



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

INCOME TAX APPEAL NO.291 OF 2021

BETWEEN:

SHRI. PRAKASH RAMCHANDRA PRABHU
SON OF SRI. RAMACHANDRA PRABHU
AGED ABOUT 51 YEARS,
NO.308, 7TH MAIN,
HAL 3RD STAGE
INDIRANAGAR,
BANGALORE-560 075.
PAN NO.AAJPP5078N.

...APPELLANT

(BY SMT. PRATIBHA R, ADVOCATE FOR
SRI. S.PARTHASARATHI, ADVOCATE)

AND:

THE INCOME - TAX OFFICER
WARD-1(1)(3),
BANGALORE.

...RESPONDENT

(BY SRI.E.I.SANMATHI &
SRI.NIRMAL MATHEW, STANDING COUNSEL)

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VIJAYALAKSHMI
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Location: HIGH
COURT OF
KARNATAKA





THIS INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 04/06/2020 PASSED IN ITA NO. 1253/BANG/2019, FOR THE ASSESSMENT YEAR 2007-2008. PRAYING THIS HON'BLE COURT TO (A) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE (B) ALLOW THE APPEAL AND SET-ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 04/06/2020 (ANNEXURE-A), BEARING ITA NO. 1253/BANG/2019 FOR THE ASSESSMENT YEAR 2007-2008 AND ETC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

ORAL JUDGMENT

(PER: HON'BLE DR. JUSTICE K.MANMADHA RAO)

The appellant-assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961 calling in question the order dated 04.06.2020 passed by the Income Tax Appellate Tribunal, Bengaluru Bench 'C', Bengaluru, in ITA No.1253/Bang/2019 relating to the



Assessment Year 2007-08. The appeal was admitted on 10.02.2022 to examine the following questions of law:-

(i) Whether the Id. ITAT correct in not considering the fact that the delay in filing the appeal before the CIT(A) was only 34 days not 8 years since the revision petition was filed before the CIT only against the notice u/s.245 of the Act and the intimation u/s.143(1) received only on 20.01.2017.

(ii) Whether the Id. ITAT ought to have allowed the exemption claimed u/s. 10(38) of the Act in respect of capital gain on sale of shares and refrained from confirming the addition of Rs.2,58,60,190/- in the total income of the appellant for the taxation.

2. The appellant herein is the assessee and the respondent herein is the Revenue before the Authority below.

3. Heard learned counsel appearing for the appellant as well as the respondent.

4. The brief facts of the case are that:-

The appellant filed his return of income on 31.07.2007 declaring a total income of Rs.2,59,44,190/-. The return included long-term capital gains of Rs.2,58,60,190/- arising from sale of shares. According to the appellant, the said capital gains were exempt under



Section 10(38) of the Income Tax Act, 1961 ('the Act' for short). Though the appellant disclosed the said amount as exempt income in Schedule EI of the return, the exemption was not reflected in Part-B relating to computation of total income.

5. The return was processed under Section 143(1) of the Act on 20.03.2009 and the exemption claimed under Section 10(38) of the Act was not granted, resulting in a demand of Rs.74,10,326/-. According to the appellant, the intimation under Section 143(1) of the Act was not served on him and he became aware of the demand only upon receipt of a communication dated 06.11.2014 issued under Section 245 of the Act proposing adjustment of refund against the outstanding demand for the Assessment Year 2007-08.

6. Thereafter, the appellant filed a revision petition under Section 264 of the Act on 14.07.2015 seeking cancellation of the demand. The said revision petition



came to be dismissed on 27.02.2017 on the ground of limitation. The appellant contends that a copy of the intimation under Section 143(1) of the Act was furnished to him only on 20.01.2017. Subsequently, he filed an application under Section 154 of the Act on 22.03.2017 and also preferred an appeal before the Commissioner of Income Tax (Appeals) on 25.03.2017 challenging the intimation dated 20.03.2009.

7. The Commissioner of Income Tax (Appeals), by order dated 28.03.2019, declined to condone the delay and held that the appeal was not maintainable in view of the appellant having already invoked the revisional jurisdiction under Section 264 of the Act and further held against the appellant on merits. Aggrieved thereby, the appellant preferred an appeal before the Tribunal. The Tribunal, by the impugned order, affirmed the decision of the Commissioner of Income Tax (Appeals) and dismissed the appeal. Aggrieved by the same, the present appeal is filed.



8. The learned counsel for the appellant would contend that both the Commissioner of Income Tax (Appeals) and the Tribunal erred in treating the delay in filing the appeal as one extending over several years. It was submitted that the intimation under Section 143(1) of the Act was furnished to the appellant only on 20.01.2017 and therefore the appeal filed on 25.03.2017 was delayed only by 34 days. It was further contended that the revision petition filed under Section 264 of the Act was prompted by the communication issued under Section 245 of the Act and not on account of any prior knowledge of the intimation under Section 143(1) of the Act.

9. It is further contended that the appellant had disclosed the long-term capital gains in Schedule EI of the return as exempt income and the omission to reflect the exemption in the computation portion of the return was only an inadvertent mistake. According to the appellant, all requirements for claiming exemption under Section 10(38) of the Act stood satisfied and therefore, the



exemption ought to have been granted. It was also contended that the authorities below failed to properly appreciate the material on record and ought to have directed disposal of the application filed under Section 154 of the Act.

10. *Per contra*, learned counsel appearing for the respondent/Revenue supported the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal. It was contended that the intimation under Section 143(1) of the Act was issued on 20.03.2009 and that the appellant had admittedly acquired knowledge of the demand at least upon receipt of the communication dated 06.11.2014 issued under Section 245 of the Act. It was submitted that the appellant himself filed a revision petition under Section 264 of the Act on 14.07.2015 seeking cancellation of the very same demand and therefore cannot contend that he was unaware of the proceedings until 20.01.2017.



11. It was further contended that notwithstanding the knowledge of the demand and the pursuit of the revisional remedy, the appellant filed the appeal before the Commissioner of Income Tax (Appeals) only on 25.03.2017 and failed to furnish any satisfactory explanation for the intervening period. Learned counsel submitted that both the Commissioner of Income Tax (Appeals) and the Tribunal, upon appreciation of the chronology of events, concurrently held that sufficient cause had not been shown for condonation of delay and that such concurrent findings of fact do not give rise to any substantial question of law under Section 260A of the Act.

12. Having heard the learned counsel for the appellant and upon perusal of the material on record, this Court is of the view that no substantial question of law arises for consideration.



13. The return of income filed by the appellant was processed under Section 143(1) of the Act on 20.03.2009 resulting in a demand of Rs.74,10,326/-. Though the appellant contends that a copy of the intimation was furnished only on 20.01.2017, the record discloses that upon receipt of the communication dated 06.11.2014 issued under Section 245 of the Act proposing adjustment of refund against the outstanding demand for the Assessment Year 2007-08, the appellant filed a revision petition under Section 264 of the Act on 14.07.2015 seeking cancellation of the very same demand. Thus, the appellant had knowledge of the demand at least by the year 2015.

14. The Commissioner of Income Tax (Appeals), upon examining the chronology of events, found that the appeal against the intimation dated 20.03.2009 ought to have been filed within the prescribed period and that the appeal preferred on 25.03.2017 was delayed by about eight years. The Commissioner of Income Tax (Appeals)



further noticed that even if the date on which the appellant had admittedly acquired knowledge of the demand was taken into consideration, the delay remained unexplained. Accordingly, the delay was not condoned.

15. The Tribunal, on independent consideration of the material on record, affirmed the said finding and observed that the appellant had taken different stands while pursuing the matter and that substantial periods of delay between the various steps taken by him remained unexplained. The findings recorded by the appellate authorities are findings of fact based on the material available on record and no perversity or legal infirmity is demonstrated so as to warrant interference under Section 260A of the Act.

16. Insofar as the claim for exemption under Section 10(38) of the Act is concerned, the Tribunal has noticed that though the appellant had disclosed the long-term capital gains as exempt income in Schedule EI of the



return, the exemption was not reflected in the computation portion of the return. The Tribunal has further observed that the appellant failed to properly pursue the remedies available under law after processing of the return. In any event, once the refusal to condone the delay is found to be justified, the appellant cannot seek adjudication of the claim on merits in the present appeal.

17. Insofar as the grievance relating to the application filed under Section 154 of the Act is concerned, the same cannot furnish a ground to interfere with the impugned order passed by the Tribunal. It is always open to the appellant to pursue such remedy as may be available in law in accordance with the statutory scheme.

18. For the aforesaid reasons, we are satisfied that the Tribunal was justified in affirming the order passed by the Commissioner of Income Tax (Appeals). The findings recorded by the authorities below do not give rise to any



substantial question of law for consideration under Section 260A of the Act.

19. In view of the above, the substantial questions of law are answered against the assessee/appellant and in favour of the Revenue/respondent. Accordingly, the appeal stands rejected.

**SD/-
(S.G.PANDIT)
JUDGE**

**SD/-
(DR.K.MANMADHA RAO)
JUDGE**

MH/-
List No.: 1 Sl No.: 42