

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA Nos. 629 to 631/Bang/2014
Assessment years : 2001-02, 2002-03 & 2003-04

M/s. Globe Transport Corporation, # 40, Lakshmi Complex, 4 th Floor, K R Road, Fort, Bangalore – 560 002. PAN: AABFG 2985M	Vs.	The Assistant Commissioner of Income Tax, Circle 1(1), Bangalore
APPELLANT		RESPONDENT

ITA Nos. 643 to 645/Bang/2014
Assessment years : 2001-02, 2002-03 & 2003-04

The Deputy Commissioner of Income Tax, Circle 1(1), Bangalore.	Vs.	M/s. Globe Transport Corporation, # 40, Lakshmi Complex, 4 th Floor, K R Road, Fort, Bangalore – 560 002. PAN: AABFG 2985M
APPELLANT		RESPONDENT

Assessee by	:	Shri Annamalai, Advocate
Revenue by	:	Shri Vikas K. Suryavamshi, Addl.CIT(DR)(ITAT) Bengaluru

Date of hearing	:	18.12.2018
Date of Pronouncement	:	04.01.2019

ORDER

Per Bench

These are appeals by the Revenue and Assessee against three orders all dated 30.1.2014 of CIT(Appeals)-I, Bangalore, relating to assessment years 2001-02 to 2003-04.

2. First we shall take up for consideration the common issue raised in Gr.No.2 in the three appeals filed by the Assessee for AYs 2001-02 to 2003-04 respectively. In Gr.No.2, the Assessee has raised a plea that the orders of assessment passed by the AO dated 30.12.2011 in all the three AYs 2001-02 to 2003-04 were barred by limitation as laid down in Sec.153(2A) read with second proviso thereto of the Income Tax Act, 1961 (Act).

3. The material facts as far as the aforesaid ground of appeal raised by the Assessee are that the Assessee which is a partnership firm, is engaged in Transport business. For AYs 2001-02 to 2003-04, the Assessee filed returns of income on 23.10.2001, 31.10.2002 and 28.11.2003 respectively. In AY 2001-02 an order of assessment u/s.143(3) of the Act dated 3.3.2003 was passed. As far as AY 2002-03 is concerned, the return of income was processed u/s.143(1) of the Act on 3.3.2003. As far as AY 2003-04 is concerned the return of income was processed u/s.143(3) of the Act on 7.7.2004.

4. The Assessment for AYs 2001-02 to 2003-04 were reopened by issue of notice u/s.148 of the Act. Notice u/s. 148 of the Act was issued dated 12.12.2007 for AYs 2001-02 & 2002-03 and dated 18.03.2007 for the AY 2003-04. In the assessment completed for all the 3 assessment years,

additions were made to the total income of the assessee on account of inflation of expenses, disallowance u/s. 40A(3), unexplained investments in purchase of trailer and other additions.

5. Aggrieved by the additions in the aforesaid orders of assessment, the assessee filed appeal before the CIT(Appeals), who by three orders all dated 12.11,2009 gave partial relief to the assessee. The assessee as well as the department filed appeals before the Tribunal against the order of CIT(Appeals). The Tribunal in ITA Nos. 92 to 92/Bang/2010 vide order dated 05.10.2010 in all the assessee's appeals set aside the orders of CIT(Appeals) and remanded for fresh consideration by the AO the assessments for all the three assessment years. Following were the relevant observations of the Tribunal in this regard:-

“16. Therefore, in the interest of justice and fair play, we find that these assessments be redone by the assessing authority after following all the principles of natural justice and confining to the materials already available on record. **Accordingly, we set aside the orders of the lower authorities and remit back the cases to the Assessing Officer for fresh disposal in according with law.** We refrain our eyes from expressing any opinion on the grounds raised before us both of law and of facts. **The remands are open.**”

(emphasis supplied by us)

6. After the order of ITAT, the AO completed the order of assessment in all the three assessment years on 30.12.2011. Against the addition made in the aforesaid orders of assessment, the assessee filed appeals before the CIT(Appeals) for all the three assessment years. Before the CIT(Appeals), the assessee contended that the order of assessment dated 30.12.2011 passed by the AO for all the three assessment years is barred by time as per the provisions of section 153(2A) of the Act. The contention of the assessee was that through the orders of assessment was dated

30.12.2011, those orders were despatched only on 09.01.2012 through the Bangalore GPO through Speed Post to the assessee and the same was served on the assessee only on 10.01.2012. The above fact is not in dispute and is evident from the postal cover in which the order of assessments were despatched to the assessee and the reply of the post office on the date of despatch of those letters to the assessee. The postal department has confirmed that the orders of assessment were despatched for service on the assessee only on 09.01.2012. A copy of the post-office letter in this regard is placed at page 133 of PB of assessee filed for AY 2001-02.

7. The provisions of section 153(2A) applicable for the relevant assessment years insofar as it is relevant for the present appeal reads as follows:-

“(2A) Notwithstanding anything contained in sub-sections (1), (1A), (1B) 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 in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner:

Provided that where the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, on

or after the 1st day of April, 1999 but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time up to the 31st day of March, 2002 :

Provided further that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2005 but before the 1st day of April, 2011, the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted:

Provided also that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2006 but before the 1st day of April, 2010, and during the course of the proceedings for the fresh assessment of total income, a reference under sub section (1) of section 92CA—

- (i) was made before the 1st day of June, 2007 but an order under sub-section (3) of section 92CA has not been made before such date; or
- (ii) is made on or after the 1st day of June, 2007,

the provisions of this sub-section shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "twenty-one months" had been substituted:

Provided also that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2010, and during the course of the proceeding for the fresh assessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of this sub-section

shall, notwithstanding anything contained in the second proviso, have effect as if for the words "one year", the words "two years" had been substituted.”

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 Id. 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 assessee 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 Id. 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.

17. In the result, the appeals of the assessee are allowed, while the appeals by the revenue are dismissed.

Pronounced in the open court on this 04th day of January, 2019.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 04th January, 2019.

/ Desai Smurthy /

Copy to:

1. The Assessee
2. The Revenue (2)
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.