INCOME TAX : Limitation period would not start from date on which order was pronounced by Tribunal and it would start from point when said order came in knowledge of assessee

[2021] 125 taxmann.com 94 (Delhi)

HIGH COURT OF DELHI

Pacific Projects Ltd.

v.

Assistant Commissioner of Income Tax*

MANMOHAN AND SANJEEV NARULA, JJ.
W.P. (C) NO. 2080 OF 2020
CM APPEAL NOS. 7346-7347 OF 2020
DECEMBER 23, 2020

Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of (Condonation of delay) - Whether limitation period would not start from date on which order was pronounced by Tribunal and it would start from point when said order came in knowledge of assessee - Held, yes - Whether, therefore, where assessee had filed impugned miscellaneous application within six months from when it had got knowledge of an ex parte order passed by Tribunal against it, said application was to be accepted - Held, yes [Paras 7 and 8] [In favour of assessee]

CASE REVIEW

Golden Times Services (P.) Ltd. v. *Dy. CIT* [2020] 113 taxmann.com 524/271 Taxman 123/422 ITR 102 (Delhi) (para 8) *followed.*

CASES REFERRED TO

Golden Times Services (P.) Ltd. v. *Dy. CIT* [2020] 113 taxmann.com 524/271 Taxman 123/422 ITR 102 (Delhi) (para 8).

Salil Kapoor, **Vetakesh Chaurasia**, **Sumit Lalchandani** and **Ms. Ananya Kapoor** *for the Petitioner*. **Kunal Sharma**, Adv. *for the Respondent.*

JUDGMENT

Manmohan, J. - Present writ petition has been filed challenging the order dated 29th July, 2019 passed by the ITAT dismissing the miscellaneous application filed by the petitioner/assessee under section 254(2) for recall of the *ex parte* order dated 1st September, 2017 whereby the matter was remanded to the Assessing Officer to decide the matter afresh after examining all documents, including additional evidences as well as books of account, bills and vouchers, etc.

2. The ITAT in its order dated 29th July, 2019 held that it had no power to condone the delay in filing the application under section 254(2) as the petitioner had filed the miscellaneous application after six months from the end of the month in which the impugned order had been passed.

3. It is the case of the appellant/assessee that it had changed its address and shifted to 301-307, 3rd Floor, Plot No. 9, DDA Service Centre, Rohini, Delhi-110085 from Safeway House, D-4, Commercial Complex, Prashant Vihar, New Delhi-110085 w.e.f. 15th November, 2008 and this fact had been mentioned in the appeal filed by the assessee in Form No. 35 against the order dated 2nd December, 2018 passed by the DCIT, Circle 14(1) New Delhi.

4. On the last date of hearing, learned counsel for the respondent had taken time to obtain instructions.

5. Having heard learned counsel for parties and having perused the paper book, we find that the address of the appellant mentioned in the appeal before the ITAT by the respondent/Department was its former address and not the new address, which had been mentioned in the appeal filed by the petitioner before the Commissioner, Income Tax (Appellate) in form No. 35.

6. Consequently, the petitioner was never served in the appeal filed by the Department before the ITAT.

7. This Court is also of the view that the ITAT has erroneously concluded that the miscellaneous application filed by the petitioner was barred by limitation under section 254(2) of the Act inasmuch as the petitioner had filed the miscellaneous application within six months of actual receipt of the order. If the petitioner/assessee had no notice and no knowledge of the order passed by the ITAT, it cannot be said that the limitation would start from the date the order was pronounced by the Tribunal.

8. In fact, the issue raised in the present petition is squarely covered in favour of the petitioner/assessee by way of the Division Bench judgment of this Court in '*Golden Times Services (P.) Ltd.* v. *Dy. CIT*' [2020] 113 taxmann.com 524/271 Taxman 123/422 ITR 102 wherein it has been held as under:

> '10. Be that as it may, the real question before us is as to what would be the relevant date for the purpose of commencement of period of limitation. To hold the date of the order to be the relevant date for the purpose of calculating the period of six months envisaged under section 254(2) of the Act, can lead to several absurd and anomalous situations. An order passed without the knowledge of the aggrieved party, would render the remedy against the order meaningless as the same would be lost by limitation while the person aggrieved would not even know that an order has been passed. Such an interpretation would not advance the cause of justice and would not be the correct approach and thus cannot be countenanced. A person who is aggrieved or concerned with an order would legitimately be expected to exercise his rights conferred by the provision and unless the order is communicated or is known to him, either actually or constructively, he would not be in a position to avail such a remedy. The words "six months from the end of the month in which the order was passed" therefore, cannot be given a narrow and restrictive interpretation. There are several decisions of the Apex Court and other High Courts, where similar question came up for consideration. The Courts have always leaned in favour of an interpretation which would enable an aggrieved party to avail its remedy in a meaningful manner, so that the right conferred by a provision does not remain fanciful or illusionary.
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> 12. As noted above, Section 254(2) of the Act has undergone certain amendments. However, there is no dispute that the provision still retains the distinctive two parts as observed by the Supreme Court in the abovenoted case. We are presently concerned with a scenario under section 254(2) of the Act where the assessee has invoked its jurisdiction seeking rectification/amendment of the order passed by the ITAT. In this situation, the assessee has claimed that it did not have the knowledge of the earlier order passed by the ITAT on 18-10-2016 and the period of limitation of six months should commence from the date of the receipt of the order. In our opinion, the limitation would begin to run when the affected person has the knowledge of the decision. The date when the order

was passed cannot be solely determined by referring to the date when the same was signed by the ITAT. We further find that under section 254(3) of the Act, the law stipulates that the ITAT shall send a copy of the order passed by it to the assessee and the Principal Commissioner. Further, Rule 35 of the ITAT Rules also requires that the orders are required to be communicated to the parties. For ready reference, section 254(3) of the Act and the relevant rule are reproduced hereinunder:

"254. Orders of Appellate Tribunal.

** ** **

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Principal Commissioner or Commissioner.

35. Order to be communicated to parties.

The Tribunal shall, after the order is signed, cause it to be communicated to the assessee and to the Commissioner."

13. From the abovenoted provisions, it emerges that the Section and the Rule mandates the communication of the order to the parties. Thus, the date of communication or knowledge, actual or constructive, of the orders sought to be rectified or amended under section 254(2) of the Act becomes critical and determinative for the commencement of the period of limitation. The ITAT has not applied its mind on this aspect and has been swayed by the literal and mechanical construction of the words "six months from the end of the month in which the order was passed". The ITAT failed to even delve into the question whether the affected party, either actually or constructively, was in knowledge of the order passed by the ITAT.

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15. The assessee had challenged the *ex parte* order dated 18-10-2016 and consequently, keeping in view, the aforesaid decisions, we are of the considered opinion that the starting point of limitation provided under section 254(2) of the Act has to commence from the date of the actual receipt of the judgment and order passed by the ITAT which is sought to be the reviewed.'

9. For the foregoing reasons, the course adopted by the ITAT at the first instance, by dismissing the appeal for non-prosecution, and then compounding the same by refusing to entertain the application for recall of the order, cannot be sustained. We, therefore have no hesitation in quashing the impugned order. Accordingly, the present petition is allowed. The order dated 29th July, 2019 is quashed and in the peculiar facts and circumstances of the case, we also set-aside the *ex parte* order dated 1st September 2017 with a direction that the ITAT shall hear and dispose of ITA No. 6686/Del/2013 on merits after affording the parties an opportunity of hearing.

10. At this stage, learned counsel for petitioner states that the petitioner shall apply under the Amnesty Scheme being "Vivad Se Vishwas". The statement made by learned counsel for appellant is accepted by this Court and the matter is held bound by the same.

Tanvi

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*In favour of assessee.