



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

RP NO.436 OF 2023

IN

ITA NO.103/2017

BETWEEN:

M/S. CHANDRIKA INVESTMENTS
REP.BY ITS MANAGING PARTNER
SRI. I. HARISHCHANDRA SHETTY
NO.8/A, 24TH MAIN, 1ST PHASE
J.P.NAGAR, BANGALORE -560 078

...PETITIONER

(BY SRI.A.SHANKAR, SR. COUNSEL FOR
SRI.ANNAMALAI S. ADV.)

AND:

THE INCOME-TAX OFFICER
WARD 4(3), 80 FEET ROAD
BMTc BUILDING, KORAMANGALA
6TH BLOCK, BANGALORE- 560 095

...RESPONDENT

(BY SRI.DILIP.M., STANDING COUNSEL)

THIS REVIEW PETITION IS FILED UNDER SECTION 114 READ WITH ORDER 47 RULE 1 OF CPC PRAYING TO REVIEW THE JUDGMENT PASSED BY THIS HON'BLE COURT IN ITA NO. 103/2017 DATED 28/07/2023 TO THE EXTENT AGAINST THE PETITIONER BY ANSWERING THE QUESTIONS OF LAW IN FAVOUR OF THE REVENUE AND AGAINST THE ASSESSEE BY CONFIRMING THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA NO. 631/BANG/2013 DATED:23/09/2016 FOR THE ASSESSMENT YEAR 2009-2010.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS ON 10.01.2025 COMING ON FOR PRONOUNCEMENT THIS DAY, **T.G.SHIVASHANKARE GOWDA, J.,** MADE THE FOLLOWING:

Digitally signed by
MALA K N

Location: HIGH COURT
OF KARNATAKA



CORAM: HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV ORDER

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

In this petition, the petitioner is seeking review of the Judgment dated 28.07.2023 passed in ITA No.103/2017.

2. In ITA No.103/2017 the petitioner had challenged the order of the Income Tax Appellate Tribunal (for short, 'ITAT'), Bengaluru in ITA No.631/Bang/2013 dated 23.09.2016 for the Assessment Year 2009-10. Said order was marked as Annexure-A in the appeal. ITA No.103/2017 was admitted to consider the following four questions of law:

- i. Whether the Tribunal was justified in law in not quashing the assessment order passed by the Income-tax Officer after holding that the order passed by the Income-tax officer is not valid on the facts and circumstances of the case?
- ii. Whether the Tribunal was justified in law in restoring the matter back for framing the de-nova assessment by a competent officer being ACIT or DCIT and thereby elongating the period of limitation on the facts and circumstances of the case?



iii. Whether the Tribunal was justified in law in not holding that the assessment order, passed is without jurisdiction and contrary to the Instruction No.1/2011 dated 31.01.2011 and the assessment order is then liable to be annulled on the facts and circumstances of the case?

iv. Whether the Tribunal was justified in law in not adjudicating the various grounds of appeals filed by the appellant on the facts and circumstance of the case?

3. After hearing both the sides and considering the materials on record, the appeal came to be dismissed on the ground that there was no error in the order passed by the ITAT. Now the petitioner is seeking the review of the order on the ground that this Court is not correct in considering the argument of the Revenue and the decision of the Delhi High Court in **Abhishek Jain vs. Income-Tax Officer**¹ and said contention has attained finality in view of the Tribunal rejecting the revenue contention which has not been challenged by the Revenue. The provision under Section 21 of the CPC is not applicable to the facts of the case. This Court has not considered the ratio in **Peter Vaz vs. Commissioner of Income Tax**² and also the judgment of the Gujarat High Court in **Commissioner of Income-Tax**

¹ (2018) 94 taxmann.com 355 (Delhi)

² (2021) 128 taxmann.com 180 (Bombay)



vs. Ramesh D. Patel³, wherein it was held that the provisions of Section 124 of the Act pertains to the 'territorial jurisdiction' only. In view of the above observation, Section 124 is not applicable to the pecuniary jurisdiction and consequently the petitioner need not object before the Assessing Officer as required under Section 124(3) of the Act. This Court did not appreciate the provisions of Section 124 of the Act, which is only regarding territorial jurisdiction and not relating to the pecuniary jurisdiction. The submissions made on behalf of the petitioner was not considered in distinguishing the decision of the judgment in **Fidelity Business Services India (P.) Ltd vs. ACIT⁴**. Even the judgment of **Sudhir Kumar Agarwal vs. ITO⁵** and **Deepak Agro Foods vs. State of Rajasthan⁶** was not considered. Substantial questions of law have been answered in favour of the Revenue and against the Assessee by this Court without taking note of the fact and decisions referred supra. Hence, the grounds fall within the provisions of Order

³ (2014) 42 taxamnn.com 540 (Gujarat)

⁴ (2018) 95 taxmann.com 253 (kar)

⁵ ITA No.158/RPR/2017 (Raipur)

⁶ (2009) 16 STR 518 (SC)



XLVII Rule 1 of CPC and sought for review. Review is opposed by the Revenue.

4. We have heard the arguments of Sri.A.Shankar, learned Senior Counsel on behalf of Sri.Annamalai S., learned counsel for the petitioner and Sri M. Dilip, learned Standing Counsel for the Revenue.

5. It is contended by the learned Senior Counsel that Section 124 of the Act deals with only 'territorial jurisdiction' and not the 'pecuniary jurisdiction'. The judgment in Abhishek Jain deals with only territorial jurisdiction. Section 21 of the CPC deals with concurrent jurisdiction it may be either pecuniary jurisdiction or territorial jurisdiction. The judgment of Bombay and Gujarat High Courts refer only the 'territorial jurisdiction'. The Tribunal in its order has referred to the 'territorial jurisdiction'. This Court has referred only second portion of the judgment in Abhishek Jain and first portion is not cited. If first portion of the judgment is read at para 12, this Court would have answered substantial questions of law in favour of the Assessee. Section 254 of the IT Act refers to the words 'as it thinks fit' and accordingly



this court ought to have considered the fact 'as it thinks fit' as explained in the case of Fidelity Business Services India (P.) Ltd. as contemplated under Section 254 of the Act. Hence, paras 12, 13 and 14 of the order of this Court require modification or entire order may be recalled and opportunity be given to the petitioner to re-argue the case on merits.

6. Per contra, learned Standing Counsel for the Revenue contended that when the assessment order was passed by the ITO, the petitioner has not raised any objection. Subsequently before the Commissioner, the issue regarding jurisdiction was raised, and the Commissioner has rejected the said contention, and similar contention was raised before the Tribunal and came to be rejected. The same is the situation in the appeal and this Court has rejected the issue regarding jurisdiction. Section 124(3) of the Act contemplates jurisdiction to the Assessment Officer and no person shall be entitled to question the issue regarding jurisdiction at a subsequent stage. The assessee has participated in the proceedings without raising any objection regarding jurisdiction and therefore the Tribunal



has passed the remand order directing the competent authority to decide the issue afresh. Hence, the petitioner cannot misinterpret and re-argue the appeal on merits and there is no error apparent on the face of the record. If the assessee is aggrieved by the judgment of this Court, they can prefer the appeal and re-hearing of the appeal is not permissible in review jurisdiction since it is not a case for review.

7. We have given our anxious consideration to the arguments addressed on behalf of both the parties and perused the materials on record.

8. The main contention raised by the assessee is regarding the jurisdiction of the Assessment Officer. In this regard it is relevant to read Section 120 of the Act, which contemplates the "jurisdiction" as under:

"Section 120 - Jurisdiction of income-tax authorities.

(1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.



⁵²[Explanation.—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).]

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—

- (a) territorial area;
- (b) persons or classes of persons;
- (c) incomes or classes of income; and
- (d) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—

(a) authorise any ⁵³[Principal Director General or] Director General or ⁵³[Principal Director or] Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

(b) empower the ⁵³[Principal Director General or] Director General or ⁵³[Principal Chief Commissioner or] Chief Commissioner or ⁵³[Principal Commissioner or] Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or



classes of cases, shall be exercised or performed by an ⁵⁴[Additional Commissioner or] ⁵⁵[an Additional Director or] a ⁵⁶[Joint] Commissioner ⁵⁷[or a ⁵⁶[Joint] Director], and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such ⁵⁴[Additional Commissioner or] ⁵⁵[Additional Director or] ⁵⁶[Joint] Commissioner ⁵⁷[or ⁵⁶[Joint] Director] by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the ⁵⁶[Joint] Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in section-124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification."



9. Section 124 of the Act has been analysed by the Delhi High Court in *Abhishek Jain (supra)*. Section 124(3)(a) of the Act contemplates the jurisdiction and it does not define either territorial jurisdiction or pecuniary jurisdiction. Section 124(3) of the Act reads as under:

" Section 124. Jurisdiction of Assessing Officers:-

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-

(a) where he has made a return [under sub-section (1) of section 115WD or] under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or ⁶³[sub-section (2) of section 115WE or] sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under ⁶⁴[sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144] to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

⁶⁵[(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.]"

10. The words employed 'as it thinks fit' as contemplated under Section 254 of the Act has been rightly



applied and the Appellate Tribunal is conferred with wide powers to pass such orders on the subject matter of the appeal "as it thinks fit" and accordingly, the Tribunal has passed the order of remand keeping open the contentions of the parties before the Assessing Officer, to decide the issue and therefore this Court, after hearing both the parties referring to the Fidelity Business Services India (P.) Ltd. has held that the term "as it thinks fit" confers wide powers upon the ITAT to pass such orders in the subject matter of the appeal.

11. This court also referred to the judgment of the Delhi High Court in *Abhishek Jain (supra)*, wherein it is held that territorial or pecuniary jurisdiction are concerned, objection should be taken at the earliest possible opportunity before the settlement of issue and not at subsequent stage. Section 124(3)(a) of the Act would cover both territorial and pecuniary jurisdiction. It is not possible to restrict the same to territorial jurisdiction. Acceptance of such contention amounts to re-writing of the provision, which is not permissible. In that view of the matter, the arguments



canvassed on behalf of the assessee is nothing but re-hearing of the appeal which is beyond the scope of the review jurisdiction. There is no error apparent on the face of the record in the order sought to be reviewed. In the result, we pass the following:

ORDER

Review Petition is dismissed.

SD/-
(K.S.MUDAGAL)
JUDGE

SD/-
(T.G.SHIVASHANKARE GOWDA)
JUDGE

MKM