

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.1885/Del/2018
Assessment Year: 2014-15

OPG Securities Pvt. Ltd.
OPG House, 4/10, Asaf Ali Road,
New Delhi – 110 002.

Vs Addl. CIT,
Spl. Range-7,
New Delhi.

PAN: AAACO1081C

(Appellant)

(Respondent)

Assessee by
Revenue by

: Ms Somya Jain, CA
: Ms Raja Rajeswari R, Sr. DR

Date of Hearing : 23.05.2023
Date of Pronouncement : 18.08.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.1885/Del/2018 for AY 2014-15, arises out of the order of the Commissioner of Income Tax (Appeals)-XXV, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No.257/17-18 dated 11.01.2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2016 by the Addl. Commissioner of Income-tax, Special Range-7, Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us :-

"1. That the Commissioner of Income Tax (Appeals) ["CIT(A)"] vide order dated 11.01.2018 (read with rectification order dated 05.02.2018) erred on facts and in law in upholding the validity of the assessment order passed by the assessing officer under section 143(3) without appreciating that the same was barred by limitation prescribed under section 153(1) of the Income Tax Act, 1961 ("the Act").

1.1 That the CIT(A) erred on facts and in law in failing to appreciate that the assessment order, though dated 30.12.2016, was passed/ dispatched/ issued on 02.01.2017 and hence barred by limitation.

Re: Disallowance under section 14A

2. That the CIT(A) erred on facts and in law in upholding disallowance to the extent of Rs.4,65,685 under section 14A of the Act, against suo-motu disallowance of Rs.1,50,000 made by the appellant.

2.1 That the CIT(A) erred on facts and in law in not setting aside the action of the assessing officer in computing disallowance by invoking Rule 8D of the Income Tax Rules, 1962 ('the Rules') considering that the conditions precedent for applying the same were not satisfied.

2.2 That the CIT(A) failed to appreciate that no expenses, over and above expenses suo-motu disallowed by the appellant, were incurred in relation to the exempt income and therefore, there was no warrant to make any further disallowance under section 14A of the Act.

Re: Disallowance of interest under section 36(1)(iii)

3. That the CIT(A) erred on facts and in law in upholding disallowance of interest expenditure to the extent of Rs.1,18,53,937 under section 36(1)(iii) of the Act.

3.1 That the CIT(A) erred in holding that interest bearing funds were utilized for making interest free loans/ advances, without any commercial expediency or business purpose, without appreciating that: (a) borrowed funds were utilized for business purposes and not for advancing any interest free loans; and (b) loans/ advances were given in earlier years on account of commercial expediency and that too. out of own interest free funds.

3.2 Without prejudice, that the CIT(A) erred in considering net interest of Rs. 1,27,17,141, in place of Rs. 1,25, 17,141, while granting part relief.

Re: Disallowance of Non-Compliance charges

4. That the CIT(A) erred on facts and in law in upholding the disallowance of non-compliance charges of Rs. 2,20,105/-

The appellant craves leave to add, amend or vary the above grounds of appeal on or before the date of hearing."

3. We have heard the rival submissions and perused the materials available on record. The assessee is a private limited company engaged in the business of trading in shares and securities and is a member of BSE and NSE. The return of income for the Asst Year 2014-15 was filed by the assessee company on 25.11.2014 declaring total income of Rs 10,88,01,290/- . The assessment was completed u/s 143(3) of the Act on 31.12.2016 u/s 143(3) of the Act determining total income at Rs 12,23,40,010/- after making various disallowances / additions. The assessee obtained partial relief from the Id. CIT(A). The Id. CIT(A) sustained the following additions against which assessee is in appeal before us:-

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|--|------|-------------|
| a) Disallowance u/s 14A of the Act | - Rs | 4,65,685 |
| b) Disallowance of interest expenditure | - Rs | 1,18,53,937 |
| c) Disallowance on account of non-compliance of charges-Rs | | 2,20,105 |

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 Id. 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 Id. 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

Id. AO when the same leaves the hand of the Id. AO or goes out of the control of the Id. 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.

10. Since the assessment is held to be bad in law, the adjudication of other grounds of the assessee on merits, would only be academic in nature and they are hence left open.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.08.2023

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 18th August, 2023.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi