

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI RAJPAL YADAV HON'BLE VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.342 to 348/Ind/2020
Assessment Year:1986-87 to 1992-93**

ACIT 1(1) Bhopal (Appellant)	बनाम/ Vs.	Shri Ashok Goyal, Bhopal (Respondent)
P.A. No.AEGPG3031D		
Revenue by	Shri Amit Soni, Sr. DR	
Respondent by	Shri S.S. Deshpande, CA	
Date of Hearing:	12.11.2021	
Date of Pronouncement:	26.11.2021	

आदेश / O R D E R

PER MANISH BORAD:

The above captioned appeals at the instance of Revenue are directed against the order of Ld. Commissioner of Income Tax(Appeals)-2, (in short 'CIT(A)'), Bhopal dated 10.09.2020 which is arising out of the order u/s 144 r.w. 147 of the Income Tax Act 1961(In short the 'Act') dated 01.11.2011 framed by DCIT-3(1) Bhopal.

2. As the issues raised in these appeals are common and relate to same assessee, at the request of both the parties all the appeals were heard together and are being disposed of by this common order for sake of convenience and brevity. The Revenue has raised following common ground in all instant appeals:

- 1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in declaring the assessment order passed u/s 144 r.w.s 147 of the Act as invalid.*
- 2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in quashing the reassessment order by computing period of limitation which was different from that laid down in the Income Tax Act, 1961.*
- 3. Whether the Hon'ble High Court can over-ride the time limits stated in the Income Tax Act, 1961 by its directions.*

3. The registry has informed that the present appeal is delayed by 2 days. Ld. DR submitted that the delay in filing the appeal is due to country-wide lockdowns imposed by the government in wake of Covid-19 outbreak and taking cognizance of the same the government had introduced the taxation and other laws (Relaxation and Amendment of Certain Provisions) Act 2020 in order to relax/extend the statutory timelines for various compliance under various laws including the Income Tax Act 1961. Prayer was made to condone the delay. Ld. AR opposed the request. We, however, under the given facts and circumstances of the case, are satisfied with the

reason giving rise to delay in filing the instant appeal. We condone the delay and admit the appeal for adjudication on merits.

4. Brief facts of the case as culled out from the records are that the assessee is an individual and engaged in the business of Building construction. In the case of the assessee search and seizure operation u/s 132(1) of the Act were conducted between the period from 06.05.1993 to 31.05.1993 at his residential premises. Various documents were seized and order u/s 132(5) of the Act was passed on 24.09.1993 wherein following income was determined for the years under consideration:

S.No.	A.Y.	Computed Income (in Rs.)
1.	1986-87	1,08,000/-
2.	1987-88	70,285/-
3	1988-89	3,67,000/-
4	1989-90	36,03,735/-
5	1990-91	1,25,14,739/-
6	1991-92	84,32,536/-
7	1992-93	1,21,47,911/-

5. Accordingly, notices u/s 148 of the Act were issued for the above years and income was assessed. The details of which are as under:-

A.Y.	Date of issue of Notice u/s 148	Date of service on the assessee	Assessed income (in Rs.)
1986-87	05.10.1993	07.10.1993	1,08,000/-
1987-88	05.10.1993	07.10.1993	70,285/-
1988-89	05.10.1993	07.10.1993	3,67,000/-
1989-90	28.09.1993	29.09.1993	36,03,735/-
1990-91	28.09.1993	29.09.1993	1,25,14,739/-
1991-92	28.09.1993	29.09.1993	84,32,536/-
1992-93	28.09.1993	29.09.1993	1,21,47,911/-

6. The Ld. AO has mentioned in the assessment orders that a fire broke out in Room No.316 at Aayakar Bhawan on 25.07.1993 in which certain documents pertaining to the assessee were destroyed. Thereafter a separate panchnama was prepared for the burnt documents and the documents saved from fire. The assessee filed writ petition before Hon'ble jurisdictional High Court against the order passed u/s 132(5) of the Act, attachment of immovable property and issue of notice u/s 148 for the A.Y. 1986-87 to 1992-93. Hon'ble Jurisdictional High Court vide order dated 05.10.1994 granted stay for the preceding under way initiated by issuance of notice u/s 148 of the Act dated 05.10.1993. This stay was further extended vide order dated 05.11.1994. Thereafter Hon'ble High court vide order dated 13.03.2006 ordered *“that since the*

assessment order has not been passed by now, respondents to consider the case in accordance with law and to pass an order in terms of the factual scenario and duly considering why order was not passed so far and whether case can proceed any further, let mater be considered within 3 months. Petition stands disposed of no costs.

7. During the course of assessment proceedings whenever the Ld. AO asked the assessee to attend the office it was requested by the assessee to the ld. AO that proceedings may be completed as per order of the Hon'ble High Court dated 13.03.2006. Ld. AO completed the assessment *ex-parte* u/s 144 r.w.s. 147 of the Act making various additions.

8. Aggrieved assessee preferred an appeal before the ld. CIT(A) challenging the validity of the assessment proceedings being barred by limitation and also raised grounds on merit. Ld. CIT(A) decided the legal issue in favour of the assessee holding that the assessment orders are barred by limitations and did not deal with the other issues on merit being academic in nature.

9. Now the revenue is in appeal before this Tribunal challenging the finding of Ld. CIT(A), quashing the assessment orders being barred

by limitation. Ld. DR supported the finding of Ld. AO and Ld. counsel for the assessee relied in the finding of Ld. CIT(A).

10. We have heard rival contentions and perused the records placed before us. The revenue has challenged following finding of Ld. CIT(A) quashing the impugned assessment orders being barred by limitation.

4.2 I have duly considered the fact mentioned in the assessment order, submission of the appellant and orders of the Hon'ble High Court given from time to time. It is pertinent to mention that my predecessor has passed common appeal order on 01.11.2011 for the A.Y. 1986-87 to 1992-93. The decision of my predecessor is reproduced here under:

"On examination of form No. 3S it was found that in the form of verification, date and place of verification is not mentioned. This substantive defect is common to all the seven appeals. During the hearing on 12.10.2011 this fact was brought to the notice of the Authorised Representative of the appellant and he was asked to show causes to why admission of appeal should not be rejected due to these defects. In response, the A.R. filed letters on 21.10.2011 which are reproduced below:

"1. The assessee had filed appeals for the aforesaid assessment year before your goodself on 18.05.2009.

2. In the said appeal date and place of verification was not mentioned and as such the said appeals were found to be defective by your good self.

3. The assessee is filing hereuii h revised form No. 3S mentioning therein the place and date of verification and thereby removing the defects .

4. You are requested to kindly accept the said revised memorandum of appeal.

S. In case your honour considers it to be filing of fresh appeal the delay in filing of appeal may kindly be condoned as the said default was not willful on the part of the assessee and had been removed immediately after being brought to the notice of the assessee.

2. In view of the facts of the matter it is held that the appeals filed on 18.08.2009 being subject matter of this order have substantive

deject in verification hence are not admissible. The revised forms of appeal have been submitted on 20.10.2011. They are also barred by limitation. In the prayer for condonaton of delay in filing appeal it is stated that wrong verification was not done unllfullu. This is not a sufficient cause for condonation of delay. The appellatant has not given any reason for wrong verification except stating that it was not willful. A wrong verification is a substantive defect and since it is not caused due to any reasonable cause to delay in filing of appeal are not condoned. All appeals are dismissed without admission.

In the result, he 7 appeals are Dismissed. "

Thereafter the appellatant approached the Hon'ble ITAT, Indore against dismissal of seven appeals. Hon'ble ITAT, Indore bench. Indore decided the appeals on 30.04.2012 vide ITA No. 20- 2 for A.Ys. 1986-87 to 1992-93. Hon'ble ITAT e appear O the file of the CIT(A) for adjudication of after providing opportunity of being heard to the Relevant part of decision of Hon'ble ITAT is reproduced here under:

"..... राजस्व का प्रकरण यह नहीं है कि अपीलें विद्वान प्रथम अपीलीय प्राधिकारी के समक्ष विलंब से दाखिल की गई थी । ये महज एक तकनीकी त्रुटि है, जो निर्धारिती द्वारा सुधारी भी गई थी, अतः तथ्यों की समग्रता एवं प्राकृतिक न्याय के सिद्धांत कि किसी व्यक्ति पर सुनवाई के बिना दोषारोपण नहीं किया जाना चाहिए, को ध्यान में रखते हुए ये सभी अपीलें विद्वान आयकर आयुक्त (अपील) की फाईल में, अपीलें स्वीकार करने के निर्देश के साथ प्रतिप्रेषित करते हैं क्योंकि निर्धारिती द्वारा त्रुटि उसके लिए तर्कसंगत वजह दर्शाने के पश्चात सुधारी गई है । हम, अतः ये अपीलें विद्वान आयकर आयुक्त (अपील) की फाईल में विधि के अनुसार गुणागुण पर नये सिरे से न्यायनिर्णयन के लिए पुनर्स्थापित करते हैं जिसके लिए निर्धारिती को सुनवाई का पर्याप्त अवसर दिया जाए । निर्धारिती उसके दावे को साबित करने हेतु साक्ष्य प्रस्तुत करने, यदि कोई है, के लिए भी स्वतंत्र है । निर्धारिती की ये अपीलें, अतः केवल सांख्यिकीय उद्देश्य से स्वीकृत की जाती हैं। "

Accordingly, various opportunities have been provided to the appellatant for adjudication of the cases. Vide this office letter dated 01.11.2010, 07.07.2011, 24.09.2014, 19.02.2016 the A.O. was requested to submit comments on the issue of validity of the assessment orders. But the A.O. did not turn up. In absence of the comments of the A.O. I am deciding the above grounds of appeal on the basis of material fact available on record and the provisions of law in this regard. I place reliance upon the decision of Hon'ble

High Court of Delhi in the case of Imperial Cables P.l. ITA No. 292/2006, although it pertains to non response of the A.O. on additional evidences but relevant here also, wherein while dismissing the appeal of the Revenue, it is held that "we find from the material placed before us that more than adequate opportunities were given to the AO to respond to the application moved by the assessee for placing additional evidence before the appellate authority. Since the AO took no interest in the matter, the appellate authority had no option to allow the application and to take the additional evidence on record. No grievance can be raised by the Revenue in this regard. JJ It is apparent from the assessment order that the Hon'ble High Court of M.P. had granted stay on the proceedings u/s 147 vide order dated 05.10.1994 and it was further extended vide order dated 28.06.1995. The Ld. A.O. has also mentioned the orders of the Hon'ble High Court dated 05.10.1994, 25.11.1994, 28.06.1995 granting stay on notice u/s 148 of the Act. On receipt of notice u/s 142(1) of the Ac . the appellant had sent reply through registered post sa' g tha the assessments should be decided as per the order da ed 13.03.2006 of the Hon'ble High Court. But the Ld. A.O. did not deal with the objection of the appellant in the assessment order. The appellant had basically raised the issue of limitation of the proceedings by citing order of Hon'ble High Court which should have been disposed of in speaking manner in the assessment order. But, he is totally silent on the order dated 13.03.2006 of the Hon'ble High Court. I find that in WP No. 2814/1994 the Hon'ble High Court has ordered on 13.03.2006 that "As it appears that no order has been passed by now, respondents to consider the case in accordance with law and to pass an order in terms of the factual scenario and duly considering why order was not passed so far and whether case can proceed any further, let mater be considered within 3 months. Petition stands disposed of no costs." It is evident from the above order that the stay on notice u/s 148 was lifted on 13.03.2006 and the A.O. was granted time period of 3 months from 13.03.2006 to pass an order. Considering the above order passed by the Hon'ble High Court, the time limit for passing the assessment orders was available to the A.O. up to 12.06.2006. However, considering the provisions of section 153 of the Act, the time limit for completion of assessment u/s 147 of the Act is re-determined as under:

<i>Date of issue of notice U/S 148</i>	<i>05.] 0.1993/28.09.1993</i>
<i>End of relevant financial year</i>	<i>31.03.1994</i>
<i>Last date on which order could have been passed if not stayed by the Hon'ble HC</i>	<i>31.03.1996</i>
<i>Date of first hearing before the Hon'ble</i>	<i>05.10.1994</i>

HC when stay was granted	
Period remaining for completion of assessment (from 05.10.1994)	11 year, 5 months, 26 days
Date of stay vacating order of the Hon 'ble Court	13.03.2006
Add: remaining period for assessment	01 year, 5 months, 26 days
Revised limitation date	06.09.2007
Order passed on	11.10.2007

It is evident from the above calculation that due to stay granted by the Hon'ble High Court the time limit for completion of the assessment in all the years under appeal goes upto 06.09.2007. But the assessment orders have been passed on 11.10.2007. Therefore, it can be conclusively said that the assessment orders which are subject matter of appeal before me are barred by limitation. Further, vide order dated 13.03.2006 Hon'ble High Court had given 3 months time to pass assessment orders. Accordingly, time available with the A.O. was upto 12.06.2006 to pass the assessment orders. In my opinion, the Hon'ble High Court had allowed time limit upto 12.06.2006 to pass the assessment orders. My this view is also supported by the order dated 25.02.2013 of Hon'ble High Court passed in department's MCC Petition No. 1432/2006 wherein the department had prayed that the time limit fixed on 13.03.2006, in WP No. 2814/1994 be extended by a further period of 3 months. The said MCC Petition was filed on 27.07.2006. The above mentioned order is reproduced here under:

{M. C. C. Petition No. : 1432/2006

*Commissioner of Income Tax and others Vs. Ashok Goyal
25.02.2013*

Shri Sanjay Lal with Shri Rajesh Pandey for the applicant.

This is a Miscellaneous Application filed by the Commissioner of Income Tax) and the prayer made in the application is that the time limit fixed on 13.03.2006} in Writ Petition o. 2814/1994, be extended by a further period of three months.

While disposing of writ Petition o. 2814/1994} on 13.03.2006, a Bench of this Court granted the applicant three months time to take action. The application was filed on 27.07.2006 and is listed today after a period of more than seven years.

The only prayer made in the application is that the time limit fixed on 13.03.2006} in Writ Petition No. 2814/1994} be extended by a further period of three months.

A period of more than seven years have passed and} therefore, with the passage of time, this application which seeks for extension of time by three months, has already expired.

Accordingly} finding the application to have been rendered infructuous with the passage of time, the same is dismissed.

I find that the assessment order have been passed neither on 12.06.2006 nor on 06.09.2007. The assessment order for the assessment years under consideration have been passed on 11.10.2007. Thus, I find that the all the orders are barred by limitation. Therefore, these orders cannot be treated as valid order passed under the Act. Hence, assessment orders under consideration are quashed. The above grounds of appeal are allowed.

5. In view of the decision given in para 4.2 of this order wherein assessment orders have been quashed, the other grounds of appeal re not liable to be considered as the same would not solve any purpose.

11. From perusal of the above finding Ld. CIT(A) as well as the directions given by the Hon'ble High Court disposing of the Writ Petition No.2814/1994, we find that the notice u/s 148 of the Act was issued on 05.10.1993. The end of relevant financial year is 31.03.1994. Statutory date for passing the order was 31.03.1996. Since Hon'ble High Court granted the stay for 11 years 5 months, 9 days and stay got vacated on 13.03.2006 the remaining period for completing the assessment was 1 year 5 months and 26 days. Accordingly the revised period of limitation due to expire on 06.05.2007. But the assessment order was framed on 11.10.2007. These facts were not controverted by Ld. DR. Therefore, under these given facts and circumstances of the case the assessment orders passed were barred by limitation and have been rightly quashed by

Ld. CIT(A) in the impugned order. We thus find no inconsistency in the order of Ld. CIT(A) quashing the assessment orders from A.Ys. 1986-87 to 1992-93. Accordingly effective ground no.1,2 & 3 raised by the revenue are dismissed.

12. In the result, Revenue's Appeals in ITANos.342 to 348/Ind/2020 are dismissed.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on ...26.11.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 26/11/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore