आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.355, 356, 357 & 358 /Chny/2019
निर्धारण वर्ष /Assessment Year: 2012-13, 2013-14, 2014-15 & 2015-16
&
CO 32, 33, 34, & 35 /Chny/2019
Assessment Years : 2012-13, 2013-14, 2014-15 & 2015-16

The Deputy Commissioner of Income Tax, Central Circle-2, Madurai	**Vs.**	**M/s.Achu Traders, No. 11/1288, M.Pudur Main Road, Govindapuram Post, Palakkad, Kerala-678507 [PAN: AAPFA8131B]**
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./ITA No.359, 360, 361 & 362 /Chny/2019
निर्धारण वर्ष /Assessment Year: 2012-13, 2013-14, 2014-15 & 2015-16
&
CO 36, 37, 38, & 39/Chny/2019
Assessment Years : 2012-13, 2013-14, 2014-15 & 2015-16

The Deputy Commissioner of Income Tax, Central Circle-2, Madurai	**Vs**	**Shri M.Shahjahan, Prop. M/s. Madeena Traders No.VII/561, M.Pudur Main Road, Govindapuram Post, Palakkad, Kerala-678507**
(अपीलार्थी**/Appellant)**		**[PAN: AIYPS1815P]**

आयकर अपील सं./ITA No.363, 444 & 445 /Chny/2019
निर्धारण वर्ष /Assessment Year: 2012-13, 2014-15 & 2015-16
&
CO 40, 42 & 43/Chny/2019

Assessment Years : 2012-13, 2014-15 & 2015-16		
The Deputy Commissioner of Income Tax, Central Circle-2, Madurai	Vs	**Smt.J.S.Nihar Banu, Prop. M/s. Alfas Traders No.377/465,M.Pudur Main Road, Govindapuram Post, Palakkad, Kerala-678507**
(अपीलार्थी**/Appellant)**		**[PAN: AGIPN8752E]**
आयकर अपील सं./ITA No.364, 441 & 442 /Chny/2019 निर्धारण वर्ष /Assessment Year: 2012-13, 2014-15 & 2015-16 & CO 44, 46 & 47/Chny/2019 Assessment Years : 2012-13, 2014-15 & 2015-16		
The Deputy Commissioner of Income Tax, Central Circle-2, Madurai	Vs	**M/s.Appu Traders, No.XI/118C,M.Pudur Main Road, Govindapuram Post, Palakkad, Kerala-678507 [PAN: AATFA7119H]**
अपीलार्थी की ओर से/ Assessee by	:	D. Anand, Advocate
प्रत्यर्थी की ओर से /Department by	:	Shri V.Nandakumar, CIT
सुनवाई की तारीख/Date of Hearing	:	26.08.2024
घोषणा की तारीख /Date of Pronouncement	:	25.10.2024
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आदेश **/ O R D E R**

PER AMITABH SHUKLA, A.M :

The four groups of 14 appeals filed by the Revenue pertaining to different assesses of same group are directed against different consolidated orders of the ld. Commissioner of Income Tax (Appeals)

19, Chennai, all dated 29.11.2018 relevant to the assessment years 2012-13 to 2015-16. The assessees have also filed Cross Objections against the order of the ld. CIT(A). Since, the facts are identical and issues are common, for the sake of convenience these appeals as well as Cross Objections were heard together and are being disposed off, by this consolidated order.

2.0 All the appeals filed by the Revenue are delayed by three/four days in filing the appeal before the Tribunal for which, the Revenue has filed petitions in support of an affidavit for condonation of the delay explaining the cause for the delay in filing the appeals and prayed that the delay may be condoned and admitted the appeals for hearing. Against the submissions made in the affidavit by the Department, the ld. Counsel for the assessee has not raised any serious objection. Consequently, since the Department was prevented by sufficient cause, the delay of three/four days in filing of the appeals stands condoned and admitted the appeals for adjudication. The Revenue has raised the following grounds:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The learned CIT(A) erred in directing the AO to delete theaddition/disallowance made u/s 40A(3) of the LT. Act amounting to Rs.9,59,37,128/-.

3. The Id.CIT(A) failed to appreciate that there is no requirement envisaged by section 40A(3) to the effect that the recipient entities ought to be bogus or there should be inflation of purchases to invoke the provisions of section 40A(3) of the LT. Act.

4. Without prejudice to the above grounds of appeal, it may noted that the assessee and the so called agents could not provide full addresses of the farmers/suppliers of copras nor any details have been maintained with regard to payment made for copra purchases. In fact one of the agents, Shri Senthil had deposed that he will not expose the farmers, which facts go on to establish that the impugned transaction itself are sham in the disguise of invoking provisions under Rule 6DD(k) r.w.s. 40A(3) of the

5. The Id.CIT(A) failed to note that the assessee has not produced any material before the AO to substantiate its contention that the self cheque recipients are agents of the assessee and hence there can be no scope to apply the provisions of Rule 6DD(K) r.w.s 40A(3) to the

facts of the instant case. In fact, the findings of search revealed that these so called agents Shri. Natarajan (Prop. Iswarya agencies), Chinna (Karpagan Traders) and Shri. Senthil are registered dealers in Tamil Nadu having TIN. To avoid levy of sales tax, they conduited themselves as middlemen for the assessee.

6. The Id.CIT(A) ought to have seen that the same disallowance made by the Department in the hands of M/s VVD & Sons Pvt Ltd on substantive basis has been deleted by the Id.CIT(A)-19, Chennai, vide order dated 23.04.2018 in ITA No.347 to 350/17-18, with an observation that any disallowance u/s 40A(3) can be considered only the group concerns of Shri Shahjahan and not in the hands of M/s VVD & Sons Pvt Ltd. M/s Achu Traders is one of the group concerns of Shri Shahjahan.

7. It is submitted that the Department has filed an appeal before the Hon'ble ITAT, Chennai in the case of M/s VVD & Sons Pvt Ltd.

8. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of Id. CIT(Appeals) may be set aside and that of the Assessing Officer be restored."

2.1 The assessee has raised following objections in his CO:

1. The Commissioner of Income Tax (Appeals) has gone wrong in dismissing the ground filed by the appellant in respect of time barring of the assessment without considering the facts that the assessment order, demand notice and notice for penalty u/s.271(1)(c) are served on the respondent on 08-01-2018 and hence barred by limitation.

2. The respondent filed application for providing satisfaction u/s.153C of the Act, but the Assessing Officer has not provided the same to the respondent and hence the assessment order is invalid.

3. The respondent is buying copra from agriculturists through agents and the provisions of Section 40A(3) of the Act and rule 6DD(k) are applicable and hence the order of the Commissioner of Income Tax (Appeals) is correct and the contention of the revenue are liable to be dismissed."

3.0 At the outset we deem it necessary to briefly recapitulate the background history and the factual matrix of the impugned appeals. A search was conducted upon one VVD Group engaged in manufacturing of coconut oil. Along with the above named assesses. The assesse's in question were reportedly selling copras (Coconut) to the VVD Group after procuring it from farmers through its designated middlemen. The VVD Group was paying to the assessees by way of RTGS credits to their bank accounts. In turn the payments were made

by the assesse to its middlemen by way of issuance of self cheques which were encashed by them so as to make cash payments to the ultimate suppliers being farmers at the grass root level. The Ld. AO passed assessment orders u/s 153(C) of the act for relevant years vide his orders dated 31.12.2017. The Ld. AO after analyzing the various facts of the case, inter-alia, including involvement of all middlemen, a statement of all concerned parties, details of bank accounts concluded that the assesse was guilty of having violated provisions of section 40A(3) in as much as it had entered into cash transactions exceeding Rs.20,000/- mandated in the said statute.

4.0 Aggrieved by the same the appellant filed a appeal before the First Appellate Authority. The appellant contested the order on twin grounds of the same being time barred as well as non-application of provisions of section 40A(3) in its case. Briefly put the appellant argued that within the meanings of section 153 (C) the order of assessment were required to be passed in 21 months i.e. on or before 31.12.2017, however as the same were serviced upon the assesse on 08.01.2018, a valid legal presumption of their being time barred deserves to be taken in the case. The assesse further argued that the case of the assesse is covered by exception provided in Rule-6DD (K) and therefore provisions of section 40A(3) are not attracted.

The Ld. First Appellate Authority concluded that section 153A / 153C mandates that the Ld. AO shall “make” an order within the statutory time frame and there is no requirement qua limitations of its service. He held that therefore there was no merit in the argument of the assesse and dismissed the grounds. On the issue of application of provisions of section 40A(3) r.w. its exception provided in Rule-6DD (K), he held that a case was made out in favour of the assesse and he deleted the addition made by the Ld. AO. The revenue contested the order of the Ld.First Appellate Authority before this tribunal and the assesse filed corresponding cross objections. The coordinate bench of this tribunal vide their combined orders dated 20.04.2022 supra in respect of all the appeals indicated herein above, dismissed the twin issues of the order being time barred and non-application of provisions of 40A(3). The assesse recontested the matter by way of an miscellaneous application. The assesse had principally pleaded that the Hon’ble Tribunal had, inter-alia, not considered an order of Hon’ble Madurai Bench of the Jurisdictional High court dated 25.03.2021 in WP No.(MD) No.26911 of 2019 in respect of a writ petition filed by M.Shajahan who was one of the respondents in the appeal before this tribunal. The impugned MA was adjudicated by the coordinate bench vide their order dated 10.04.2024 whereby the said order dated

20.04.2022 was recalled for readjudication. The Ld. CIT DR also informed that the revenue had not filed any appeal against the MA order of this Tribunal. The present appeal is thus taken in consequence of the above decision in MA dated 10.04.2024.

5.0 The only two issues challenged by revenue and the assesse are regarding the order passed u/s 153C being time barred and application of section 40A(3) of the Act.

6.0 The first issue challenged by the assesse through its grounds of appeal is regarding the order u/s 153C dated 31.12.2017 being invalid on account of the same being time barred. The Ld. Counsel for the assesse informed that the order dated 31.12.2017 was passed by complying to requirements of section 153C of the Act. It was submitted that given the fact of connection of assesse is with search u/s 132, provisions of section 153A triggered in which provides for assessment in cases of search or requisition. The Ld. AR informed that the time limit for completion of assessment u/s 153A is contained in section 153B and that the assessment is to be completed by issuing of notice u/s 153C. The Ld. AR invited our attention to following statutory provisions of section 153B :-

*1**[153B. Time limit for completion of assessment under section 153A.**—(1) notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—*

*1 (a) in respect of each assessment year falling within six assessment years2**[**and for the relevant assessment year or years**]** referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed; (b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed: Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:*

*3**[**Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2018,— (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words —twenty-one months‖, the words —eighteen months‖ had been substituted; (ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of eighteen months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later: Provided also that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2019,— (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words —twenty-one months‖, the words —twelve months‖ had been substituted; (ii) the period of limitation for*

making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twelve months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later: Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment shall be extended by twelve months: 586

*Provided also that in case where during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment in case of such other person shall be extended by twelve months:] Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment shall be extended by twelve months: Provided also that in case where during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment in case of such other person shall be extended by twelve months.**]** (2) The authorisation referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have been executed,— (a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or (b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer. (3) The provisions of this section, as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment or reassessment made before the 1st day of June, 2016:*

1[Provided that where a notice under section 153A or section 153C has been issued prior to the 1st day of June, 2016 and the assessment has not been completed by such date due to exclusion of time referred to in the Explanation, such assessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016 (28 of 2016).] Explanation.—In computing the period of limitation under this section— (i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or (ii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and— (a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or (b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or (iii) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or (iv) the time taken in re-opening the whole or any part of the proceeding or in giving an opportunity to the assessee of being re-heard under the proviso to section 129; or (v) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or (vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or (viii) the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in sub-section (2) of section 153A, till the date of the receipt of the order setting aside the

order of such annulment, by the Principal Commissioner or Commissioner; or (ix) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or (x) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer, shall be excluded: Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this sub-section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly: Provided further that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:]

1[Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.]

7.0 The Ld. AR informed that as per the prescription contained in section 153B supra an assessing officer is required to "**make**" an order of assessment within 21 months from the end of the Financial Year in which last of the authorization for such u/s 132 was executed. It was argued that by virtue of search in these cases conducted on 17.11.2015 the limitation period of 21 months completed on 31.12.2017. The Ld.AR further submitted that as per postal records the impugned assessment orders were dispatched by speed post on 06.01.2018(being Saturday) from Muthalamada(678507) that is six days after it was purported to have been made and the order was received by the assesse on 08.01.2018(being Monday). In support of its contentions, the Ld. AR provided through its paper book documents as above. The Ld. AR also argued that it is not known as to why the assessment orders were not dispatched from Madurai Tallakulam post office located at a distance of just 4 KM from AO's office(at meenambalpuram Madurai) but were chosen to be dispatched from Muthalamada(678507) near Pallakkad located about 140 KM away. The appellant has placed at page-72 in the paper book in the case of Shajahan Proprietor , Madeena Traders an acknowledgement slip clearly indicating receipt of assessment orders, penalty orders u/s 271(1)(c), and demand notice u/s 156 for the years AY-2012-13 to

2015-16 clearly indicating receipt by the party on 08.01.2018. The appellant has placed at page-73 in the same paper book in the case of Shajahan Proprietor , Madeena Traders a copy of the envelop bearing stamp “On India Government Service” addressed to Shajahan Proprietor , Madeena Traders. It shows that despatcher of the communication was office of Additional CIT, Central Range, Income Tax, a Staff Quarters Complex, Kulamangalam Mair Road, Meenambalpuram, Madurai-625002. The same document further evidences by way of a post office acknowledgement stamp contained on the bottom left showing that the envelop weighing 215 gms was received by postal entity being RLAD Muthalanada, 678507 at 13.21hrs. on 06.01.2019. The Ld. Counsel for the assesse argued that in view of these peculiar and intriguing facts of the case there is a presumption of the assessment orders having been made after the limitation of 31.12.2017.

8.0 In support of its contentions he has placed reliance upon a catena of judicial pronouncements in its favour to allude that the assessment orders are time barred. It has been submitted that Hon’ble Supreme Court in the case of Ramakishtaih and company civil appeal No.491 of 1997 considered facts in which an order passed on due date of 06.01.1973 was served on the assesse 21.11.1973. The

Hon'ble Apex Court ruled that in the absence of a satisfactory explanation for the delay between the purported date of order and its actual service, a presumption of the order not being made on the indicated date can be safely drawn. Further reliance was placed on the order of Hon'ble Andra High Court in the case of Sanka Agencies Vs Commissioner of Commercial Taxes dated 29.09.2004(142 STC 496 AP) wherein an order dated 17.05.1996 was served upon the assesse on 14.11.1996 again, in the absence of a satisfactory explanation for the delay, leading to the presumption that the impugned order was passed after the limitation date. Pertinently the decision in the case of Ramakishtaih and company supra was relied upon this case. Further, reliance was placed upon the decision of Hon'ble Delhi High Court in the case of Nokia India Pvt. Ltd, dated 06.03.2018 in WP (Civil) No.2974/2013 wherein Hon'ble High Court has in para-32 examined the issue of "communication" of an order stating that the same need not be interpreted as actual receipt but a situation in which *"...When the order is sent out and goes out of control of the authority. The principle being that the authority should not have the chance of changing its mind or modifying the order…"*. Reliance was also placed in the decision of Hon'ble Delhi High Court in the case of Qualimax Electronics Pvt Ltd dated 02.06.2010 in WP (C) 3223 /

2010. *On the issue of transmission of order, it observed that " of course this is danger that to prevent an assesse from seeing settlement of this case the adjudicating authority may quickly pass the adjudication order the movement he gets an inkling that the assesse is about to approach the settlement commission. There is also the danger that the adjudicating authority may backdate an order. Adjudicating authorities are not suppose to behave in this manner and are presumed to function within the boundaries of law but these things can happen. Would not a literal construction of the provisions then come in the aid of such errant officers and run counter to the legitimate hopes of assesse's who want to come clean……. The answer to this would lie in construing the date of adjudication to be date on which the adjudicating authorities losses his locus poenitentia, or opportunity to tear off, destroy or alter the adjudication order. In other words when the order goes out of his control and that happens when the order is signed and the one way process of sending it to the assesse is put in motion either directly or indirectly through some other agency…… what is of prime importance the date on which the order in original was dispatched from the office of adjudicating authorities…."*.

9.0 The Ld. AR further relied on the decision of Hon'ble Bangalore of tribunal in the case of Kullachary Puttamma vide ITA No.951 / BANG /

2022 dated 06.02.2023. In the impugned case Hon'ble Coordinate Bench was seized with the situation wherein order u/s 153A r.w.s.143(3) passed on 27.03.2015 was actually dispatched on 07.04.2015 and not upto 31.03.2015, the limitation date. As per fact of the case the order was dispatched on 07.04.2015. The Ld. Counsel for the assesse invited our attention to the following part of the judgement:-

"….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 (ArticleTracking) 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 discussed in the later part of this order) had clearly held 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 a 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 assesse 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 assesse 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 ITA 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…."

10.0 The Ld. Counsel for the assesse further relied upon the decision of Hon'ble Coordinate Bench of the Delhi Tribunal in the case of OPG Securities Pvt Ltd. ITA No.1885 / Del/2018 dated 18.08.2023 which while considering the time limitations prescribed in section 153 holding as under:-

"…..4. We find that the assessee had raised a preliminary ground vide Ground Nos. 1 & 1.1. that the assessment per se is barred by limitation. Since this issue goes to the root of the matter, we deem it fit and appropriate to address this preliminary issue first.

5. As per the provisions of Section 153(1) of the Act as amended by the Finance Act 2016 w.e.f. 01.06.2016 , the time limit for completion of assessment proceedings for the Asst Year 2014-15 u/s 143(3) or 144 of the Act would be 21 months from the end of the assessment year in which income was first assessable i.e. from 01.04.2015.

Accordingly, the time limit for completion of assessment would be 31.12.2016. In the instant case, the assessment order u/s 143(3) of the Act has been signed by the ld. AO on 31.12.2016 as mentioned in the assessment order. But the same is dispatched only on 02.01.2017 which is evident from the screenshot of the consignment tracking taken from the India Post website. The said screenshot shows that consignment sent by the Additional Commissioner of Income Tax, Special Range 7 , CR Building, has been booked at Indraprastha HO on 02.01.2017 at 11 hrs 6 minutes and 57 seconds with the caption 'Item Booked'. The said order has been received by the assessee on 03.01.2017.

6. Now the short point that arises for our consideration is that whether in these facts and circumstances, the assessment could be construed to have been framed within the time limit prescribed u/s 153(1) of the Act. In the instant case, it is not in dispute that the ld. AO had made the booking of the consignment (i.e assessment order dated 31.12.2016) only 02.01.2017 as is evident from India Post screen shot enclosed in page 36 & 37 of the paper book. In this regard, we hold that an order could be said to be issued / passed by the ld. AO when the same leaves the hand of the ld. AO or goes out of the control of the ld. AO. It is trite law that to make the order complete in all aspects, it should be issued , so as to go beyond the control of the authority concerned, for any possible change or modification therein. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of Qualimax Electronics Pvt ltd vs Union of India reported in 2010 257 Excise Law Times (ELT) 42 (Del) had held that the date of dispatch from the adjudicating officer is relevant for determining the limitation period. We find that the Hon'ble Supreme Court in the case of Collector of Central Excise vs M.M. Rubber & Co. reported in AIR 1991 SC 2141 in Civil Appeal No. 6071 (NM) of 1990 dated 04.09.1991 had held as under:-

"12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locuspaetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of

communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time."

7. Similar view was taken by the Hon'ble Kerala High Court in the case of Government Wood Works vs State of Kerala reported in 69 STC 62 in T.R.C. No.90 of 1986 dated 14.01.1987 while dealing with the issue of necessity of communication of any order had held as under:-

"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."

7.1. Though the aforesaid decision of Hon'ble Kerala High Court was rendered in the context of sales tax law, the legal principles enunciated therein for passing of an order within the limitation period would be squarely applicable to the facts of the appeal before us in the instant case.

8. Similarly in the context of issuance of notice u/s 148 of the Act, the Hon'ble Gujarat High Court in the case of Kanubhai M Patel (HUF) vs Hiren Bhatt reported in 334 ITR 25 (Guj) had held that the notice u/s 148 of the Act was dated 31.3.2010 but was sent to the speed post centre for booking only on 07.04.2010. The Hon'ble Gujarat High Court held that considering the definition of the word 'issue' , it is apparent that merely signing the notices on 31.03.2010, cannot be equated with issuance of notice as contemplated under section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer, which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the Speed Post Centre only on 07.04.2010 , the date of issue of the said notices would be 07.04.2010 and not 31.03.2010 as contended on behalf of the revenue. In the circumstances, impugned notices under section 148 in relation to assessment year 2003-04, having been issued on 07.04.2010 which is clearly beyond the period of six years from the end of the relevant assessment year, are clearly barred by limitation and as such, cannot be sustained.

9. Respectfully following the aforesaid decisions, we hold that the assessment order, though passed on 31.12.2016, was dispatched to the Speed Post Centre by the office of the Additional Commissioner of Income Tax , Special Range -7, C R Building, New Delhi -110002 on 02.01.2017 would have to be construed as assessment framed beyond the time limit prescribed u/s 153(1) of the Act for the Asst Year 2014-15 and hence is hereby declared as barred by limitation. Accordingly, the assessment order is liable to be quashed and is hereby quashed. The Ground Nos. 1 & 1.1. raised by the assessee are allowed…."

11.0 The Ld. DR argued that there is no necessity of issuing or serving the assessment order within the timeline prescribed in section 153B. It was argued that the word “make” only connotes that the order should be prepared and there is no compulsion on its actual transmission upon the tax payer. The Ld. CIT DR argued that the order was served on 08.01.2018 only for the solitary purpose of enforcing demand. The Ld. AR invited our attention to section 153 stating that it postulates that no order of assessment shall be “made” u/s 143 at any time after the expiry of 21 months….. The Ld. CIT DR would like us to believe that the AO had to only “make” the order on 31.12.2017 and hence fulfilled the limitation requirements. He stressed upon the that the technology and electronic environment of the department is such that back dating of orders is not possible and also that there is a concept of supervisory approvals leading to a plausible presumption that an order cannot be altered. In support of its contentions the Ld. DR vehemently relied upon the decision of Hon’ble Apex Court in the case of Mohamed Meeran Shahul Hameed supra postulating that if an order is made by a limitation date its service upon the tax payer even after the limitation date would not affect the legality of the same.

12.0 We have heard the rival submissions in the light of material available on records. It is an undisputed fact of the case that the orders u/s 143(3) r.w.s 153C were passed on 31.12.2017. It is also an admitted position by the revenue that although the assessing officer was located at Madurai, Tamil Nadu the impugned orders were dispatched through the postal authorities located at Pallakkad, Kerala. It is also an admitted and undisputed fact of the case that the orders were given to postal authorities for dispatch on 06.01.2018 and which were actually delivered upon the said assesses are 08.01.2018. Thus, we find that the assessment order which was mandated u/s 153B to be completed on or before 31.12.2017 was actually served upon the assesse on 08.01.2018. In view of these peculiar facts of the case the Ld. Counsel for the assesse has fiercely opposed the legality of the impugned order and contended that the same is time barred and therefore deserves to be set aside.

13.0 This brings us to an important question as to the very relevance of the concept of limitation enshrined in any legal fiction. A section of political scientist have perceived state as a totalitarian entity which is susceptible to arbitrary, adhoc and excessive exercise of powers qua its citizens. Political thinkers are unanimous that the said urge or trait or the tendency of the state, orchestrated through its executive arms,

deserves to be contained for preservance of a uniform order in the society. Thus to contain the executive excesses the concept of limitation has been introduced in the judicial ecology by inserting a specific timelines for completion of a legal process. In the taxation statutes the same has been introduced so that the state does not indulges in raising tax demands against its citizens or tax payers population abruptly and without following the due process of law. The legal presumption is that the state must raise its demands within a specific time frame after which it looses its rights on the impugned tax revenues. The law of limitation is thus an inviolable absolute law bereft of any interpretations.

14.0 The natural corollary of the said law of limitation entails that the decision of the executive taken in respect of a matter has to be communicated to the person against whom the same has been taken on or before the completion of prescribed timeline. The only argument in favour of the same would be that the executive authority should not be in a position to change its decisions randomly. For if the decision or the communication is not timely and effectively made to the taxpayer it would not be known as to whether the impugned decision was taken within the statutorily mandated timeline or not. It would also be not known as to whether the decision making process was

impacted by some extraneous considerations or not. It is said that the taste of pudding lies in its eating. With the same analogy the only test of an order confirming to the timelines would be its effective communication to the taxpayer within the prescribed timelines. The communication is thus the key to law of limitation.

15.0 In the above back ground we find that timelines prescribed in section 153B for completing assessments referred in section 153A and for which notices have been issued u/s 153C assumes utmost significance in the present controversy. As discussed above, the orders u/s 143(3) in respect of all the assessees in these appeals though allegedly passed on 31.12.2017 was actually served upon the impugned assessees, through speed post communication on 08.01.2017. It has also been noted that for an inexplicable and incomprehensible reason the order was handed over to postal authorities, for service upon the assesse, located some 140 KMs away from the office of the assessing officer. The arguments of the Ld. CIT DR regarding the same having some linkages to the non-transfer of PAN etc., have been found to be far from convincing and apparently having no connection with the ground realities. The argument of Ld. CIT DR about the technological compulsions and electronic restrictions

are far from convincing as the full-fledged electronic online working of the department has seen the light of the day only since 2020 and in 2017 the orders were still passed in the offline mode. The Ld. AO on the date of passing of the order shown as 31.12.2017 had become functous officio and had no locus standi in the matter thereafter. The undisputed and admitted fact by the revenue of dispatching the order on 06.01.2017 and its consequent service upon the assesse on 08.01.2017 therefore lands the assessment order u/s 143(3) r.w.s 153C into the mischief of a time barred order. The judicial pronouncements of the Hon'ble Apex Court in the case of Mohamed Meeran Shahul Hameed supra have been found to be distinguished in as much as in the said decision their Lordships have considered provisions of section 263 which mandates that an order should be "made" by the revisionary authority within the prescribed timelines. We have also noted that the decisions relied upon by the Ld. AR viz of Hon'ble Apex Court in the case of M.Ramakishtaih and company, of Hon'ble Andhra Pradesh High Court in the case of Sanka Agencies, Hon'ble Gujarat High Court in the case of Kanu Bhai as well as of Coordinate Benches of Delhi and Bangalore Tribunals are covering the subject in favour of the assessees in above appeals. Accordingly, we are of the considered view that the orders u/s 143(3) r.w.s 153C dated

31.12.2017 in respect of all the above assessees in these appeals have been hit by the time limitations prescribed in section 153B are time barred and therefore deserved to be set aside. Accordingly, we hereby set aside all the assessment orders u/s 143(3) r.w.s 153C dated 31.12.2017 of the Ld. AO and of the Ld. First Appellate Authority in respect of all the above assessees in these appeals. The grounds of appeal raised by the revenue in the impugned appeals are therefore dismissed and cross objections raised by the assesse are allowed.

16.0 As regards, the ground of appeal raised qua the merits of addition made u/s 40A(3) we are of the view that as the assessment orders u/s 143(3) r.w.s 153C dated 31.12.2017 per se have been set aside, the grounds of appeal raised by the contending parties qua merits of the addition have become purely academic in nature and not requiring any a specific adjudication.

17.0 In the result, the appeals filed by the Revenue in I.T.A. Nos.355, 356, 357 & 358/Chny/2019 (M/s. Achu Traders), I.T.A. Nos.359, 360, 361 & 362/Chny/2019 (Shri M. Shahjahan), I.T.A. Nos.363, 444 & 445/Chny/19 (Smt. J.S. Nihar Banu) and I.T.A. Nos.364, 441 & 442/Chny/2019 (M/s. Appu Traders) are dismissed.

18.0 In the result, the Cross Objections filed by the assessees in C.O. Nos. 32, 33, 34 & 35/Chny2019 (M/s. Achu Traders), C.O. Nos. 36, 37, 38 & 39/Chny2019 (Shri M. Shahjahan), C.O. Nos. 40, 42 & 43/Chny2019(Smt. J.S. Nihar Banu) and C.O. Nos. 44,46 & 47/Chny2019(M/s. Appu Traders) are allowed.

Order pronounced on 25, October-2024.

Sd/-	**Sd/-**
(मनु कुमार गिरि)	**(अमिताभ शुक्ला)**
(Manu Kumar Giri)	**(amitabh shukla)**
न्यायिक सदस्य / Judicial Member	**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 25th , October-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF