

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.951/Bang/2022 : Asst.Year 2011-12

Sri Kullachari Puttamma Nanjundi Vishwakarma No.475, Nanjundi Arcade 6 th Cross, Sampige Road Malleswaram Bengaluru-560 003 PAN : ABMPN9442L	v.	DCIT,CC-1(4) Bengaluru
(Appellant)		(Respondent)

Appellant by : Sri V. Chandrashekar, Advocate
Respondent by : Ms. Neera Malhotra, CIT-DR

Date of Hearing : 02.02.2023	Date of Pronouncement : 06.02.2023
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 29.07.2022. The relevant assessment year is 2017-2018

2. The grounds raised read as follows:-

1. *The order of the learned Commissioner of Income tax (Appeals) passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*
2. *The Appellant denies himself liable to be assessed on total assessed income of Rs.6,94,42,960/- as determined by the learned assessing officer and upheld by the learned CIT(A), as against the returned income by the Appellant of Rs.5,94,42,960/- under the facts and circumstances of the case.*

3. *Grounds on assessment order being barred by Limitation.*

- (i) *The learned Commissioner of Income tax (Appeals) failed to appreciate that the assessment order passed by the learned assessing officer under section 153A r.w.s. 143(3) of the Act is barred by limitation on the facts and circumstances of the case.*
- (ii) *The learned Commissioner of Income tax (Appeals) erred in not calling for the dispatch register for verifying actual date as to when the assessment order left the control of the assessing officer and further failed to appreciate that the assessment order dated 27.03.2015 passed by the learned assessing officer u/s. 153A r.w.s. 143(3) of the Act had left the control of the learned assessing officer only after 31.03.2015 i.e., on 07.04.2015 and consequently the assessment order passed is barred by limitation and is liable to be annulled on the facts and circumstances of the case.*
- (iii) *The learned Commissioner of Income tax (Appeals) failed to provide the copy of the dispatch register though specifically requested by the Appellant for rebuttal by the Appellant and consequently, the Appellate order passed is in violation of principles of natural justice and the Appellate order requires to be set aside on the facts and circumstances of the case.*

4. *Grounds on validity of search u/s. 132 of the Act.*

- (i) *The learned Commissioner of Income tax (Appeals) failed to appreciate that the Appellant is not liable to be assessed under section 153A r.w.s. 143(3) of the Act under the impugned order on the ground that:-*
 - a. *The search initiated in the case of the Appellant is illegal and ultra vires the provisions of section 132(1)(a), (b) &(c) of the Act.*
 - b. *That the search is conducted not on the basis of any prior information or material inducing any relief but purely on the suspicion and therefore, the action under section 132(2) is bad in law [CIT vs. Vindhya Metal Corporation, 224 ITR 614 (SC) and consequent assessment under section 153A is null and void-ab-initio on the parity of the ratio of the decision of the Hon'ble Apex Court in the case of Ajith Jain, reported in 260 ITR 80.*
 - c. *The learned authorities below have not discharged the burden of proving that there is a valid initiation, execution and completion of search under section 132(1)(a), (b) & (c) of the Act, in accordance with law to render the*

proceedings valid and to assume jurisdiction to make an assessment under section 153A of the Act.

- (ii) The learned commissioner of Income tax (Appeals) failed to appreciate that the order passed under section 153A r.w.s 143(3) of the Act is bad in law as there is no valid search on the appellant under section 132 of the Act and a valid search is sine qua non for making a valid assessment under section 153A of the Act.*
 - (iii) The learned Commissioner of Income tax(Appeals) failed to appreciate that the notice issued under section 153A of the Act is bad in law under the facts and circumstances of the case.*
 - (iv) The learned Commissioner of Income tax (Appeals) failed to appreciate that the satisfaction regarding the inference of liability must be recorded and in the absence of the same, the proceedings is bad in law and liable to be quashed totally on the facts and circumstances of the case.*
 - (v) The learned Commissioner of Income tax (Appeals) failed to appreciate that assessment made u/s. 153A r.w.s. 143(3) of the Act is bad in law when neither any incriminating material was found in the course of search nor any addition has been made in the assessment on the basis of material seized during the course of search in the case of the Appellant on the facts and circumstances of the case.*
 - (vi) The learned Commissioner of Income tax (Appeals) failed to appreciate that a valid search is a sine qua non for making a valid assessment under section 153A of the Act on the parity of ratio of the decision of the Hon'ble Apex Court in the case of Ajit Jain reported in 260 ITR 80 on the facts and circumstances of the case.*
 - (vii) Without prejudice, the learned Commissioner of Income tax (Appeals) failed to appreciate that the learned Commissioner of Income tax (Appeals) can look into the other aspects of validity of search other than referred to Explanation to section 132(1) of the Act on the facts and circumstances of the case.*
 - (viii) The learned Commissioner of Income tax (Appeals) erred in holding that the learned Commissioner of Income tax (Appeals) could not look into validity of search and consequently, gave a perverse finding on the facts and circumstances of the case.*
5. *Grounds of whether provision of section 153A or 153C of the Act is applicable.*
- (i) The learned Commissioner of Income tax (Appeals) failed to appreciate that the notice under section 153C*

of the Act ought to have been issued for making the assessment as addition was made based on the seized material found in the premises of M/s. Lakshmi Gold Khazzanaa Pvt.Ltd. and the order passed under section 153A of the Act by considering the materials seized from the premises of M/s. Lakshmi Gold Khazzanaa Pvt.Ltd. is not valid in the law on the facts and circumstances of the case.

(ii) The learned Commissioner of Income tax (Appeals) failed to appreciate that the assessment order passed under section 143(3) r.w.s. 153A of the Act is without jurisdiction and the lower authority without prejudice ought to have issued notice under section 153C of the Act after complying with the mandatory conditions on the facts and circumstances of the case.

6. The learned Commissioner of Income tax (Appeals) failed to appreciate that the assessment made under section 153A r.w.s. 143(3) of the Act is bad in law when neither any incriminating materials were found in the course of search nor any addition has been made in the assessment on the basis of material seized during the course of search in the case of Appellant on the facts and circumstances of the case.

7. Grounds on merits of the case: Addition of Rs.1,00,00,000/- u/s. 69 of the Act.

(i) The learned Commissioner of Income tax (Appeals) is not justified in law in confirming the addition made by the learned assessing officer u/s. 69/69B of the Act amounting to Rs.1,00,000/- under section 69 of the Act on the facts and circumstances of the case.

(ii) The learned Commissioner of Income tax (Appeals) erred in upholding the addition made without appreciating that the section 69 of the Act is not applicable in the case of the Appellant under the facts and circumstances of the case.

(iii) The addition confirmed by the Commissioner of Income tax (Appeals) is not in accordance with law under the facts and circumstances of the case.

(iv) The finding of the learned Commissioner of Income tax (Appeals) for confirming the addition of Rs.1,00,000/- is perverse on the facts and circumstances of the case.

8.The learned Commissioner of Income tax (Appeals) erred in not admitting the additional grounds of appeal filed by the Appellant before the learned Commissioner of Income tax (Appeals). '4.The learned Assessing Officer failed to appreciate that the search conducted in the case of the

appellant is not a valid search and the conditions contemplated under section 132 of the Act have not been complied and more so when no addition was made in the case of the appellant based on the materials seized in the course of search of the appellant on the facts and circumstances of the case.'

9. The learned Commissioner of Income tax (Appeals) erred in not admitting the additional grounds of appeal filed by the Appellant before the learned Commissioner of Income tax (Appeals).'⁵ Without prejudice, the assessment cannot be made under section 153C of the Act in the case of appellant unless mandatory conditions are complied with including recording proper satisfaction by the Assessing Officer of the searched person and the learned Assessing Officer having jurisdiction on the appellant as required under the provisions of law on the facts and circumstances of the case'.

10. The learned Commissioner of Income tax (Appeals) failed to appreciate the statement of facts, written submissions, rejoinder and other material produced by the Appellant in respect of all the issues on the facts and circumstances of the case.

11. Levy of interest u/s. 234A & 234B of the Act.

(i). Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karnavir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234A, 234B of the Income Tax Act under the facts and circumstances of the case.

(ii) Without prejudice the levy of interest under section 234A and 234B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discern able and are wrong on the facts of the case.

12. The Appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.

13. For the above and other grounds to be urged during the course of hearing of the appeal the appellant prays that the appeal be allowed in the interest of equity and justice.

3. The brief facts of the case are as follows:

The assessee an individual is engaged in the business of trading Gold Jewellery, Silver Articles & Diamonds. For AY 2011-12, the return of income was filed on 30.09.2011 declaring total income of Rs.5,94,42,960/-. A search u/s. 132 of the I.T.Act was conducted in the case of the assessee on 08.02.2013. Consequent to the search proceedings, the AO completed the assessment u/s. 153A r.w.s. 143(3) of the I.T.Act on 27.03.2015 determining total income at Rs.6,94,42,960/-.

4. Aggrieved, assessee preferred an appeal before the first appellate authority. The ld.CIT(A) dismissed the appeal of the assessee vide the impugned order dated 29.07.2022.

5. Aggrieved by the impugned order of the ld.CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising of sixty seven pages, enclosing therein the written submission filed before the income tax authorities, the details with regard to the dispatch of the assessment order, the case laws relied on etc. The ld. AR submitted the assessment order is barred by limitation since the same has been dispatched only on 07.04.2015. It is submitted that the assessment order should be issued from the office of the AO within the time limit i.e 31.03.2015 and the dispatch seal of postal authority being 07.04.2017, the assessment order is barred by limitation. In this context, the ld. AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of M/s. Maharaja

Shopping Complex vs. DCIT in ITA No.832/2008 dated 14.10.2014 and the order of the Tribunal in the case of M/s. Globe Transport Corporation vs. ACIT in ITA No.629-631/Bang/2014 (order dated 04.01.2019).

6. The ld.DR on the other hand submitted the order has been made within the date of limitation period and dispatched by the AO on 27.03.2015 i.e within the period of limitation. In this context, the ld.DR relied on judgment of the Hon'ble Apex Court in the case of CIT vs. Mohammed Meeran Shahul Hameed (judgment date 07.10.2021).

7. We have heard rival submissions and perused the material on record. Assessee's, primary contention is that the order of assessment passed by the AO u/s. 153A r.w.s. 143(3) of the I.T.Act dated 27.03.2015 is barred by limitation. The time limit for completing the assessment for the impugned AY 2011-12 is on or before 31.03.2015 as per the provisions of section 153 of the I.T.Act. The assessment order though dated 27.03.2015, it was dispatched through BG City post office on 07.04.2015 at 21.23 hours and it was served on the assessee by speed post on 09.04.2015 at 16.21 hours. The assessee had taken the print out from the web-site (Article Tracking) in respect of dispatch and delivery details of assessment order booked through No.EK 22288164 2IN. The copy of the postal cover is placed on record at page 15 of the paper book submitted by the assessee. The said postal cover contains the date of dispatch on 07.04.2015. The print out

taken by the assessee from the web-site of India Post (Article Tracking) is placed on record at page 16 of the paper book submitted by the assessee. It clearly indicates that the postal cover was dispatched on 07.04.2015 at 21.23 hours and delivered to the assessee on 09.04.2015 at 16.21 hours. Viewed from the above factual scenario, let us examine the contention of the assessee.

8. Various judicial pronouncements (which we shall discuss in the later part of this order) had clearly held that an order of any authority could not be said to be passed unless it was in some way pronounced or published. It has been stated that it was not enough if the order was made, signed and kept in the file. 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 (emphasis supplied). Thus, the order of assessment ought to have left the office of the AO on or before 31.03.2015. In the instant case, the order has left the office of the AO only after the specified date i.e 31.03.2015. Thus, the assessment order has been passed in violation of section 153 of the I.T.Act. In this context, we rely on the judgment of the Hon'ble Jurisdictional High Court in the case of M/s. Maharaja Shopping Complex vs DCIT (supra). The relevant observation of the Hon'ble High Court reads as follows:-

"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 an subsequent to 31.03.2016. 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 limitation”.

9. The Hon’ble Supreme Court in the case of B.J.Shelat vs. State of Gujarat reported in AIR 1978 SC 1109 had held for the proviso to become operative it is necessary Government should not only take a decision but communicate it to the Government Servant. It is not necessary that the communication should reach the Government Servant. It would be sufficient if such order is sent out and goes out of control of the appointing authority before the relevant date. Further, it was observed by the Hon’ble Court that once the same has been sent out to the concerned Government Servant, it must have been communicated no matter when he actually received it.

10. The Hon’ble Gujarat High Court in the case of CIT vs. Purshottamdas T Patel reported in 209 ITR 52 (Guj) had held the AO having failed to determine the tax payable on assessed income within the prescribed time u/s. 153 of the I.T.Act, (though the assessment order was passed within the time) the assessment has become time barred.

11. The Hon’ble Kerala High Court in the case of Commissioner of Agricultural Income tax vs. Kappumalai Estate reported in 234 ITR 187(Ker.) had held 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. This should have been done within the prescribed time, though the actual service of the order may be beyond that period.

12. The Co-ordinate Bench of the Bengaluru Tribunal in the case of M/s.Globe Transport Corporation vs. ACIT (supra) an identical factual situations had quashed the assessment order as barred by the limitation. The relevant finding of the Bengaluru Bench of the Tribunal reads as follows:-

“8. It is not in dispute before us that the 2nd proviso of section 153(2A) of the Act is applicable in the present case and therefore the order of assessment pursuant to the directions of Tribunal is required to be passed within nine months from the date on which the order of Tribunal is received by the Commissioner. The period of limitation if reckoned as per those provisions is 31.12.2011. The plea of the assessee before the CIT(Appeals) was that though the order of assessments were dated 30.12.2011 and appear to be within the period of limitation of 31.12.2011 for passing the order of assessment in terms of section 153(2A) of the Act, yet the date of order of assessment has to be reckoned as 09.01.2012, the date on which the order was despatched by the AO. On such contention, the assessee pleaded before the CIT(Appeals) that the order of assessment is barred by time and is liable to be annulled. On such a plea, the CIT(Appeals) held that the order of assessment is within time with the following observations:-

“2.5 In the instant case, the date of assessment order was mentioned on 30/12/2011 and sent by Registered Post with Acknowledgment. In the remand report also, the present AO held that the assessment was concluded on 30/12/2011. Further, a perusal of the order sheet shows that the completion of date of assessment order was on 30/12/2011. In view of the ratio of the decision of the various High Courts as cited above, the assessment order passed on 30/12/2011 but served on the appellant on 09/01/2012 was not barred by limitation u/s 153(2A) of the Act. The appeal in this ground is therefore dismissed.”

9. Aggrieved by the aforesaid order of CIT(Appeals), the assessee has raised ground No.2 before the Tribunal, which we have set out in the earlier part of this order.

10. We have heard the rival submissions. As we have already observed, it is undisputed that the order of assessment was despatched by the AO only on 09.01.2012 and that the last date of limitation for passing the order of assessment, pursuant to the directions of the Tribunal in all the three assessment years was 31.12.2011. The question which arises for consideration is, whether the date of despatch has to be construed as the date of order of assessment and consequentially the orders of assessment have to be held as bad in law.

11. 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.

12. 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.”

13. The Hon’ble Kerala High Court thereafter held that the date of despatch 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.”

14. 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 orders of assessment have to be held as barred by time and all the orders of assessment are therefore liable to be annulled and are hereby annulled.

15. The ld. DR, however, placed reliance on the decision of the Hon’ble Calcutta High Court in the case of CIT v. Subrata Roy [2014] 45 taxmann.com 513 (Calcutta) wherein the Hon’ble Court took the view that assessment order passed within limitation period cannot be doubted merely because the demand notice was served after 47 days of the limitation period. We are of the view that the aforesaid decision is contrary to the law laid down by the Hon’ble High Court of Karnataka which is the jurisdictional High Court as far as this Tribunal and the present appeal is concerned. We are therefore bound to follow the decision of the jurisdictional High Court.

16. In view of the decision on the preliminary point, the other issues raised by the assessee in its appeals and the grounds raised by the revenue in its appeals do not require any adjudication.”

13. The ld.CIT(A) had rejected the contention of the assessee that the assessment is time barred by observing that the assessment order has been dispatched by the AO on 27.03.2015 itself and same is evident from the entry in the Demand & Collection Register (D&CR). The question is whether the dispatch to dispatch register within the department would suffice so as to state that the assessment order has gone out of control of the AO for any possible change or modification ?. The answer to the above question would be certainly no. Unless and until, the assessment order is received by the postal authority (3rd party/agent of the department) for dispatch within the limitation period, the same cannot be said to be dispatch with the limitation period (i.e 31.03.2015 in this case), though the actual service of the order may be beyond that period.

14. The ld. DR had relied on the judgment of the Hon'ble Supreme Court judgment in the case of CIT vs. Mohammed Meeran Shahul Hameed (supra). The judgment of Hon'ble Apex Court relied on by the ld. DR is distinguishable on facts. In the above said case, the revisionary order u/s. 263 of the I.T.Act was to be passed on or before 31.03.2012. The order of the ld.CIT was passed u/s. 263 of the I.T.Act on 26.03.2012. There was a categoric finding, the order of the ld.CIT(A) passed u/s. 263 of the I.T.Act was dispatched within

the period of limitation i.e on 28.03.2012. Whereas in the instant case, the evidence on record clearly point out that dispatch of the assessment order was not within period of limitation so as to go beyond the control of the AO. For the aforesaid reasoning and judicial pronouncement cited supra, we hold that the assessment order is barred by limitation.

15. Since we had decided that the assessment order is barred by limitation. The other grounds with regard to the merits is not adjudicate and are left open. It is ordered accordingly.

16. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 06th day of February, 2023.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated :06th February, 2023.
Thirumalesh, Sr.PS

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore