

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

BEFORE SHRI S. S. GODARA, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./I.T.A Nos.1194/Kol/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

ACIT, Circle-50(1), Kolkata	Vs.	Sunil Agarwal DA-12, Sector-I, Salt Lake City, Kolkata – 700 064.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACTPA 4135 D		
(Appellant)	..	(Respondent)

&

Cross Objection No.10/Kol/2019

(A/o I.T.A Nos.1194/Kol/2017)

(निर्धारण वर्ष / Assessment Year: 2011-12)

Sunil Agarwal DA-12, Sector-I, Salt Lake City, Kolkata – 700 064	Vs.	ACIT, Circle-50(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACTPA 4135 D		
(Cross-Objector)	..	(Respondent)

Appellant by : Shri C. J. Singh, JCIT, Sr. DR

Respondent by : Shri A. K. Tibrewal, FCA

सुनवाईकीतारीख/ Date of Hearing : 21/02/2019

घोषणाकीतारीख/Date of Pronouncement : 28/02/2019

आदेश / O R D E R

Per Shri S. S. Godara:

This Revenue's appeal and assessee's cross-objection for assessment year 2011-12 arise against the Commissioner of Income Tax (Appeals) - 15, Kolkata dated 28.03.2017 passed in Case No.112/CIT(A)-15/15-16/DCIT,CC-4(3)/R&T/Kol u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. We come to Revenue's appeal ITA No.1194/Kol/2017. Its sole substantive grounds pleads that the CIT(A) has erred in law and on facts in holding the assessment in issue to be framed beyond the stipulated limitation period vide detailed discussion:

"2. Aggrieved by the assessment order passed by the Assessing Officer, the appellant had preferred this appeal with the following grounds of appeal.

1. That the impugned assessment order dated 31/ 03/ 2014 passed by the Ld. DCIT and served on the appellant on 28/04/2014 is time barred, illegal and void ab initio.

2. That the impugned assessment order passed u/ s. 143(3) of the Income Tax Act, 1961 by the Ld. DCIT on 31/03/2014 is against law and facts of the case and against the established principles of natural justice.

3. That on facts and circumstances of the case, the Ld. ACIT erred in law in making additions of an aggregate sum of Rs. 73,05,000/- on account of alleged unexplained cash credits appearing in the books of accounts.

4. That the Ld. DCIT erred in disallowing the sum of Rs.8,78,694/- on account of interest paid by the assessee on unsecured" loans borrowed by the appellant and used for the purpose of his business.

5. That without prejudice, the Ld. DCIT erred in adding the sum of Rs.73,05,000/- on account of unexplained cash credit without considering the peak credit of unsecured loans.

6. That the Ld. DCIT erred in not allowing deduction of Rs.2,83,789/- claimed by the appellant against net profit from the proprietary business m/s Agarwal Steel Industries on account of interest paid on loans borrowed for the purpose of business.

7. That the Ld. DCIT erred in disallowing the sum o/Rs.1,344 u/ s 14A of the income tax Act, 1961.

8. That the Ld. DCIT erred in charging interest o/ Rs. 9,35,478 u/ s. 234B of the income Ta-x Act, 1961 which is not chargeable in this case.

9. That the appellant craves leave to add, alter or withdraw any ground or grounds of appeal at or before the hearing of the appeal.

3. Before going into the merits of the case it is important to deal with ground of appeal no 1, wherein it has been mentioned that assessment order was served on 28/04/2014. According to assessee, order was passed after 31/03/2014 and the order has got time barred and it is illegal. In support of his proposition, appellant has cited the following judgments/decisions.

1. State of Andhra Pradesh vs. M. Ramakrishtaiah & Co.- 93 STC 40; (SC).

2. CIT vs. Shri Narayani Chandrika Trust – 212 ITR 456 (Ker)

3. *Government of Wood Works vs. State of Kerala - 69 STC 62 (SC)*
4. *Mafatlal Industries Ltd. & Another vs. CTO & Others - 101 STC 461 (ITAT, Kolkata).*
5. *Shanti Lal Ghodawat & ors. Vs. ACIT- (2009) 726 TTJ (Jd) 135 (ITAT, Jodhpur)*
6. *CIT vs. M/s. Rai Bahadur Kishore Chand & Sons - 2008 TMI- 3777 (P &HHC)*
7. *M/s. Dilip Mohan Seth vs. ITO - ITA No. 2110/Kol/2009 (ITAT, Kolkata)*
8. *CIT vs. Kappumalai Estate- (1998) 234 ITR 167 (Ker)*
9. *K. Joseph Jacob vs. Agrl. ITO & Anr. (1991) 190 ITR 464 (Ker).*
10. *Malayil Mills vs. State of Kerala - (TRC Nos. 15 and 69 of (1991)*

As assessee had leveled serious allegation that assessment order u/s. 143(3) was not passed within the time limit of 31/03/2014, it was important to look into this issue. Accordingly, AO was requested to intimate the date of service of the assessment order. In his report dated 20/02/2017 ACIT,Cir-50(1) informed that tear off acknowledgement slip was not available in the assessment records. It was also intimated that assessment order in this case was passed by DCIT-Central Cir- 4(3) (erstwhile DCIT, Central, Cir-XXVII, Kolkata). Accordingly, letter was sent to DCIT, Cir-4(3) in this regard. DCIT Central Cir-4(3), vide his letter 22/02/2017, informed that assessment order was not dispatched by post and proof of service, if any, would be in the assessment records. After receipt of this report another letter was sent to ACIT, Cir-50(1), to intimate the date of uploading of computation on ITD, in respect of assessment order. In response, ACIT, Cir-50(1), vide his letter dt. 09/03/2017, informed that computation/assessment order was not uploaded on ITD.

Assessee is very forcefully saying that the assessment order was served on 28/04/2014 and it has been passed after 31/03/2014. On the other hand A.O is not able to submit any proof to counter the allegation of the assessee. Under the circumstances, I do not have any option but to accept assessee's submissions in this regard.

I have also perused the assessment records and I am separately communicating my observations to Pr CIT-17, in this matter.

In view of the facts narrated above and the case laws cited by assessee, it is held that order passed by the A.O was barred by limitation as it appears to have been passed after 31/03/2014. Hence, assessment u/s 143(3) dated 31/03/2014 is quashed.

As the assessment order is quashed, merits of the case have not been looked into.

3. Learned Senior Departmental Representative vehemently contends during the course of hearing that the CIT(A) has erred in law and on facts in quashing the impugned assessment to have framed beyond the limitation period prescribed. He

quotes hon'ble jurisdictional high court's decision in *CIT vs. Subrata Roy; [2014] 45 taxmann.com 513 (Calcutta)* holding that assessment within limitation period cannot be doubted merely because the consequential demand and notice was served after 47 days of the statutory period of limitation. We find no merit in Revenue's instant arguments. The facts remains the CIT(A) made tremendous efforts by way of various correspondence(s) to get all the relevant material on record as to whether the impugned assessment had been framed within the statutory time limit up to 31.03.2014 or not. It has come on record that the assessing authority had also failed to indicate any material on record that the relevant computation had been uploaded even on the department's portal. We therefore hold that the CIT(A) has rightly quashed impugned assessment not framed within the time limitation prescribed. Hon'ble jurisdictional high court's decision *CIT vs. Subrata Roy; [2014] 45 taxmann.com 513 (Calcutta)* involves a case where the Revenue had filed sufficient proof before their lordships that the Assessing Officer had framed the assessment in issue within the time period prescribed as against the facts of the instant case. Hon'ble Kerala high court's judgment in *CIT vs. Sree Narayan Chandrika Trust; (1995) 212 ITR 456(Kerala)* in similar facts holds as follows:

"We shall now deal with the other references and applications under [Section 256\(2\)](#) which have been heard along with these references. The questions referred for the year 1978-79 are similar, except that one further question has been referred at the instance of the assessee, namely, "whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the order of the Commissioner of Income-tax passed under [Section 263](#) is not barred by limitation". We shall deal with this question which arises in Income-tax References Nos. 81 and 82 of 1986 relating to this year.

The Income-tax Officer made an order of assessment on January 12, 1981, holding that income accruing, to the assessee-trust from the firms of which it was a partner was exempt under [Section 10\(22A\)](#), as income accruing to the hospital, deviating from the stand taken by him earlier. The Commissioner of Income-tax took up the matter in revision under [Section 263](#) and set aside the order of assessment. The revisional order was passed on January 11, 1983, and communicated within a period of six days thereafter. The question was whether the exercise of the revisional power was barred by time. The Tribunal held otherwise and sustained the order. It is in these circumstances that the additional question has been referred.

Sub-section (2) of [Section 263](#) as it stood at the relevant time, prescribed that no order shall be made under Sub-section (1) of the section after the expiry of two years from the date of the order sought to be revised. The Tribunal was of the view that the

Commissioner had passed his order within the time prescribed, though it was communicated later.

The question as to when an order can be stated to have been made was the subject of consideration by this court in *Government Wood Workshop v. State of Kerala* [1988] 69 STC 62 ; [1987] 1 KLT 804 in which this court stated, after relying on various decisions of the Supreme Court culminating in *B.J. Shelat v. State of Gujarat*, AIR 1978 SC 1109, as follows (at page 69) :

"The order of any authority cannot be said to be passed unless it is in some way pronounced or published or the party affected has the means of knowing it. It is not enough if the order is made, signed, and kept in the file, because such order may be liable to change at the hands of the authority who may modify it, or even destroy it, before it is made known, based on subsequent information, thinking or change of opinion. To make the order complete and effective, it should be issued, so as to be beyond the control of the authority concerned, for any possible change or modification therein. This should be done within the prescribed period, though the actual service of the order may be beyond that period."

37. The Tribunal has not referred to this decision though it is relevant. We feel that the matter has not been considered by the Tribunal in the manner in which it should have been, particularly after advertence to the aforesaid decision. We, therefore, decline to answer the additional question referred at the instance of the assessee in *Income-tax References Nos. 81 and 82 of 1986*.

4. We therefore decline Revenue's sole substantive ground raised in the appeal i.e ITA No.1194/Kol/2017. The same is accordingly dismissed. The assessee's cross-objection no.10/Kol/2019 pleads that the CIT(A) has not adjudicated its averments on merits is rendered infructuous accordingly.

5. The Revenue's appeal in ITA No.1194/Kol/2017 is dismissed whereas assessee's C.O No.10/Kol/2019 is dismissed rendered infructuous.

Order is pronounced in the open court on 28.02.2019.

Sd/-
(A. L. SAINI)
ACCOUNTANT MEMBER

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 28/02/2019

(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - ACIT, Circle-50(1), Kolkata
2. The Respondent- Sunil Agarwal
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT,
Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.