

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.2385/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2009-10

M/s. Shanthi Fortune (India)  
Private Limited,  
Door No. 38, Trichy Road,  
Palladam 641 664.  
**[PAN: AAJCS4289D]**

Vs. The Assistant Commissioner of  
Income Tax,  
TDS Circle, Coimbatore.

आयकर अपील सं./I.T.A. No.2557/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2009-10

&

**C.O. No. 88/Chny/2019 [in I.T.A. No.2557/Chny/2018]**

The Income Tax Officer,  
TDS Ward, No. 121,  
Sixty Feet Road, Tirupur 641 602.

Vs. M/s. Shanthi Fortune (India)  
Private Limited,  
Door No. 38, Trichy Road,  
Palladam 641 664.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

Department by : Shri P. Sajit Kumar, JCIT

Assessee by : Shri N Arjun Raj, C.A.

सुनवाई की तारीख/ Date of hearing : 17.11.2022

घोषणा की तारीख /Date of Pronouncement : 30.11.2022

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

Both the cross appeals filed by the assessee as well as Revenue are directed against the order of the Id. Commissioner of Income Tax (Appeals) 2, Coimbatore, dated 25.06.2018 relevant to the assessment

year 2009-10. The assessee has also filed Cross Objection. The assessee has raised following additional grounds:

- “1. *In continuation of the Grounds of Appeal filed along with the subject appeal, the Appellant beg this Hon'ble Income Tax Appellate Tribunal to consider the following Additional Grounds of Appeal.*
2. *Barred by Limitation - Procedural Law.*
  - 2.1 *The assessment proceedings and its order dated 30.08.2016 by the Assistant Commissioner is barred by limitation in view of sec.153(3) as amended by the Finance Act, 2016 w.e.f. 01/06/2016. That is, time limit to complete the assessment proceedings u/s. 153(3) is nine months from the end of the financial year in which the order u/s.254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the case may be.*
  - 2.2 *In the subject case, the order was received by Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in July 2013 and the end of the financial year is March 2014. Nine months limitation period will end in December 2014. Therefore, the Assistant Commissioner should have passed the assessment order on or before 31.12.2014, but the same was came to be passed on 30.08.2016.*
  - 2.3 *The Hon'ble Supreme Court of India in "M.P. Steel Corporation vs. Comm. of Central Excise" - (2015) 7 SCC 56 (SC) settled the law that a law relating to limitation and forum being procedural laws, will be applicable from retrospectively. The relevant portions from the said judgement is reproduced herein below:*

*Though periods of limitation, being procedural law, are to be applied retrospectively, yet if a shorter period of limitation is provided by a later amendment to a statute, such period would render the vested right of action contained in the statute nugatory as such right of action would now become time barred under the amended provision.*

*Substantive and procedural law*

*23. Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation.*

24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.

25. Law on the subject has also been elaborately dealt with by this Court in various decisions and reference may be made to a few of those decisions. This Court in *Garikapati Veeraya v. N. Subbiah Choudhry* [MANU/SC/0008/1957: AIR 1957 SC 540], *New India Insurance Co. Ltd. v. Shanti Misra* [MANU/SC0547/1975: (1975) 2 SCC 840], *Huendra Vishnu Thakur v. State of Maharashtra* [MANU/SC/0526/1994: (1994) 4 SCC 602: 1994 SCC (Cri) 1087], *Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar* [MANU/SC/0643/1999: (1999) 8 SCC 16] and *Shyam Sunder v. Ram Kumar* [MANU/SC/0405/2001: (2001) 8 SCC 24], has elaborately discussed the scope and ambit of an amending legislation and its retrospectivity and held that every litigant has a vested right in substantive law but no such right exists in procedural law. This Court has held that the law relating to forum and limitation is procedural in nature whereas law relating to right of appeal even though remedial is substantive in nature.

26. Therefore, unless the language used plainly manifests in express terms or by necessary implication a contrary intention a statute divesting vested rights is to be construed as prospective, a statute merely procedural is to be construed as retrospective.

2.4 Therefore, the learned Commissioner (Appeals) is wrong in not considering the limitation as per section 153 (3) in proper perspective.

For the aforesaid additional ground, of appeals hereinabove and that may be adduced at the time of hearing, it is prayed that the subject appeal may be allowed and order of Commissioner (Appeals) may be quashed in so far as the decision on limitation and thereby the order of the assessing office, may be quashed as barred by limitation and justice be rendered.”

2. Brief facts of the case are that in the first round of litigation, vide order in I.T.A. No. 2260/Mds/2012 & CO No. 30/Mds/2013 dated 17.07.2013 for the relevant assessment year 2009-10, the ITAT has remitted the matter back to the file of the Assessing Officer to verify the veracity of the documents filed by the assessee before the Id. CIT(A) and decide the matter afresh. Accordingly, by order giving effect to the order

of the ITAT, vide order dated 30.08.2016, by considering the details furnished by the assessee, the Assessing Officer raised the demand under section 201(1) of the Income Tax Act, 1961 ["Act" in short] and levied interest thereon under section 201(1A) as under:

| Tax due u/s. | Demand u/s 201(1) | Interest u/s 201(1A) | Total tax payable |
|--------------|-------------------|----------------------|-------------------|
| 194H         | ₹.6,14,879/-      | ₹.10,53,905/-        | ₹.16,68,784/-     |
| 194A         | ₹.85,31,078/-     | ₹.1,19,84,247/-      | ₹.2,05,15,325/-   |
| Total        | ₹.91,45,957/-     | ₹.1,30,38,152/-      | ₹.2,21,84,109/-   |

3. The assessee carried the matter in appeal before the Id. CIT(A) and besides challenging on merits, the assessee also disputed that the order giving effect to the order of the ITAT passed by the Assessing Officer is barred by limitation. After considering the submissions of the assessee, the Id. CIT(A) held that the completion of assessment giving effect to the order under section 254 of the Act passed by the Assessing Officer dated 30.08.2016 was not barred by limitation. On merits, the Id. CIT(A) directed the Assessing Officer to exclude the service tax component of ₹.9,27,000/- and re-compute the liability of the assessee under section 194H of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal challenging that the order giving effect to the order of the ITAT passed by the Assessing Officer is barred by limitation. The Revenue also filed an appeal against the decision of the Id. CIT(A) in respect of TDS under

section 194A of the Act. Against the appeal filed by the Revenue, the assessee has also filed Cross Objection.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the ITAT in I.T.A. No. 2260/Mds/2012 & CO No. 30/Mds/2013 passed the order dated 17.07.2013 for the relevant assessment year 2009-10. Subsequently, the Assessing Officer has passed the consequential order of giving effect to the order of the ITAT dated 30.08.2016. The assessee has challenged before the Id. CIT(A) that the order giving effect to the order of the ITAT passed by the Assessing Officer is barred by limitation. However, the Id. CIT(A) has confirmed the order of the Assessing Officer by holding that the order giving effect to the order of the ITAT passed by the Assessing Officer is not barred by limitation.

5.1 The provisions of section 153(2A) of the Act enacted vide Finance Act, 2013 clearly specifies the time limit for passing the effect giving order in consequence to the directions of the IT AT and the same is extracted below:

*“(2A) Notwithstanding anything contained in sub-sections (1) l (JA), (JB)]and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section*

*254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner:*

5.2 From the above, it is clear that the effect giving order as per section 153(2A) of the Act, as it stood at the relevant point in time, should have been passed at any time before the expiry of one year from the end of the financial year in which the order under section 254 of the Act is received by the Chief Commissioner or Commissioner. The Id. DR, during the course of hearing, had brought to the notice of the Bench that the order was received in the month of July 2013. In such circumstances, the effect giving order in pursuance to the order of the ITAT dated 17.07.2013 (First Round) ought to have been passed on or before 31.03.2015. However, the said effect giving order in the present case was passed on 30.08.2016, which is clearly beyond the limitation period prescribed therein. Therefore, the findings of the Id. CIT(A) in his order dated 25.06.2018 is legally incorrect, since the Id. CIT(A) has not considered the provisions of section 153(2A) of the Act. Thus, we are of the considered opinion that the order passed by the Assessing Officer on 30.08.2016 giving effect to the order of the ITAT is barred by limitation and cannot survive. Accordingly, the order passed by the Assessing Officer dated 30.08.2016 of order giving effect to the order of the ITAT is

quashed and the findings of the Id. CIT(A) are reversed. Thus, the appeal filed by the assessee is allowed.

6. Since we have quashed the assessment order, the appeal preferred by the Revenue has been redundant as well as the CO of the assessee is academic and accordingly, dismissed.

7. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue and the CO filed by the assessee are dismissed.

Order pronounced on the 30<sup>th</sup> November, 2022 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, the 30.11.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/  
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय  
प्रतिनिधि/DR & 6. गार्ड फाईल/GF.