposing penalties, reads as under: -

275. (1) No order imposing a penalty under this Chapter shall be passed—

(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later :

5. Clause (a) of section 275(1) of the Act provides that no order imposing penalty under this Chapter shall be passed in a case where the relevant assessment year is subject matter of appeal before the Tribunal, after the expiry of the financial year in which the proceedings in the course of which action for imposing penalty has been initiated, are completed, or six months from the end of the month in which the order of the Tribunal is received by the Principal Commissioner, whichever period expires later. It is a case where the penalty order was passed after the expiry of the financial year in which the assessment order was passed, which aspect is not under dispute. The entire controversy rotates around the second limb of section 275(1)(a) which gives a period of six months from the end of the month in which the order of Tribunal is received by the competent Commissioner. The Tribunal passed quantum order on 13-11-2002. The case of the assessee is that the order of Tribunal was received by the Commissioner, Kolhapur, under whose jurisdiction the AO imposing penalty falls, on 13-12-2002. Since the penalty order was passed on 30-09-2003, which is beyond a period of six months from the end of December, 2002, the proceedings became time-barred. On the other hand, the AO has made out a case that the Tribunal order was received by the

office of CIT-IV, Pune on 13-05-2003. Going by that, the penalty order passed on 30-09-2003 was within a period of six months from the end of May, 2013.

6. We need to decide the date on which the order passed by the Tribunal was served on the competent Commissioner. In this regard, the assessee has placed on record a letter dated 18-03-2004 issued by the Assistant Registrar, ITAT, Pune stating as under :

“Kindly refer to your letter dated 09-03-2004 in relation to ITA Nos. 1022 to 1029/2001 decided on 13-11-2002.

2. In reply please note that the jurisdictional CIT, Kolhapur was served with the appeal orders on 13-12-2002 as is evident from the acknowledgement from the office of the Commissioner of Income Tax, Kolhapur.”

7. It is apparent from the above reply given by the Assistant Registrar, ITAT, Pune that the quantum order passed by the Tribunal on 13-11-2002 was served on the jurisdictional CIT, Kolhapur on 13-12-2002 as per the acknowledgement received from the office of CIT, Kolhapur. It can be seen from the quantum order passed by the Tribunal that a copy of the order was directed to be forwarded to CIT, Kolhapur. It is not understandable as to how the AO has brought in focus the date of service of the quantum order passed by the Tribunal on CIT-IV, Pune on

13-05-2003. The ld. AR submitted that the Department changed the jurisdiction of the Commissioners of Income-tax and it was possible that the office of CIT, Kolhapur who had the original jurisdiction over the ITO, Ward-1, Solapur, who imposed the penalty, underwent change and the Tribunal order dated 13-11-2002 might have been sent by the CIT Kolhapur to CIT-IV, Pune on 13-05-2003. The ld. DR did not deny this fact. In our considered opinion, the internal transfer of documents including the Tribunal order from the office of CIT, Kolhapur to CIT-IV, Pune, cannot have any bearing on the determination of the date on which the order of Tribunal was served on the competent Commissioner having jurisdiction over the case at the material time. It has been further brought to our notice that the ITO Ward 1(1), Solapur issued notice for penalty u/s 271(1)(c) of the Act on 4.4.2003 fixing the date of hearing on 17.4.2003, which is prior to 13.05.2003, being the date of the alleged service of the order of the Tribunal on the competent CIT. As the CIT, Kolhapur had the jurisdiction over the AO and the order of Tribunal was served on CIT, Kolhapur, on 13.12.2002, in our considered opinion, the limitation period has to be reckoned from the date of such service. Going by this date of service of order of Tribunal on CIT,

Kolhapur, we hold that the penalty order passed by the AO on 30-09-2003 is time-barred.

8. Both the sides are in agreement that the facts and circumstances of other six appeals are similar to that of Ekata P. Raka. Following the view taken hereinabove, we hold that the penalty orders passed on these six persons were also time-barred.

9. In the result, all the seven appeals are allowed on this legal issue.

Order pronounced in the Open Court on 27th February, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 27th February, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-III, Pune
4. The CIT-IV/V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	26-02-2019	Sr.PS
2.	Draft placed before author	27-02-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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