

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1541/Bang/2018
Assessment Year : 2013-14

Shri. Ashok Kumar Bhavarlal, Prop: Ashok Bankers, #238, Thimmaiah, Road, Bengaluru – 560 005. PAN : AAOPB 3451 A	Vs.	Income Tax Officer, Ward – 1(2)(2), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Shivaprasad Reddy
Revenue by	:	Shri. Pradeep Kumar, CIT(DR)(ITAT), Bengaluru
Date of hearing	:	25.02.2021
Date of Pronouncement	:	03.03.2021

ORDER

Per N. V. Vasudevan, Vice President:

This is an appeal filed by the assessee against the order of Pr. CIT, Bengaluru-1, Bengaluru, passed under section 263 of the Income Tax Act, 1961 (the ‘Act’), relating to Assessment Year 2013-14.

2. The assessee is an individual. In an order of assessment concluded under section 143(3) of the Act for Assessment Year 2013-14 dated 29.09.2015 in the case of the assessee, a sum of Rs.4,23,825/- was added to the income declared in the return of income under the head “Capital Gains”. The CIT in exercise of his powers u/s.263 of the Act was of the view that the aforesaid order of the AO allowing deduction to the assessee under section 54/54F of the Act while computing capital gain was erroneous and

prejudicial to the interest of the Revenue. The CIT accordingly issued a show cause notice dated 12.03.2018. The CIT, after considering the reply to the show cause notice under section 263 of the Act, held that the order of the AO was erroneous and prejudicial to the interest of the Revenue. The order of the AO was set aside and the AO was directed to verify the claim of the assessee under section 54/54F of the Act after making all necessary enquiries and passed speaking order. Against the aforesaid order of the CIT, the assessee has preferred the present appeal before the Tribunal.

3. We shall first take up for consideration the ground No.2 raised by the assessee which reads as follows:

“BARRED BY LIMITATION:

2. The impugned order u/s.263 is received by the appellant on 04-04-2018 through SPEED POST and as per the INDIA POST consignment tracking system, the order was dispatched and handed over to the Postal Authority only on 04-04-2018 and as such it is barred by limitation, which expired on 31-03-2018.”

4. The relevant records were perused with reference to the plea of the assessee raised in ground No.2. The period of limitation for the purpose of passing an order under section 263 of the Act is 2 years from the end of the Financial Year in which the order sought to be revised was passed. The order that was sought to be revised under section 263 of the Act was passed on 29.09.2015. The period of limitation of passing order under section 263 of the Act would therefore be 31.03.2018. The impugned order was sent to the assessee by speed post. The cover containing the order was given to the postal authorities on 04.04.2018. It is the plea of the assessee that the date of dispatch of the order by handing it over to the postal authority should be taken as the date of the order. It is plea of the assessee, based on the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. PJN

Hotels Ltd., 382 ITR 110 that the date of dispatch of the order should be taken as the date of the order because that is the point of time at which the authority would lose control of modifying or changing the order.

5. In the light of the admitted position of date of dispatch of the impugned order only on 4.4.2018 to the postal authority, the question for consideration is whether the date of dispatch has to be considered as the date of the order and consequently the impugned order has to be held as bad in law and barred by limitation.

6. On the above question, the ld. counsel for the assessee has drawn our attention to the decision of the Hon'ble High Court of Karnataka in the case of Maharaja Shopping Complex v. DCIT, ITA No.832/2008, judgment dated 14.10.2014. In the aforesaid case, the facts were identical as the facts in the present case.

7. In the aforesaid case, the time limit for passing the order of assessment was 31.03.2006, the order of assessment was dated 28.02.2006. The order of assessment was, however, served on the assessee only on 18.04.2006. The question before the Court was, whether the order of assessment was barred by limitation and the date mentioned in the order of assessment should be ignored and only the date on which it was despatched to the assessee should be taken as the date of the order. The Hon'ble High Court placed reliance on the decision of the Hon'ble Kerala High Court in the case of Govt. Warehouse v. State of Kerala, [1988] STC Vol. 69 Pg. 62, wherein the Hon'ble Kerala High Court in para 14 observed as follows:-

"14. 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. This aspect of the matter had not come up for consideration in the cases of Viswanaihan Chettiar [1954] 25 ITR 79 (Mad.) and Laxmidas & Co. [1969] 72 ITR 88 (Bom) where the only question dealt with was whether service of the order after the prescribed period rendered it invalid. Unless, therefore, the order of the Deputy Commissioner in this case had been so issued from his office within the period prescribed, it has to be held that the proceedings are barred by limitation. This question has not been considered by the Tribunal. The Tribunal, which passed the order, apparently did not have the benefit of the decision in Malayil Mills case (T. R. C. Nos. 15 and 16 of 1981 decided on 7th June, 1982-Kerala High Court) which, so far as we could see, remains, unreported. The matter has therefore to go back to the Tribunal for an examination of the records to ascertain whether the order of the Deputy Commissioner had been issued from his office within the period of four years prescribed in Section 35(2) of the Act. The Tribunal will adjudicate the matter in the light of the observations contained herein and in the judgment in the case of Malayil Mills (T.R.C. Nos.15 and 16 of 1981 decided on 7th June, 1982 - Kerala High Court) extracted earlier."

8. The Hon'ble Kerala High Court thereafter held that the date of dispatch of the order of assessment should be construed as the date of order of assessment and consequently quashed the orders of assessment as barred by limitation with the following observations:-

"5. Learned counsel for the revenue is unable to point out from the records whether the assessment order was dispatched from the office before 31 03.2006. Therefore, it is clear when the same was received by the assessee on 18.04.2006, it might have been dispatched few days prior to that and subsequent to 31.03.2006. In that view of the matter, the law laid down as aforesaid squarely applies to the facts of this case and therefore, any just conclusion that could be reached is that the order passed is barred by law of limitation. In that view of the matter,

the additional substantial question of law framed today is answered in favour of the assessee and against the revenue. Accordingly, the appeal is allowed. The impugned orders are set-aside."

9. In our view, the facts of the aforesaid case are squarely applicable to the facts of the present case. Following the aforesaid judgment of Hon'ble High Court of Karnataka, the impugned order has to be held as barred by time and is liable to be annulled and is hereby annulled.

10. In the result, the appeal of the assessee is allowed on the preliminary ground of limitation. The other grounds of appeal are not taken up for consideration in view of the conclusion of the preliminary ground of appeal.

11. In the result, appeal by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore,

Dated: 03.03.2021.

/NS/*

Sd/-

(N. V. VASUDEVAN)
Vice President

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.