IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6972/Del./2017
Assessment Year 2001-2002

M/s. Vivek Financial Focus Ltd., 105, Vishwas Sadan, 9 District Centre, Janakpuri, New Delhi – 110 058. PAN AAACV4309A	vs.	The DCIT, Circle-17(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate Shri Ashish Goel, C.A. and Shri Rishab Jain, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	05.07.2018
Date of Pronouncement :	09.07.2018

ORDER

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-23, New Delhi, dated 29.09.2017, for the A.Y. 2001-2002.

2. Briefly, the facts of the case are that original return of income was filed declaring income of Rs.26,98,700/-,

subsequently assessment u/s 143(3) was completed on 29.03.2004 at an income of Rs.46,98,702/-. However, the matter went upto the ITAT wherein a relief of Rs.20 lac was granted to the assessee and finally the income of the assessee after appeal effect to the order of the ITAT was worked-out to Rs.26,98,700/-. Later on, the case was reopened under section 148 and addition was made on account of unexplained amount of Rs.9.00,000/- received from M/s Chanakya Finvest Pvt. Ltd. and assessment was completed u/s 147/143(3) at an income of Rs.35,98,700/- vide order dated 30.12.2008. Assessee preferred appeal before the Ld. CIT(A) which is dismissed vide order dated 07.07.2009. The assessee filed appeal before the ITAT and the ITAT has set aside the issue regarding the addition of Rs.9 lacs to the file of the AO in ITA.No.3899/Del./2009 vide order dated 08.06.2010 with a direction to decide the issue afresh, after providing adequate opportunity to the assessee. The A.O. in view of the directions of the Tribunal, provided an opportunity to the assessee for submission of the details vide letter dated 24.08.2010 and

30.12.2013. The assessee-company appeared before A.O. and filed bank statement, but, in the absence of confirmation of the creditor, the A.O. made the addition of Rs.9 lakhs in the order under section 254/143(3) vide order dated 28.03.2014.

3. The assessee challenged the assessment order before the Ld. CIT(A) and it was contended that the assessment order passed is barred by limitation under section 153(2A) of the I.T. Act and addition of Rs.9 lakhs under section 68 is unjustified. It was submitted that the Tribunal has given direction vide order dated 08th June 2010 to decide the issue afresh, after providing adequate opportunity to the assessee which is reproduced in the appellate order to the effect that *"After hearing both the sides, we set aside the issue raised in the additional ground regarding the addition of Rs. 9 Lacs to the file of the Assessing Officer with a direction to decide afresh after providing adequate opportunity to the assessee"*. It was submitted that if the assessment is set aside by virtue of an order of the Tribunal under section 254, the fresh assessment

shall be completed within one year from the end of the financial year, in which order under section 254 is received by the Chief Commissioner or Commissioner. As per section 153(2A), the above mentioned notice issued for the A.Y 2001-02 under appeal dated 30th December 2013 restoring the matter to the file of the Assessing officer is time barred. The submissions were also made on merit that assessee produced sufficient evidence before A.O. and in case, there is any doubt, summons under section 131 may be issued against the Investor for verifying the transaction. The Ld. CIT(A), as regards the issue of the impugned order is time barred by limitation has rejected the claim of assessee His findings in paras 5.1 to 5.3 of the impugned order are reproduced as under :

"5.1. Ground no. 1 is regarding contention that the impugned order is barred by limitation.

5.2. The A.O. (DCIT circle 17(1), New Delhi) issued notice u/s 143(2) dated 24th August 2010, pursuant to the direction of the Hon'ble ITAT. It is the contention of the

appellant that the matter got time barred on 31.03.2012, however, the impugned order has been passed on 28.03.2014. The appellant relied upon provisions of section 153(2A) of the income tax 1961.

5.3. The provisions of section 153(2A) of the Income tax 1961, are reproduced as under:

2A; Notwithstanding anything contained in sub-sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment under section, 146 or}in pursuance of an order, under section 250, section 254, section 263 or section 264^ setting aside or cancelling an assessment, may be made at any time before the expiry of one year from me end of the financial year in which the order under section 146 cancelling the

assessment is passed by the Assessing Officer or the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner."

5.4. A plain reading of the above provisions contained u/s 153(2A) would show that the time limit prescribed therein is applicable only when there is a direction of making fresh assessment after setting aside or cancelling the entire assessment order under appeal. However, in the present case, as can be seen from the operative part of the order of Hon'ble ITAT, reproduced in para 4.2, above, the whole assessment has not been directed to be made, afresh. Only limited issue was to be decided by the AO as per directions of the Hon'ble ITAT and the entire earlier assessment order is not disturbed by the Hon'ble ITAT. Therefore, the

time limit prescribed in section 153(2A) is not applicable in this case. Hence, the contention of the appellant is rejected."

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and filed all the previous orders in the paper book. He has submitted that as per Provisions of Section 153(2A), assessment order pursuant to an Order under section 254 of the I.T. Act, has to be made before the expiry of one year from the end of the financial year, in which the order under section 254 of the I.T. Act is received by the Department. Therefore, since the order has been passed by the A.O. after the expiry of this limited period, the said order is bad in law and void abinitio. The A.O. made sole addition of Rs.9 lakhs in the assessment order dated 30.12.2008 under section 147/143(3) which was restored by the Tribunal to the file of A.O. vide order dated 08.06.2010. Therefore, limitation period for passing the order under section 254/143(3) expires on 31.03.2012 whereas the impugned assessment order has been

passed on 28.03.2014. Therefore, the same is barred by limitation. He has submitted that Ld. CIT(A) misunderstood the direction of the ITAT as well as provisions of Section 153(2A) of the I.T. Act. The issue is covered by the Order of Hon'ble jurisdictional Delhi High Court in the case of Nokia India Private Limited vs. DCIT 2017-(9)-TMI-1298-Del.-HC, in which, in paras 22 to 25 it was held as under :

> *"22. Having perused the impugned order of the ITAT carefully and the operative portions qua which the assessment order was set aside and the matter remanded to the AO, the Court is unable to agree with the contention of learned ASG that the aforementioned order of the ITAT did not constitute a complete setting aside of the assessment with directions to the AO to pass a fresh order. The Court does not agree with the submission of the learned ASG that the AO was 'chained' by the ITAT's directions and could not have passed a fresh assessment order de novo pursuant to such remand.*

23. The Court is also unable to agree with the contention that unless the entire assessment order is wholly set aside, the time limit for passing the fresh order under Section 153 (2A) would not be attracted. There is no warrant for such an interpretation. The object behind introduction of sub-section (2A) was to prescribe a time limit for completing the assessment proceedings upon the original assessment being set aside or being cancelled in appeal. Clearly, the intention was not to restrict the applicability of sub-section (2A) only to such cases where the 'entire' original assessment order is set aside. It was noted that, "Under the existing provisions of section 153 (3), such fresh assessments are not subject to any time limit." Indeed, Section 153, as it stood at that time, did not prescribe any time limits. Section 153 (3) (ii), in particular, did not require the order passed thereunder to be issued within any particular time limit. Further there is a distinction between an 'assessment' that is set aside and an 'assessment order' being set aside. When the

assessment on an issue is set aside and the matter remanded, with a direction that the issue has to be determined afresh, Section 153 (2A) of the Actwould get attracted.

24. What is important to note is that, along with the insertion of sub-section (2A), sub-section (3) underwent a simultaneous change. It was expressly made "subject to the provisions of sub-section (2A)" This meant that Section 153 (3) would thereafter apply only to such cases where Section 153(2A) did not apply. In other words, in all instances of an AO having to pass a fresh assessment order upon remand where Section 153 (2A) would apply, the AO would be bound to follow the time- limit imposed by sub-section (2A). Where the AO was only giving effect to an appellate order, then Section 153 (3) (ii) of the Act would apply.

25. In the present case, of the seven issues, the assessment in respect of five was set aside and the issues

remanded for a fresh determination. Whether the remand was to the TPO or the DRP would not make a difference as long as what results from the remand is a fresh assessment of the issue. Clearly, therefore, the time limit for completing that exercise was governed by Section 153 (2A) of the Act."

4.1. In the same Judgment, the Hon'ble jurisdictional Delhi High Court in paras 32 to 35 held as under :

"32. In the considered view of the Court, the aforesaid decision of the Gujarat High Court fully supports the case of the Assessee here. The decisions of the Madhya Pradesh High Court in Gulabchand Motilal v. Commissioner of Income-tax [1988] 174 ITR 117 (MP), the High Court of Punjab and Haryana in Bharti Engineering Corporation v. Union of India [2008] 298 ITR 400 (P&H) and Deep Chand Jain v. ITO [1984] 145 ITR 676 (P&H), and the Karnataka High Court in CIT v. Paul Noel Rodrigues [2015] 231 Taxman 811 (Kar), all hold likewise. The Kerala High Court in Patel R.P. v. ACIT 2015 (5) KHC 370 held that Section

153 (2A) of the Act would apply even where more than one issue is involved i.e. even where one of the issues has been remanded to the AO for a fresh determination.

33. The analysis of the terms 'finding' and 'directions' by the Supreme Court in Rajinder Nath (supra) was in the context of Section 153 (3) (ii) of the Act at a time when Section 153 (2A) of the Act had not been introduced since the relevant AY in that case was 1956-57. The said decision is, therefore, not of help to the Revenue.

Conclusion

34. For all the aforementioned reasons, the Court holds that, in the present case, the assessment proceedings had to necessarily be completed by the AO within the time limit specified in Section 153(2A) of the Act. Inasmuch as the AO failed to do so, the impugned notice dated 14th September 2015 issued by the AO and all proceedings consequential thereto including the order dated 2nd December 2015 passed by the AO are hereby set aside.

35. The writ petition is allowed in the above terms but, in the circumstances, with no orders as to costs."

5. On the other hand, Ld. D.R. relied upon the orders of the authorities below.

6. After considering the rival submissions, I am of the view that the impugned assessment order is time barred. The Ld. CIT(A) reproduced Section 153(2A) in his findings as reproduced above. According to the provisions of Section 153(2A), an assessment order, pursuant to the Order under section 254 of the Act has to be made before expiry of one year from the end of the financial year in which order under section 254 of the Act is received by the Department. In this case, the A.O. made addition of Rs.9 lakhs only in the original re-assessment order which is set aside by the Tribunal and the issue of Rs.9 lakhs was restored to the file of A.O. vide order dated 08.06.2010. Therefore, limitation period for passing the order under section 254/143(3) expired on 31.03.2012 whereas, the impugned assessment order was passed on

28.03.2014, therefore, it is time barred. Whatever issue have been raised by the Ld. CIT(A) for rejecting the claim of assessee, have been answered by the Hon'ble jurisdictional Delhi High Court in the case of Nokia India Private Limited (supra), in favour of the assessee. The issue is covered in favour of the assessee by the Hon'ble jurisdictional Delhi High Court in the case of Nokia India Private Limited (supra). I accordingly, hold that the assessment order passed by the A.O. is time barred and as such, the entire proceedings have been vitiated and void abinitio. I, accordingly, set aside the orders of the authorities below and quash the same Since the order of the authorities below have been quashed, therefore, there is no need to decide the addition on merit which is left with academic discussion only.

7. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dt. 09th July, 2018.
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.