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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 24th March, 2017

\+ **ITA 52/2015, CM APPL 23522/2015**

CIT-7 ..... Appellant

Versus

ODEON BUILDERS PVT. LTD ....Respondent.

With

\+ **ITA 755/2015**

PR. COMMISSIONER OF INCOME TAX-4 ..... Appellant

Versus

GULBARGA ASSOCIATES (P) LTD. ....Respondent.

And

\+ **ITA 756/2015**

PR. COMMISSIONER OF INCOME TAX-4 ..... Appellant

Versus

GULBARGA ASSOCIATES (P) LTD. ....Respondent

Appearance: Mr. Dileep Shivpuri, Senior Standing counsel with Mr. Sanjay Kumar, Junior Standing counsel for Revenue in ITA 52 of 2015

Ms. Vibhooti Malhotra, Lakshmi Gurung, Junior Standing counsel for Revenue in ITA 755 and 756 of 2015

Mr. Abhishek Maratha, Advocate for Respondent in ITA 52 of 2015

Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar and Mr. Rupinder Kumar Aggarwal, Advocates for Respondents in ITA 755 and 756 of 2015.

CORAM:

JUSTICE S. RAVINDRA BHAT
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

J U D G E M E N T

Dr. S. Muralidhar, J.:

Introduction

1. The central question that arises for consideration before this Bench is whether the words "the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner" in Section 260A (2) (a) of the Income Tax Act, 1961 ('Act') mean only the 'jurisdictional' Principal or Chief Commissioner of Income-tax (CIT) or could it include any CIT including the CIT (Judicial)?

2. The question assumes significance in light of the stand of the Revenue that unless the 'jurisdictional' CIT receives a certified copy of the order of the Income Tax Appellate Tribunal (ITAT), the limitation of 120 days within which an appeal has to be filed does not commence. It requires to be clarified at the outset that the expressions 'Revenue' and 'Department' are used interchangeably throughout the judgment. Both expressions refer to the Income Tax Department.

Background facts in ITA 755 & 756 of 2015

3. In I.T.A. Nos. 755 and 756 of 2015 are appeals by the Revenue, through the Principal CIT Delhi-IV under Section 260-A of the Act against a common order dated 29th October, 2014 passed by the ITAT in a large batch of 115 appeals. Both appeals were first filed on 25th August, 2015. Para 8 of both memoranda of appeal state that the impugned order of the ITAT "was received in the office of the Appellant on 28th April, 2015". Enclosed with both the appeals was only a typed copy of the impugned order of the ITAT. The Revenue proceeded to compute limitation on that basis and claimed, therefore, that the appeal was filed within time on 25th August, 2015.

4. The Court perused the photocopy of the certified copy of the impugned order, dated 29th October 2014 of the ITAT. The date stamp on the top right hand corner of the said order showed that it was delivered to the office of the CIT, Ghaziabad on 19th December, 2014. The left hand bottom corner contained an endorsement of the Tax Assistant dated 22/23rd December, 2014. The explanation offered was that at the time the appeals were heard before the ITAT, the CIT (Ghaziabad) was the concerned CIT as far as this Assessee was concerned. On the date of the dispatch of the impugned order of the ITAT, the memo of parties in the appeal before the ITAT showed the address of the CIT at Ghaziabad. Therefore, the certified copy of the order was sent to him and received by him on 19th December, 2014. Pursuant to certain administrative orders issued by the Income Tax Department ('Department') the jurisdiction relating to the Assessee was transferred to the CIT, Delhi-IV. The ITAT was, therefore, asked to send the certified copy of its order to the 'concerned' CIT, Delhi-IV. It was only after receiving the certified copy

on 28th April 2015 that the said CIT Delhi-IV took a decision regarding filing of the appeals.

Background facts in ITA 52 of 2015

5. This appeal by the Revenue through the CIT-7 is against an order dated 16th May 2014 of the ITAT. At the hearing of the appeal on 1st September 2015, counsel for the Assessee raised a preliminary objection as regards limitation. It was pointed out by him that the photocopy of the certified copy of the impugned order of the ITAT bore a date stamp which showed that a copy had been received in the office of the CIT (Judicial) on 23rd July 2014. There were two other date stamps on the first page. One dated 25th July 2014 was in Hindi and was of the CIT, Central, New Delhi. The other was the stamp of the Office of CIT, Delhi-V with the date of 19th September, 2014. In para 6 of the memorandum of appeal, it was stated that the impugned order of the ITAT was served on the CIT-7 on 29th September, 2014 although there was no such date stamp anywhere on the first page of the photocopy of the impugned order. The counsel for the Assessee therefore contended that if a copy of the impugned order was available with the CIT (Judicial) on 23rd July 2014 or with the CIT (Central) on 25th July, 2014, then the present appeal which has been filed on 14th January, 2015 was beyond 120 days from the date of the receipt of the certified copy. There was no application for condonation of delay as of that date.

6. Following this, the Revenue out of 'abundant caution' filed C. M. No. 23522 of 2015 seeking condonation of 85 days' delay in filing the appeal. Notice in the said application was issued on 14th October 2015. At that hearing, the Court's attention was drawn to its decision in ***CIT v. Sudhir***

Choudhrie (2005)278 ITR 490 which mandated that the ITAT shall 'pronounce its orders' in open court by listing the cases for pronouncement. The Court was informed by the counsel for the Revenue that the said judgment was being scrupulously followed and ever since the ITAT has been pronouncing its orders after listing the matters for pronouncement in the cause list. The Court was further informed that as a follow up of the above judgment, there were certain changes made in the administrative side. One was that for the purposes of Section 254 (3) of the Act, the requirement of the ITAT having to send a copy of the order passed by it to the 'Principal Commissioner' or 'Commissioner' was satisfied by ensuring that the said order was sent to the CIT (Judicial). This was to facilitate the communication of the orders of the ITAT to the Department without unnecessary delay.

7. The Court then requested the Assistant Registrar (AR) of the ITAT to send to it forthwith both by special messenger as well as by email copies of the circulars/notifications/communications relevant to the issue of communication of the orders of the ITAT to the Department.

8. At the hearing on 19th October 2015, the Court was shown a copy of the Office Manual of the ITAT containing the detailed procedure in relation to matters before the ITAT, including communication of its orders. Para 76 of the ITAT Manual states that the orders of the ITAT 'shall be in writing and shall be pronounced, signed and dated by the members constituting the Bench which heard it as required under Rule 34. Paras 82 (a) and (d) of the Manual which deal with 'communication of orders' read thus:

> "*(a) Copies of the Tribunal's order are issued expeditiously to the appellant/applicant and the respondent, the Commissioner of*

Income-tax and the Departmental Representative in the form as at APPENDIX XX after putting the seal as at APPENDIX XX (a) on each page of the order issues. Where the appeal before the CIT (Appeals) has been restored and/or remanded to him, a copy of such order passed in such appeal is also to be sent to the CIT (Appeals) concerned."

(d) Copy of the order meant for the Assessing Officer other than those cases remanded to him, is issued through the Commissioner of Income tax concerned. Copies to the assessee and the Commissioner of Income tax are issued either under registered A.D. post or by hand delivery through Peon Book. If sent by post, it is sent to the address given in the Memo of Appeal. If no letter of authority was filed by one or more of those who appeared for the assessee, a copy meant for him will not be issued to him until he files the necessary letter of authority. The A.D. Cards received from the assessee or the Commissioner of Income-tax are filed or pasted on the back of the order kept on the relevant file and date of service of the order should be noted in the Order Sheet."

9. Appendix XX to the Manual gives the proforma of the endorsement made on the order of the ITAT when forwarding it to the various parties including the assessee, the Departmental Representative (DR), the Assessing Officer (AO), the CIT (Appeals) and the CIT. Therefore, it appears that as far as the Department is concerned, the ITAT dispatches copies of its orders to at least three officers apart from the DR, one of whom is presumably the 'concerned' CIT.

10. The Court's attention was also drawn to Instruction No. 4, dated 7th May 2002 and the subsequent Instruction No. 6/2015 dated 3rd July 2015 which appear to set out the 'work jurisdiction and role' of the CIT (Judicial). It was stated that pursuant to the said instructions, one of the copies of the ITAT's order is always sent to the CIT (Judicial) in addition

to the concerned CIT. If there was a change in the concerned CIT, then the onus would be on the Revenue to inform the ITAT of such change.

Questions for decision by the larger Bench

11. In both matters, the Revenue relied on the decisions of Division Benches (DBs) of this Court in ***CIT v. Arvind Construction Co. (P) Ltd. (1992) 193 ITR 330*** and ***Commissioner of Income Tax v. Income Tax Appellate Tribunal (2000) 245 ITR 659 (Del)*** to urge that limitation would start to run only from the date of service of the order of the ITAT on the concerned CIT having jurisdiction over the Assessee.

12. Both the aforementioned decisions of the DBs were rendered in the context of a reference at the instance of the CIT under Section 256 (2) of the Act. There was no occasion to interpret Section 260A (2) (a) of the Act. Secondly, both decisions were given at a time when there was no practice of the ITAT 'pronouncing' orders in the open. That practice came into vogue after an order was passed by this Court in ***CIT v. Sudhir Choudhrie*** (*supra*). The question then was whether it was incumbent on the Revenue through its DR or CIT (Judicial) to apply for a certified copy of the order of the ITAT and should limitation for the purposes of Section 260A (2) (a) be computed from the date on which such certified copy is made ready for delivery by the ITAT? Further, whether the receipt of the copy by the CIT (Judicial) is sufficient to trigger the limitation period under Section 260 A (2) (a) of the Act? Also, in the context of a common order of the ITAT in several appeals, whether limitation for all the appeals would begin to run when the certified copy is received first by either the CIT (Judicial) or any one of the CITs concerned?

13. In the above background, by the order dated 19th October 2015 in ITA Nos. 755 and 756 of 2015, the following questions were referred to the larger Bench for decision:

(i) What is the correct interpretation to be placed on the expression "received by the Assessee or the Principal Chief Commissioner or the Chief Commissioner or Principal Commissioner" in Section 260A (2) (a) of the Act? Does it mean 'received' by any of the named officers including the CIT (Judicial)?

(ii) Does limitation begin to run for the purposes of Section 260A (2) (a) only when a certified copy of the order of the ITAT is received by the 'concerned' CIT within whose jurisdiction the case of the Assessee falls notwithstanding that it may have been received by any other CIT, including the CIT (Judicial) prior thereto? Is it open to the Court to read the word 'concerned' into Section 260 A (2) (a) of the Act as a prefix to any of the officers of the Department named therein?

(iii) In the context of Section 254 (3) of the Act, is there an obligation on the ITAT to send a certified copy of its order to a CIT other than the one whose details are given to it during the pendency of the appeal? Will change in the jurisdiction concerning the case of the Respondent Assessee to another CIT subsequent to the order of the ITAT have the effect of postponing the time, from which limitation would begin to run in terms of Section 260 A (2) (a) of the Act, to when such CIT receives the order of the ITAT?

(iv) After the decision of this Court in ***CIT v. Sudhir Choudhrie (2005) 278 ITR 490***, do the decisions in ***CIT v. Arvind Construction Co. (P.) Ltd. (1992) 193 ITR 330*** and ***CIT v. ITAT (2000) 245 ITR 659 (Del)*** require to be reconsidered, explained or reconciled?

(v) After the change of procedure where orders of the ITAT are pronounced in the open, is it incumbent on the Department through its DR or CIT (Judicial) to apply for a certified copy of the order of the ITAT and should limitation for the purposes of Section 260A (2) (a) be computed from the date on which such certified copy is made ready for delivery by the ITAT?

(vi) Whether the receipt of a certified copy of the order of the ITAT by the CIT (Judicial) is sufficient to trigger the commencement of the limitation period under Section 260 A (2) (a) of the Act?

(vii) In the context of a common order of the ITAT covering several appeals, whether limitation for all the appeals would begin to run when the certified copy is received first by either the CIT (Judicial) or any one of the officers of the Department mentioned in Section 260 A (2) (a) or only when the CIT 'concerned' receives it? Where the same CIT has jurisdiction over more than one Assessee in the batch, will limitation begin to run for all such appeals when such CIT receives the order in either of the Assessee's cases?

(viii) Whether administrative instructions issued by the Department for its own administrative convenience can have the effect of altering the time from which limitation will begin to run for the purposes of Section 260 A (2) (a) of the Act?

14. On the same day, by a separate order, ITA 52 of 2015, in which some of the above questions arose, was also referred to the larger Bench.

Legislative History

15. It is necessary first to examine the background to the insertion of Section 260A of the Act. By the Finance Act No. 2 of 1998 a new sub-heading and Section were inserted in Chapter XX of the Act. The Memorandum to the amending Bill explained what may have been the legislative intent behind the insertion of Section 260A of the Act. In it, a reference was made to the decision of the Kerala High Court in ***CIT v. Wandoor Jupiter Chits (P) Ltd. (1995) 213 ITR 73 (Ker.)***, which held that the limited scope of Section 256 (2) of the Act which provided for reference by the ITAT to the High Court did not allow for "rendering of final decision on the issue even where the relevant facts are available to such a decision". The second reason was that the provision contributes to the delay in passing of the consequential orders by the AO after the

reference is decided by either the High Court or the Supreme Court, as the case may be.

16. At this stage, there was no particular focus on the expiry of the limitation period for filing appeal. Significantly, Section 260A as soon it was introduced only contemplated the order in appeal being "communicated to the appellant". Prior to the amendment with effect from 1st June 1998, Section 260A read as under:

> *260 A. Appeal to High Court.-*
>
> *(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.*
>
> *(2) An appeal under this section shall be:*
>
> *(a) filed within one hundred and twenty days from the date on which the order appealed against is communicated to the appellant;*
>
> *(b) accompanied by a fee of ten thousand rupees where such appeal is filed by an assessee;*
>
> *(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.*

17. After the amendment with effect from 1st June 1998, Section 260A read as under:

> *260A. Appeal to High Court.- (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law.*
>
> *(2) The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file*

an appeal to the High Court and such appeal under this sub-section shall be—

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner;

(b) (omitted)

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

.....

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

18. By the aforementioned amendment, two distinct changes took place. One was that in sub-section (2) of Section 260A, the words “an appeal under this Section shall be” was substituted by the words “The Chief Commissioner or Commissioner or an Assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-Section shall be..." Further the words “communicated to the Appellant” appearing in Section 260A (2) (a) was substituted by the words “received by the assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.”

19. There are certain general observations required to be made at this stage. The first is that the grant of time of 120 days to file an appeal against the order passed by the ITAT is contrary to many other statutes which provide for a shorter period of limitation. The only plausible explanation is that the legislature acknowledged the inherent delays in the system and, particularly, the working of the administrative machinery of the State. The power of the High Court to condone delay beyond that period would have to be interpreted in this context.

Strict construction

20. Sub-section (2A) was inserted by the Finance Act 2010, giving powers to the High Court to condone the delay in filing the appeal. There was a difference of opinion of the High Courts on whether the High Court has the power to condone the delay in filing the appeal, although Section 260A (7) (inserted by the Finance Act, 1999) stated that the provisions of the Code of Civil Procedure, 1908 ('CPC'), which related to appeals to the High Court shall "as far as may be" apply to the appeals under Section 260A. With a view to clarifying that the High Court did have such power to condone the delay, sub-section (2A) was retrospectively inserted.

21. Considering that in terms of sub-section (2A), the High Court can condone the delay for as long there is sufficient cause for not filing the appeal within 120 days, there, necessarily, has to be a strict construction of Section 260A(2). A comparison could be drawn with Section 34 of the Arbitration and Conciliation Act, 1996, Section 34 (3) of which stipulates a three-month period for filing a petition to challenge an Award. The proviso thereto limits the discretion of the Court to condone the delay

beyond three months up to "a further period of 30 days, but not thereafter".

The decision in CIT v. Sudhir Choudhrie

22.1 In ***CIT v. Sudhir Choudhrie*** (*supra*), the Court noted that orders of the ITAT were not being served upon the Department for years together. It was stated by the counsel for the Revenue appearing in those appeals that "the orders are duly communicated or served upon the authorities but sometimes they decline to accept the same and the delay is not attributable to the Registrar of the Income Tax Appellate Tribunal".

22.2 The Court was essentially dealing with the issue of the pronouncement of the final orders by the ITAT. The contention was that it was not obligatory to pronounce the final orders after listing them in Court, since Rule 35 Income Tax Appellate Tribunal Rules, 1963 (ITAT Rules) only required the orders to be communicated to the parties. It was explained that the ITAT had not been following such a direction "and does not wish to start the same being not a mandate of law".

22.3 Rule 35 of the ITAT Rules states: "The Tribunal shall, after the order is signed, cause it to be communicated to the assessee and to the Commissioner". The word 'Commissioner' in the said rule is not qualified by the word 'concerned'. The second factor to be noticed is that Rule 35 still uses the word 'communicated to' and not 'received by' which is used in Section 260A (2) (a) after the amendment by the Finance Act, 1999.

22.4 In ***CIT v. Sudhir Choudhrie*** (*supra*), reference was made to Section 254 of the Act which deals with "Orders of Appellate Tribunal". The

provision envisaged that once the ITAT passed an order then under Section 254(3), it was to "*send a copy of any orders passed under this section to the assessee and to the Chief Commissioner or Principal Commissioner or Commissioner*". The Court emphasised that Section 254 on a plain reading (or by necessary implication) nowhere indicated that ITAT "*could decline to pronounce the orders which are obviously to be dated and signed on a given date to make such orders effective and binding*".

22.5 The Court in ***CIT v. Sudhir Choudhrie*** (supra) proceeded to hold: "*Known precepts of procedural law would necessarily impose an obligation upon any forum or Tribunal, judicially determining the rights of the parties to declare its order on the date it is signed and declared*". It further observed: "*The requirement of letting the parties to know the contents of the order upon its declaration (when its dated and signed by the Bench of the Tribunal) would be the minimum requirement to the principles of natural justice. This requirement transcends all technical rules of procedure*". The rational explanation was that the "*pronouncement of an order would certainly put the parties at notice and they would be able to take recourse to the remedies available to them under law with some urgency, if required*".

22.6 The Court in ***CIT v. Sudhir Choudhrie*** (supra) then proceeded to direct the ITAT to pronounce its judgment and orders "*in open hearing and upon enlisting them for a given date.*"

Rule 34 of the ITAT Rules

23. Following the above judgment in ***CIT v. Sudhir Choudhrie*** (supra), Rule 34 of the ITAT Rules was amended to read as under:

"Order to be pronounced, signed and dated

34. (1) The order of the Bench shall be in writing and shall be signed and dated by the Members constituting it.

(2) The Members constituting the Bench or, in the event of their absence by retirement or otherwise, the Vice-President, Senior Vice-President or the President may mark an order as fit for publication.

(3) Where a case is referred under sub-section (4) of section 255, the order of the Member or Members to whom it is referred shall be signed and dated by him or them, as the case may be.

(4) The Bench shall pronounce its orders in the Court.

(5) The pronouncement may be in any of the following manners :—

(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.

(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.

(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.

(6) The order of the Bench shall ordinarily be pronounced by the Members who heard the appeal. However, if the said Members or any of them is or are not available for pronouncement for any reason, then the order will be pronounced by such Member or Members as may be nominated by the President, Senior Vice-President, Vice-President, or Senior Member, as the case may be.

(7) In the case where the order is ready in every respect and can be made available to the parties, the Bench may advance the date of

pronouncement and put this information on the notice board and the order shall be pronounced accordingly.

(8) In a case where the order cannot be pronounced on the date given, the date of pronouncement may be deferred, subject to sub-rule (5)(c) above, to a further date and information thereof shall be given on the notice board."

24. Usually, when an order is pronounced by the ITAT, the fact of such matter being listed for pronouncement is made known to the parties and their counsel. Rule 34 if read as a whole makes it mandatory for ITAT to pronounce orders at a hearing/sitting and obliges it to be made available to the parties. The DR is expected to remain present when such orders are pronounced. As noticed earlier, one copy of the order is sent as a practice by the ITAT to the CIT (Judicial), apart from sending it to the CIT whose details are made available by the Department to the ITAT at the time of filing the appeal or to such changed office as may be made known to the ITAT by the Department.

Earlier decisions

25. There has been no decision as such interpreting the words "*received by the assessee or the Principal Chief Commissioner*" occurring in Section 260A (2) (a) of the Act. The date of such receipt is the trigger for the commencement of the limitation period of 120 days for filing the appeal. Reliance has been placed by the Revenue on two decisions of this Court, which were rendered in the context of Section 256 of the Act.

26.1 The first is the decision in ***CIT v. Arvind Construction Co. (P) Ltd*** (supra). One of the questions considered was whether the application by the Revenue seeking reference was barred by time. It was pointed out that the order of the ITAT under Section 256 (1) of the Act was sent to the 'Chief Commissioner, Central Revenue Building'.

26.2 The Assessee urged that the date on which the order was received in that office i.e., 22nd May 1989 should have been the starting point for computation of the period of limitation and if so computed, the reference application would be barred by time. The revenue, on the other hand, urged that the concerned Commissioner i.e., the Commissioner, Delhi, Central-II, received the ITAT's order only on 14th August 1989, which should be the starting point for computation and limitation and not 22nd May 1989 when the order under Section 256 (1) "*was sent to the Chief Commissioner*".

26.3 The Court noted that the reference application under Section 256 (1) of the Act had to be filed "*not by the Income Tax Officer but by the Commissioner*". It observed that: "*It is obviously the Commissioner of Income-tax who is in charge of the Assessing Officer who would have the jurisdiction to file an application under section 256(1)*". The Court held that service of such an order on the Chief Commissioner was of no consequence and that "*It is only when the order was served on the Commissioner of Income-tax (Central II), that the limitation would commence*". The Court noted that after filing of an application under Section 256 of the Act, "*the jurisdiction of the Commissioner may change. But, we are not, in the present case, dealing with such a controversy*".

27. The above decision was reiterated in ***Commissioner of Income Tax v. Income Tax Appellate Tribunal*** (supra). In that case, the controversy was whether the period of limitation would commence from the service of the certified copy of the ITAT's order on the concerned Commissioner or on the Commissioner (Central-I) who had no jurisdiction. The Court followed the decision in ***CIT v. Arvind Construction Co. (P) Ltd.*** (supra). It was reiterated: "*It is the Commissioner concerned who alone has the*

jurisdiction to file application and it is imperative that it is he who should be served with a copy of order either under Section 254 or 256 (1)".

28. The above decisions under Section 256 (3) are clearly distinguishable. The limitation for the purpose of Section 256 begins to run the moment the order is communicated to the parties. Another distinction to be drawn is that the word used in Section 256 of the Act 'served' whereas under Section 260A it is 'received'. The word 'received' has to be seen in the context of the decision in ***CIT v. Sudhir Choudhrie*** (supra), which made it mandatory for pronouncement of the orders of the ITAT. At the time of such pronouncement, apart from the AR of the Assessee, the DR is expected to remain present. Through him the Department becomes immediately aware of the said judgment of the ITAT.

The 'concerned' CIT

29. The main thrust of the submissions of learned counsel for the Revenue is that it is only the 'concerned' CIT or Principal Commissioner of Income Tax (Pr CIT) who has the jurisdiction over the case who can be a 'party' to the appeal and not any and every CIT or Pr CIT. It is further pointed out that in the context of appeals by or against the Revenue, it is not that the Revenue as a whole that is the aggrieved party but only the concerned officer dealing with a case or having jurisdiction over the AO of the concerned case, who would be "the concerned party." Only such CIT or Pr CIT could file an appeal for the Revenue.

30. In this context, it is necessary to also refer to the allocation of work of the CITs (Judicial) and their jurisdiction. Initially, Instruction No. 4 dated 7th May 2002 specified the jurisdiction and the role of the CIT (Judicial). It was stated that the administrative decision to file the appeal before the

High Court would vest with the respective administration CIT/CCIT, who would compile the databank on the question of law and ensure that there was uniformity in the stand of the Department on a particular issue.

31. Later, these instructions were revised and superseded by Instruction No. 6 of 2015 dated 3rd July 2015. While reiterating the earlier Instruction, it was clarified that the actual filing of appeals before the High Court would remain the responsibility of the jurisdictional Pr CIT/CIT. The CIT (J) was made part of the Screening Committee and his office would provide secretarial assistance to the Screening Committee for engagement of standing counsels and prosecution counsels. The CIT (J) was also responsible for assisting the Pr CIT/CIT in the work of reviewing and evaluating their performance.

32. It is in the above context that it is argued on behalf of the Revenue, by its standing counsel Mr Dileep Shivpuri, Ms. Vibhooti Malhotra and Ms. Lakshmi Gurung, that the 'aggrieved party' is the 'concerned' CIT or Pr CIT who alone has to take a decision in the matter of filing an appeal. In other words till the order in appeal of the ITAT is not 'received' by the concerned CIT, the limitation for filing an appeal against the said order, does not, according to the counsel for the Revenue, begin to run. Emphasis is also laid on the words "the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner". It is stated that the prefix 'the' in this context connotes that the particular CIT/Pr CIT has to take a decision about the filing of an appeal. Reference is made to the decisions in ***Consolidated Coffee v. Coffee Board 1980 (3) SCR 625 and Shree Ishar Alloys Steels Ltd. v. Jayaswal Neco AIR 2001 SC 1161***.

33. Reference is also made to the decision in ***Adi Pherorzshah Gandhi v. H.M. Seervai AIR 1971 SC 385***, where the scope and ambit of the words 'person aggrieved' under Section 37 of the Advocates Act, 1961 was considered. It is pointed out that any person feeling disappointed with the result of the case would not be a 'person aggrieved'. "*He must be disappointed of a benefit which he would have received if the order had gone the other way*".

34. The Revenue also relies on the decision in ***Infosys Technologies Ltd. v. Jupiter Infosys Ltd. (2011) 1 SCC 125***, where the Supreme Court discussed the scope of the word 'aggrieved' occurring in the Trade and Merchandise Marks Act, 1958. An application under Sections 46 or 56 of that statute had to be by "a person aggrieved". Such a person, it was held, "*must be one whose interest is affected in some possible way*". It is accordingly submitted in the present case by the Revenue that it is only the jurisdictional Commissioner who can be said to be 'aggrieved' by the decision of the ITAT. Reference is also made to the decision in ***State of Maharashtra v. Ark Builders Pvt. Ltd. (2011) 4 SCC 616*** which in the context of Arbitration and Conciliation Act, 1996 emphasised that the period of limitation under Section 34(3) of the Act would commence only "*from the date on which the order/award was received by the party concerned in the manner prescribed by the law*".

35. On the other hand, it is pointed out by Mr. C.S. Aggarwal, Senior counsel for the Assessee, that it is the date of pronouncement of the order which should be taken as the date on which that order is 'received' for the purposes of Section 260A(2)(a) of the Act. This is because the order is pronounced in the open and the date of pronouncement is duly notified by the ITAT. Reference is also made to Section 33 of the CPC read with

Order 20, Rule 1(1) thereof, which states that the Court would pronounce the judgment in open court after notifying the parties or the pleaders. It is pointed out that the date of pronouncement of orders by the ITAT is always notified in advance. A DR is always present at the time of pronouncement of such judgment or order.

36. Supplementing the above submission, Mr. Abhishek Maratha, counsel appearing for the Assessee in ITA No. 52 of 2015 pointed out that after the change of procedure where the orders of the ITAT are pronounced in the open it is incumbent on the Department through its DR or CIT (Judicial) to apply for a certified copy of the order. It is also pointed out that under Section 256, the expression used is 'served'. In Section 260A, the word 'communicated' was substituted by the word 'received'. This word 'received', according to Mr.Maratha, has to be read as 'pronounced' in the presence of DR. Limitation would, therefore, begin to run from the date of pronouncement of the judgment excluding the time taken in obtaining a copy thereof.

37. At the outset, the Court would like to observe that in any matter arising from an order passed by the ITAT against the Department, an 'aggrieved' person is the entire Department. It is not any individual officer of the Department who can be said to be 'aggrieved'. It would be factually and legally incorrect to state that only that AO, CIT or Pr CIT within whose jurisdiction the Assessee's returns are scrutinised will be the aggrieved party and not any other officer of the Department. The CIT or the Pr CIT is a representative of the Department which is the party aggrieved.

38. In other words, there can be no doubt that in all cases where the decision of the ITAT has gone against the Revenue, it is the Revenue as a whole which is the 'aggrieved party'. An individual CIT or Pr CIT can prefer the appeal on behalf of the Revenue as an aggrieved party. If the legislative intent was to confer the power to file an appeal only by the 'concerned' CIT or Pr CIT or Chief CIT, then words to that effect ought to have been used. The use of the prefix 'the' preceding the words CIT or Pr CIT in Section 260 A (2) (a) serves only the grammatical correctness of a preposition and nothing more. It is not to be read as meaning "that particular CIT" or the "concerned CIT".

39. The interpretation of the prefix "the" has to be both purposive and contextual. The object of the provision is to enable the filing of appeals within a period of limitation. As it is, the period of limitation (120 days) is considerably longer than in routine cases (30, 60 or a maximum of 90 days). The interpretation has to serve the purpose of not lengthening the period of limitation further, but to ensure that the time limit is strictly adhered to. Relaxation of the period of limitation in such cases has to be an exception and not the rule. The decisions in ***Consolidated Coffee v. Coffee Board*** (supra) and ***Shree Ishar Alloys Steels Ltd. v. Jayaswal Neco*** (supra) were rendered in the context of different statutes where the wording of the provisions in question dictated the result of the interpretative exercise. They are not useful in the interpretation of the word "the" which precedes the words CIT or Pr CIT in Section 260 A (2) (a) of the Act.

40. The context in which the interpretive exercise is to be undertaken is that of the statute of limitation. Usually, the commencement of limitation is that point when there is 'knowledge' of an order or judgment. In the

context of Section 260A(2)(a), the question that should be asked is: "when was the Department/Revenue aware of the order" and not "when was that particular CIT or Pr CIT having jurisdiction have knowledge of the order". Once a responsible officer or representative of the Department such as its DR or the CIT (Judicial) is aware of the order, then from that point it is a purely internal administrative arrangement as to how the said officer obtains and further communicates the order to the officer who has to take a decision on filing the appeal. Of course, the time taken to obtain a copy of the order by such DR or CIT (Judicial) would be excluded. However, the period of limitation will not cease to run only because the 'concerned' officer has not yet received the order.

41. The counsel for the Revenue point out that the requirement that the ITAT should pronounce orders was not a statutory one but was brought about by a decision of this Court. Whilst this is correct, Rule 34 of the ITAT Rules equally provides the statutory underpinning of this principle. The fact that the jurisdictional CIT was not present at the time of pronouncement of the order of the ITAT will make no difference. The first officer of the Department who receives the certified copy should be taken to have 'received' it on behalf of all the officers of the Department. How such officer who first receives the copy ensures that it reaches the particular officer who has to take a decision on filing an appeal is for the Department to figure out. That internal issue of the Department cannot possibly extend the time for filing of the appeal beyond 120 days as provided under Section 260A (2) (a) of the Act

42. The problem can also be viewed from the angle of the frequent transfers and posting of the income tax officers including CIT/Pr CIT on account of the allocation/re-allocation of duties and other administrative

exigencies. It is possible that the CIT who was the ‘concerned’ CIT at the time of dispatch by the ITAT of the copy of the order ceases to be such when he receives the copy. That will not give rise to a fresh period of limitation or postpone the commencement of limitation till such time the substitute 'concerned' Pr CIT/CIT receives a copy of the said order. Given the fact that, legislatively, a larger period of limitation has been granted for filing appeals, there is no warrant for any flexibility in the interpretation thereby giving a discretion to officers of the Department to extend the period of limitation beyond what is envisaged by the statute. In these very cases, the impugned order was received by a particular CIT (Judicial) and then sent to the ‘concerned’ CIT, who was shifted out by the time a copy reached him. Meanwhile, the period of 120 days lapsed. The period of 120 days cannot be sought to be stretched indefinitely till the 'concerned' CIT receives the order. That would then defeat the legislative purpose.

43. Viewed differently, the contextual interpretation of the expression ‘receive’ would be when the parties notified of the pronouncement are represented at that time in the open court. When pronounced, both parties are said to receive it. The agency which they choose for transmission to the official or executive component to authorise an appeal is not the concern of the judicial system.

44. Another context would be the absence of arbitrariness and discrimination in the manner of treatment of the parties to the litigation. Section 260 A (2) (a) applies to both, the Assessee as well as the Revenue. When it is the Assessee who is aggrieved, limitation for filing the appeal will begin to run once the Assessee through its AR receives a copy of the order of the ITAT. Where the AR is present at the pronouncement, or even

when such AR chooses not to remain present for pronouncement, the Assessee should be taken to be aware of the order from that moment. From then on, barring the time taken by such AR to obtain a copy of the order, the limitation for filing an appeal would begin to run. Assuming that the Assessee is a large company, and a decision as to filing an appeal can only be taken by, say, its Managing Director (MD), an argument that the limitation does not begin till the order has reached the desk of the MD of that company will not be countenanced. Therefore, what applies to an Assessee should equally apply to the Revenue particularly since the legislature has not couched the language in a manner that brings out any difference in the treatment of both the parties to the appeal.

45. The decisions in the ***State of Maharashtra v. Ark Builders Pvt. Ltd.*** (supra), ***Adi Pherorzshah Gandhi v. H.M. Seervai*** (supra) and ***Infosys Technologies Ltd. v. Jupiter Infosys Ltd*** (supra) were in the context of statutes other than the Act. Apart from reiterating the settled principles of interpretation of statutes, over which there can be no dispute, the said decisions are therefore not particularly helpful to the Revenue.

46. On the other hand, the settled legal position is that where the words and expressions used in the statute are unambiguous and clear, there is no scope for the Court to 'read into' the statute words that do not exist. In the present case, if the Revenue's argument were to be accepted, the Court would be adding a prefix 'concerned' to the words CIT or Pr CIT or Chief CIT in Section 260 A (2) (a) of the Act. In the considered view of the Court, that is not permissible for the Court to do so in the circumstances explained hereinbefore.

47. Administrative instructions issued by the Department might insist that the CIT (Judicial) cannot by himself take a decision on filing an appeal. That, however, cannot extend the statutory period of limitation for filing the appeal. It is up to the Department to devise the protocol to ensure that (i) the decision to file the appeal and (ii) the steps to prepare and file such appeal are completed within the stipulated statutory period of 120 days from the date when the order was first received either by the DR or by the CIT (Judicial) or any other CIT. As long as the order to be appealed against is served on an officer of the Revenue, be it a DR or a CIT (Judicial), limitation will begin to run from that date.

48. It is possible that immediately after pronouncement, the AR or the DR or both may apply for a certified copy of the order of the ITAT. In that case, the time taken for the certified copy to be readied for collection by the applicant will be excluded while computing limitation. But here again, if earlier to such date, a copy is received by a party from the ITAT, then such earlier date will be the starting point for limitation.

49. Consequently, where the order is common to several appeals, while for the assessee the starting point for limitation will be when the assessee aggrieved by such order first receives a copy thereof; for the Revenue, the date when the DR or the CIT (Judicial) first receives a copy thereof will be the starting point for limitation for all the appeals.

50. It is, therefore, not possible to accept the submission that till a particular jurisdictional CIT or Pr CIT has not received the order of the ITAT, the period of limitation for filing an appeal against that order does not commence.

Answers to the Questions

51. The answers to the questions referred to this Court are answered thus:

Q: (i) What is the correct interpretation to be placed on the expression "received by the Assessee or the Principal Chief Commissioner or the Chief Commissioner or Principal Commissioner" in Section 260A (2) (a) of the Act? Does it mean 'received' by any of the named officers including the CIT (Judicial)?

Ans: The word 'received' occurring in Section 260A (2) (a) would mean received by any of the named officers of the Department, including CIT (Judicial). The provision at present names four particular officers i.e. the Principal Commissioner, Commissioner, Principal Chief Commissioner, and the Chief Commissioner of Income Tax. These are the only designations of the officers who could receive a copy of the order. In the absence of a qualifying prefix 'concerned', the receipt of a copy of the order of the ITAT by any of those officers in the Department including the CIT (Judicial) will trigger the period of limitation.

Q: (ii) Does limitation begin to run for the purposes of Section 260A (2) (a) only when a certified copy of the order of the ITAT is received by the 'concerned' CIT within whose jurisdiction the case of the Assessee falls notwithstanding that it may have been received by any other CIT, including the CIT (Judicial) prior thereto? Is it open to the Court to read the word 'concerned' into Section 260 A (2) (a) of the Act as a prefix to any of the officers of the Department named therein?

Ans: In Section 260A (2) of the Act, the words CIT, Pr CIT or Chief CIT are not prefixed or qualified by the word 'concerned'. There is no warrant for the Court to read into the provision such a qualifying word. The Court rejects the contention of the Revenue that limitation for the purposes of Section 260A (2) (a) begins to run only when a certified copy of the order of the ITAT is received by the 'concerned' CIT within whose jurisdiction

the case of the Assessee falls notwithstanding that it may have been received by any other CIT, including the CIT (Judicial) prior thereto.

Q: (iii) In the context of Section 254 (3) of the Act, is there an obligation on the ITAT to send a certified copy of its order to a CIT other than the one whose details are given to it during the pendency of the appeal? Will change in the jurisdiction concerning the case of the Respondent Assessee to another CIT subsequent to the order of the ITAT have the effect of postponing the time, from which limitation would begin to run in terms of Section 260 A (2) (a) of the Act, to when such CIT receives the order of the ITAT?

Ans: As far as the obligation of the ITAT under Section 254 (3) of the Act is concerned, the said obligation is satisfied once the ITAT sends a copy of an order passed by it to the Assessee as well as to the Pr CIT or the CIT or even the CIT (Judicial). The ITAT has to be simply go by the details as provided to it in the memo of parties. If there is a change concerning the jurisdiction of the CIT and it is some other CIT who has jurisdiction, it will not have the effect of postponing the commencement of the period of limitation in terms of Section 260A (2) (a) of the Act. The statute is not concerned with the internal arrangements that the Department may make by changing the jurisdiction of its officers. It is for the officer of the Department who first receives a copy of the ITAT's order to reach it in time to the officer who has to take a decision regarding the filing of an appeal.

Q: (iv) After the decision of this Court in CIT v. Sudhir Choudhrie (2005) 278 ITR 490, do the decisions in CIT v. Arvind Construction Co. (P.) Ltd. (1992) 193 ITR 330 and CIT v. ITAT (2000) 245 ITR 659 (Del) require to be reconsidered, explained or reconciled?

Ans: The decisions in ***CIT v. Arvind Construction Co.*** (supra) and ***CIT v. ITAT*** (supra) were rendered in the context of Section 256 of the Act (and not Section 260 A (2) (a) of the Act) and also prior to the decision in ***CIT***

v. Sudhir Choudhrie (supra). While the former decisions may not require reconsideration, they require to be reconciled with the latter decision in ***CIT v. Sudhir Choudhrie*** (supra). The decisions in ***CIT v. Arvind Construction Co.*** (supra) and ***CIT v. ITAT*** (supra) are of no assistance to the Revenue in its interpretation of Section 260 A (2) (a) of the Act.

Q: (v) After the change of procedure where orders of the ITAT are pronounced in the open, is it incumbent on the Department through its DR or CIT (Judicial) to apply for a certified copy of the order of the ITAT and should limitation for the purposes of Section 260A (2) (a) be computed from the date on which such certified copy is made ready for delivery by the ITAT?

Ans: While there is no requirement for the DR or CIT (Judicial) to apply for a certified copy of the ITAT, in any event under the extant ITAT Rules, a copy of the order is sent to the CIT (Judicial). In the context of Section 260A(2)(a) of the Act, once an order is listed for pronouncement in the ITAT, the DR or the CIT (Judicial) should be taken to be aware of the order. From that point, it is a purely an internal administrative arrangement as to how the DR or CIT (Judicial) obtains and further communicates the order to the officer who has to take a decision on filing the appeal. It is possible that immediately after pronouncement, the AR or the DR or both may apply for a certified copy of the order of the ITAT. In that case, the time taken for the certified copy to be readied for collection by the applicant will be excluded while computing limitation. But here again, if earlier to such date, a copy is received by a party from the ITAT, then such earlier date will be the starting point for limitation.

Q: (vi) Whether the receipt of a certified copy of the order of the ITAT by the CIT (Judicial) is sufficient to trigger the commencement of the limitation period under Section 260 A (2) (a) of the Act?

Ans: The receipt of a certified copy of the order of the ITAT by CIT (Judicial) would trigger the commencement of the limitation period under Section 260 A (2) (a) of the Act.

Q: (vii) In the context of a common order of the ITAT covering several appeals, whether limitation for all the appeals would begin to run when the certified copy is received first by either the CIT (Judicial) or any one of the officers of the Department mentioned in Section 260 A (2) (a) or only when the CIT 'concerned' receives it? Where the same CIT has jurisdiction over more than one Assessee in the batch, will limitation begin to run for all such appeals when such CIT receives the order in either of the Assessee's cases?

Ans: Where there, is a common order of the ITAT covering the several appeals, limitation would begin to run when a certified copy is received first by either the CIT (Judicial) or one of the officers of the Department and not only when the CIT 'concerned' receives it. When the same CIT has jurisdiction for more than one Assessee, the limitation begin to run for all from the earliest of the dates when the DR of CIT (Judicial) or any CIT first receives the order in any of the cases forming part of the batch disposed of by the common order. If there are four separate orders passed, then the limitation begins to run when such separate orders are received first by any officer of the Department.

Q: (viii) Whether administrative instructions issued by the Department for its own administrative convenience can have the effect of altering the time from which limitation will begin to run for the purposes of Section 260 A (2) (a) of the Act?

Ans: Instructions issued by the Department for its administrative convenience cannot alter the time when limitation would begin to run under Section 260A (2) (a) of the Act. To reiterate these administrative instructions are for the administrative convenience of the Department and will not override the statute, in particular, Section 260A (2) (a) of the Act.

52. The matters be now placed before the roster Bench on 17th April 2017.

S. MURALIDHAR, J

S. RAVINDRA BHAT, J

VIBHU BAKHRU, J

MARCH 24,2017
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