

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member and
Shri Prakash Chand Yadav, Judicial Member

आ.अपी.सं / **ITA No.132/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2015-16)

Shri Chundi Sukumar Reddy Hyderabad PAN:BNQPC2445F	Vs.	Income Tax Officer (International Taxation)-1 Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by: Shri P Murali Mohan Rao, CA		
राजस्व द्वारा/Revenue by: Shri B. Balakrishna, DR		
सुनवाई की तारीख/Date of hearing: 18/09/2024		
घोषणा की तारीख/Pronouncement: 20/09/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the draft assessment order dated 31/01/2024 passed by the Income Tax Officer (International Taxation)-1 Hyderabad, relating to A.Y.2015-16.

2. Facts of the case, in brief, are that the assessee is a non-resident individual and has not filed return of income on or before the due date u/s 139(1) of the I.T. Act, 1961 for the A.Y 2015-16. As per information available on record, it was seen that during the financial year 2014-15 relevant to A.Y 2015-16, the

assessee has accrued income on account of capital gain which has escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Therefore, the assessment has been reopened and notice u/s 148 dated 28.03.2021 was issued. The case was selected for scrutiny and during the course of assesment proceedings, the Assessing Officer noticed that during the financial year relevant to A.Y 2015-16, the appellant has sold a property vide document No.1130/15, dated 25.02.2015 for a consideration of Rs.75,80,000/-. The Assessing Officer called upon the assessee to file necessary evidences including the relevant sale deed and computation of Long-Term Capital Gain. The assessee neither appeared nor filed any details. Therefore, the Assessing Officer has passed order u/s 144C(1) of the I.T. Act, 1961 on 01/03/2023 and made an addition of Rs.34,21,060/- towards Long-Term Capital Gain derived from sale of property.

3. The assessee has filed objection against the draft assessment order before the DRP-1 Bengaluru and challenged the draft assessment order passed by the Assessing Officer on 01/03/2023 in light of notice u/s 148 issued on 28/03/2021 and claimed that assessment order is barred by limitation. The assessee had also challenged the addition made towards the Long-Term Capital Gain.

4. The learned DRP vide their direction issued u/s 144C(5) of the I.T. Act, 1961 dated 26/12/2023 rejected the legal ground taken by the assessee on limitation of draft assessment order passed by the Assessing Officer u/s 144C(5) and held that the period of limitation as per section 153(2) of the I.T. Act, 1961

is 12 months from the end of financial year in which notice u/s 148 was served. Since the Department has dispatched the notice on 01/03/2023 in the evening, it should be construed that the notice was served in April, 2021 i.e. financial year 2021-22 and if we consider 12 months from the end of the financial year, the order passed by the Assessing Officer is within the time allowed under the Act. The DRP had also rejected the explanation of the assessee with regard to the computation of capital gain and upheld the additions made by the Assessing Officer. In pursuant to the DRP directions, the Assessing Officer has passed final assessment order u/s 147 r.w.s. 144C(13) of the I.T. Act, 1961 on 31/01/2024 and determined the total income at Rs.34,21,060/-.

5. Aggrieved by the final assessment order, the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches in the case of Shri Syed Gulam Mohiuddin vs. Income Tax Officer (International Taxation)-1, in ITA No.136/Hyd/2023 wherein under identical set of facts, it has been held that the final assessment order passed by the Assessing Officer u/s 147 r.w.s. 144C(13) is barred by limitation. The learned Counsel for the assessee further referring to the notice u/s 148 dated 28/03/2021 submitted that even otherwise assuming for a moment, the extended time is available to the Assessing Officer but still, the assessment order passed by the Assessing Officer is beyond limitation, because as per section 153(2), the re-assessment order should be passed on or before

31/03/2023, whereas in the present case, the final assessment order has been passed on 31/01/2024 which is beyond limitation and liable to be quashed.

7. The learned DR, on the other hand, supporting the orders of the DRP submitted that as per section 153(2) of the I.T. Act, 1961, the Assessing Officer shall have time of 12 months from the end of the financial year in which notice u/s 148 was served and in the present case, since the notice was served in the financial year 2021-22, the draft assessment order passed by the Assessing Officer is within the time limit under the Act, and thus, the grounds taken by the assessee needs to be rejected.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the notice u/s 148 of the Act, was issued on 28/03/2021 i.e. in the financial year 2020-21. As per section 153(2) of the I.T. Act, 1961, the time limit for completion of assessment u/s 147 is within 12 months from the end of the financial year in which the notice u/s 148 was served. If we go by the notice issued u/s 148, dated 28/03/2021 and the draft assessment order passed by the Assessing Officer dated 1/3/2023 which is beyond 12 months from the end of the financial year in which notice u/s 148 was served. The learned DRP rejected the legal ground taken by the assessee on the ground that the Department has physically dispatched the notice in the evening of 31/03/2021 and therefore, the notice u/s 148 was presumed to be served in April, 2021 i.e. in the financial year 2021-22 and if we consider the said date, then the draft

assessment order passed by the Assessing Officer on 01/03/2023 is within the time limit for completion of the assessment. We find that the issuance of notice is a pre-condition for assuming jurisdiction by the Assessing Officer, but not the service of notice. In other words, the Assessing Officer assumes jurisdiction to assess or re-assess the income of any assessee by issuance of notice and if we go by the same logic for assuming jurisdiction, the date of issue of notice should be considered. If we consider the date of issuance of notice in the present case i.e. on 28/03/2021 which falls in financial year 2020-21 and as per section 153(2) of the Act, the time limit for completion of assessment is 12 months from the end of the financial year in which the notice u/s 148 was served i.e. on or before 31/03/2022. Since the Assessing Officer has passed the draft assessment order on 01/03/2023, in our considered view, the draft assessment order passed by the Assessing Officer is beyond limitation provided under the Act, and can not be sustained. In so far as the reasons given by the learned DRP to reject the legal ground taken by the assessee that the notice was presumed to be served in April, 2021, in our considered view, the said finding is only on the basis of presumption but not on the actual facts. Therefore, we are of the considered view that the draft assessment order passed by the Assessing Officer u/s 144C(1) of the Act, dated 1/3/2023 is beyond limitation and thus, the order passed by the Assessing Officer is hereby quashed.

9. Further, even otherwise, the final assessment order passed by the Assessing Officer in the present case in pursuant to direction of the DRP dated 26/12/2023 is beyond limitation as

held by the Coordinate Bench in the case of Shri Syed Gulam Mohiuddin vs. Income Tax Officer (International Taxation)-1 in ITA No.136/Hyd/2023 wherein it has been held as under:

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee is a non-resident individual for the A.Y 2017-18 and is an eligible assessee as per section 144C(15) of the I.T. Act, 1961. As per section 144C of the Act, the assessment of an eligible assessee shall be dealt with in accordance with the said provision. As per the provision of section 144C, in case of an eligible assessee, the Assessing Officer shall pass a draft assessment order and served on the assessee, if he propose to make any variation in his total income. The assessee, after receipt of draft assessment order shall have two options. As per sub section (2) of section 144C, on receipt of draft assessment order, the eligible assessee shall within 30 days file its acceptance of the variations to the Assessing Officer or file his objection, if any, to such variation with the DRP. If the eligible assessee file his acceptance to the Assessing Officer, then the Assessing Officer shall complete the assessment within one month from the end of the month in which the acceptance is received. In case an eligible assessee files objection before the DRP, then the DRP shall issue its direction within 9 months from the end of the month in which the draft order is forwarded to the assessee. Thereafter, the

Assessing Officer shall pass his final assessment order within one month from the end of the month in which such direction is received.

9. In the present case, there is no dispute with regard to the fact that the appellant has filed his objection against the draft assessment order passed by the Assessing Officer before the DRP. Therefore, in ordinary course, the extended time limit for completion of the assessment should be available to the Assessing Officer as per section 144C r.w.s. 153C of the I.T. Act, 1961. But, the argument of the learned Counsel for the assessee is that as per section 153(4) of the Act, the extended period of 12 months for completion of assessment is available only where a reference under sub section (1) of section 92CA is made during the course of the assessment or re-assessment, but not in a case where there is no reference to the TPO. We find force in the argument of the learned Counsel for the assessee for the simple reason that, as per section 153(2), the time limit for completion of assessment or re-assessment shall be 12 months from the end of the financial year in which notice u/s 148 was served. However, sub-section (4) of section 153 extends the said time limit by another 12 months notwithstanding anything contained in sub-section (1), (1A), (2), (3) and (3A) where a reference u/s 92CA(1) is made during the assesment proceedings to the TPO. In other words, except the cases of the reference to the TPO, extended time limit of 12 months for completion of assessment is not available even in a case of Non-Resident assessment, even though the said assesment proceedings is covered u/s 144C of the Act. Since

the extended time limit of 12 months is not available in the case of Non-Resident as per section 153(4) of the Act, in our considered view, the Assessing Officer ought to have completed the assessment as per the provisions of section 153(2) of the Act which is one year from the end of the financial year in which notice u/s 148 was served. In the present case, if we go by date of notice issued u/s 148 of the Act i.e. 30.03.2021, the time limit for completing the assessment u/s 147 was available up to 31/03/2022 and thus, the final assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C dated 12.01.2023 is clearly barred by limitation.

10. This proposition is covered by the decision of the Hyderabad Bench of the Tribunal in the case of Shri Farooq Ali vs. Income Tax Officer in ITA No.104/Hyd/2023 order dated 10/04/2024. The relevant findings of the Tribunal are as under:

“23. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.2,55,75,000/- u/s 69 of the I.T. Act on the ground that as per the sale deed, the assessee had paid total sale consideration of Rs.2,55,75,000/- on 5.10.2016 to the vendors by way of cash, that the vendors have admitted and acknowledged the same and the assessee could not explain the source of such payment made for purchase of the immovable property. While doing so, he further held that the sale deed in itself is conclusive evidence and the contents of the same could not be proved further and a civil suit filed by the 3rd party claiming the title to the said property after the registration of sale deed between the assessee and the vendors will not negate the contents of the sale deed.

23.1 It is the submission of the learned Counsel for the assessee that the assessment order passed by the Assessing Officer is barred by limitation. It is also his submission that the assessee being an NRI and settled in UAE does not have any economic activities in India, therefore, there cannot be any addition of unexplained investment in the hands of the assessee as these falls under article 22 of Indo-UAE DTAA which makes such income taxable in the country of residence i.e. UAE unless these investments are proved to be made out of income generated in India.

24. We find some merit in the above argument of the learned Counsel for the assessee. A perusal of the record shows that the notice u/s 148 was issued on 24.2.2021, a fact not disputed by the Revenue. There is no reference made to the TPO for making any adjustment of arm's length price of the international taxation. We find the provisions of section 153(2) read as under:

“153. Time limit for completion of assessment, reassessment and re-computation.

(1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:

Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

[Provided further that in respect of an order of assessment relating to the assessment year commencing on the—

(i) 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(ii) 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.]

(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of nine months from the end of the financial year in which such return was furnished.]

(2) No order of assessment, reassessment or re-computation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted."

25. Thus, a perusal of the above provision clearly shows that the time limit for completion of the assessment in the present case lapses on 31.3.2022. However, the final assessment order u/s 144 r.w.s. 144C has been passed on 30.01.2023 which is beyond the time limit prescribed u/s 153(2). Since the assessment order has been passed on 30.01.2023 as against 31.03.2022, therefore, the same, in our opinion, is barred by limitation and accordingly, the assessment order is liable to be quashed. We therefore, quash the re-assessment proceedings being barred by limitation. Since the assessee succeeds on this preliminary legal issue, the other grounds become academic in nature and therefore, are not being adjudicated. “

11. In this view of the matter and considering the facts and circumstances and also by following the decision of the Hyderabad Bench of the Tribunal in the case of Farooq Ali vs. Income Tax Officer (Supra), we are of the considered view that the assessment order passed by the Assessing Officer u/s 144 r.w.s. 144C(13) dated 12.01.2023 is barred by limitation and thus we quash the re-assessment order passed by the Assessing Officer.

10. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the draft assessment order passed by the Assessing Officer u/s 144C(1) of the I.T. Act, 1961 dated 1/3/2023 is barred by

limitation and thus, we quash the order passed by the Assessing Officer u/s 144C(1) of the Act, dated 1/3/2023.

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

Order pronounced in the Open Court on 20th September, 2024.

Sd/-

Sd/-

(PRAKASH CHAND YADAV) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 20th September, 2024

Vinodan/sps

Copy to:

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3	DRP-1 Bengaluru
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order