

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 2678/Mum/2024
Assessment Year 2015-16

Purohit Food Products Private Limited, 1-10, Dhiraj Pen Compound, 58-59, Andheri Kurla Road, J.B. Nagar, Andheri (East), Mumbai. PAN : AAGCP5590F	vs.	The Income Tax Officer, Ward-10(3)(1), Aayakar Bhavan, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri Ajay Singh a/w. Shri Akshay Pawar,
For Revenue :	Shri H.M. Bhatt, Sr.DR

Date of Hearing :	01-08-2024
Date of Pronouncement :	07-08-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 27-03-2024 passed by the learned Commissioner of Income Tax (Appeals)-NFAC, Delhi (in short 'Ld.CIT(A)') and it relates to AY. 2015-16.

2. The Ld.AR submitted that the Ld.CIT(A) has refused to condone the delay of 198 days and accordingly dismissed the appeal in limine. The Ld.AR submitted that the assessment order was dispatched through e-mode and the assessee was not aware of the same. It was further submitted that the Income Tax matters were looked after by a

Sr. Director, Shri Indravadan Purohit. He underwent treatment surgery for Prostate Cancer and on that account also, the assessment order passed by the AO escaped the attention of the assessee. Only when the assessee received penalty notice u/s. 271(1)(c) of the Income Tax Act, 1961 ('the Act'), it came to know about the assessment order passed by the AO, and thereafter it filed appeal before the Ld.CIT(A) with a delay of 198 days. Accordingly, it was submitted that there was a reasonable cause for filing appeal belatedly before the Ld.CIT(A). Accordingly, Ld.AR submitted that Ld.CIT(A) was not justified in refusing to condone the delay.

3. The Ld.AR submitted that the impugned assessment is related to re-assessment proceedings initiated for AY. 2015-16. The AO has issued the notice on 29-07-2022, whereas the last date of issuing notice u/s. 148 of the Act for AY. 2015-16 was 31-03-2022. Accordingly, he submitted that re-opening of assessment is bad in law. In this regard, Ld.AR placed reliance on the decision rendered by the Hon'ble Bombay High Court in the case of Hexaware Technologies Limited., vs. ACIT in Writ Petition No. 1778/2023, dt. 03-05-2024. He submitted that the facts available in the present case and the case before Hon'ble High Court are identical, i.e., in that case also, the AO had issued notice u/s. 148 of the Act on 27-08-2022 for the AY. 2015-16, which was held to be invalid by Hon'ble jurisdictional High Court. Accordingly he prayed that the Tribunal may decide this legal issue.

4. On the contrary, Ld.DR, submitted that the AO has issued notice within the extended time limit provided by Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020 (TOLA) and hence, the same has to be considered as issued within the time period.

5. We heard the parties and perused the record. Since the legal issue urged by the assessee goes to the root of the matter, we admit the same.

6. We notice that the Hon'ble jurisdictional High Court has examined the validity of the reopening notice dated 27-08-2022 issued for AY 2015-16 u/s 148 of the Act in the case of Hexaware Technologies Ltd (supra). The issues before the Hon'ble Bombay High Court in the above said case was framed into eight questions. The question no.1 and 2 are relevant in this case and they read as under:-

1. Whether TOLA is applicable for Assessment year 2015-16 and whether any notice issued u/s 148 of the Act after 31st March 2021 will travel back to the original date?

2. Whether the notice dated 27th August 2022 issued under section 148 of the Act is barred by limitation as per the first proviso to Section 149 of the Act?

6.1. With regard to the first question, the Hon'ble High Court followed its earlier decisions rendered in the case of Tata Communications Transformation Services Ltd vs. ACIT (2022)(443 ITR 49)(Bom) and Siemens Financial Services (P) Ltd vs. DCIT (2023)(154 taxmann.com 159)(Bom) and held that the provisions of TOLA provide that any notice issued under sec.148 of the Act after 31st March 2021 will travel back to the original date.

6.2. With regard to the second question, the Hon'ble High Court held that the first proviso to sec.149 of the new provisions will not enable issuing of notice u/s 148 of the Act after 1st day of April, 2021, if the notice could not have been issued under the erstwhile provisions of sec.149(1)(b) of the Act on the date when the impugned 148 notice was issued. Under the erstwhile provisions, a notice u /s 148 of the Act could be issued on or before 31st March, 2022. Accordingly, the Hon'ble High Court held that the notice u/s 148 issued on 27th August, 2022 is barred by limitation.

7. The present case is related to AY 2015-16 and the notice u/s 148 of the Act has been issued on 29th July, 2022. The last date for issuing

notice u/s 148 of the Act under the old provision is 31st March, 2022. Hence as held by the Hon'ble Bombay High Court in the case of Hexaware Technologies Ltd (supra), the above said notice is barred by limitation.

8. In view of the above, the orders passed by the tax authorities are liable to be quashed. We order accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 7th August, 2024.

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 07-08-2024

TNMM

Copy to

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "C" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai