IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 5 OF 2011

M/s EDC Limited, EDC House, Dr. A.B. Road, Panaji, Goa. .... Appellant

Versus

The Commissioner of Wealth Tax, Circle-1, Aayakar Bhavan, Patto Plaza, Panaji, Goa. .... Respondent

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Mr. S.R. Rivankar with Mr. Rama Rivankar and Mr. Sagar Rivankar, Advocates for the Appellant.

Ms. Taniya Ferreira, Advocate holding for Mr. K.V. Aravind, Standing Counsel for the Respondent.

Coram:- M.S. SONAK &
C.V. BHADANG, JJ.

Date:- 26th November, 2019

ORAL JUDGMENT: (Per M. S. Sonak, J.)

Heard Mr. Rivankar, the learned Counsel for the appellant and Ms. Ferreira, the learned Counsel holding for Mr. K.V. Aravind, the learned Standing Counsel for the respondent.

2. This Appeal was Admitted on 25.07.2011 on the following substantial questions of law:

> *(i) Whether on the facts and in the circumstances of the case, the order passed by the ACWT dated 30/06/2008, is barred by limitation being made beyond period of one year as required u/s 17A(2) of the WT Act, and consequently the penalty proceedings initiated u/s 18(1)(c) are unsustainable/bad in law ?*
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> *(ii) Whether the learned ITAT upon coming to the conclusion that there was no malafide intention on the part of the Assessee to delay the filing of the returns and it was due to oversight without any element of deliberateness, the ITAT was further right in law/justified in holding that Expl. (3) to Section 18(1)(c) of the Wealth Tax Act 1957, is attracted to Assessee's case for AY 2003-04 ?*

3. The challenge in this Appeal is to the order dated 25.02.2011, made by the Income Tax Appellate Tribunal (ITAT), which has, confirmed the order made by the Commissioner (Appeals), remanding the matter to the Wealth Tax Officer for re-examination and re-assessment after providing adequate opportunity of being heard to the appellant.

4. Mr. Rivankar, the learned Counsel for the appellant submits that the proceedings were taken out against the appellant in respect of assessment years 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06. He pointed out that insofar as all the assessment years are concerned, except assessment year 2003-04 is concerned, the Appeals were allowed, *inter alia* on the ground that no case was made out for imposition of any penalty. He submits that on the same basis, the Appeal for assessment year 2003-04 also, ought to have been allowed.

5. Mr. Rivankar, the learned Counsel for the appellant pointed out that the period of limitation to complete the assessment in such matters was one year. He submits that since, in this case, a notice was served upon the appellant on 29.03.2007, the assessment order should have been passed at least by 31.03.2008. He submits that the assessment order, is in fact passed on 13.06.2008 and consequently, the same is barred by limitation. Mr. Rivankar, the learned Counsel for the appellant submits that even though, the bar of limitation may not have been raised by the appellant in its reply, the respondent was duty

bound to consider this issue, particularly, since, it is an issue of law and further, an issue, which goes to the root of the jurisdiction. For these reasons, Mr. Rivankar, submits that the aforesaid substantial questions of law are liable to be answered in favour of the appellant and against the respondent.

6. We have carefully considered the contentions raised by Mr. Rivankar and also perused record. We find that in this case, both the Commissioner (Appeals) as well as the ITAT have held that explanation 3 to Section 18 of the Wealth Tax Act is attracted. This is on the basis that for the assessment year 2003-04, the re-assessment notice was issued to the appellant prior to the appellant filing its returns. No doubt, the ITAT has also observed that the issue of limitation was never raised by the appellant in its reply.

7. Upon perusal of the impugned order, including in particular para 13 of the impugned order, we are of the opinion that, the observation made therein that explanation (3) to Section 18 of the

Wealth Tax Act is applicable, is really a *prima facie* observation. This is clear from the fact that both the Commissioner (Appeals) as well as the ITAT have directed the Wealth Tax Officer to re-examine the matter, after providing adequate opportunity of being heard to the appellant herein. The ITAT has also observed that the issues raised in the matter require investigation of facts. From all this, it is quite clear that the observations made in the impugned orders of the Commissioner (Appeals) as well as the ITAT, are *prima facie* observations and such observations, are made only for the purpose of remanding the matter to the Wealth Tax Officer for fresh consideration.

8. Now that we have clarified that the observations in the impugned order are only *prima facie* in nature, we find no reason to interfere with the impugned orders and revoke the remand order by the Commissioner (Appeals) and by the ITAT. The Wealth Tax Officer will have to investigate into the factual aspect and will have to re-examine the matter and thereafter, conclude whether the period of limitation, as prescribed under Section 17 of the Wealth Tax, is indeed

attracted in this case, in the light of explanation 3 to Section 18 of the Wealth Tax Act. The issue as to whether, explanation 3 to Section 18 of the Wealth Tax Act, is attracted or not, is a mixed question of law and facts and therefore, the Wealth Tax Officer will have to consider this issue as well. Needless to mention that the Wealth Tax Officer will have to afford an opportunity of hearing before deciding the matter in pursuance of the remand. The substantial questions of law as framed, therefore, cannot be answered in favour of the appellant, at this stage, as raised.

9. The Appeal is accordingly disposed off with the aforesaid clarification. The Wealth Tax Officer to dispose off the proceedings now remanded to him in accordance with law and on its own merits by treating the observations in the impugned order as only *prima facie* observations.

C. V. BHADANG, J. ***M. S. SONAK, J.***

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