IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.935 of 2009

A.P.Shanmugaraj ... Appellant/Appellant

Vs.

The Deputy Commissioner of Income Tax,
Special Investigation Circle, Erode ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai dated 15.12.2008 in I.T.(SS)A.No.16/Mds/01 against the Order of the Commissioner of Income Tax (Appeals), Chennai -34, made in ITA No. dated against the Order of the Income Tax Officer made in the order of Income Tax Appellant Tribunal, dated 30/03/2007 and against the Order of the Commissioner of Income Tax (Appeals), in 383/2000-2001 dated 28/02/2001.

For Appellant : Mr.P.Rajavelu
For Mr.R.Senniappan

For Respondent : Mr.T.R.Senthilkumar
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J.)

The Assessee - A.P.Shanmugaraj has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short 'Act') arising from the order of the learned Tribunal in I.T(SS) A.No.16/Mds/01 dated 15.12.2008. The present appeal was admitted by the Coordinate Bench of this Court on 20.10.2009 on the following substantial question of law:

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in not considering the commencement of the period as 21.04.2000 instead of 20.04.2000, which is the date of service of the order/direction under Section 142(2-A) of the Income

Tax Act, 1961?"

2.The Tribunal in its impugned order held that the Block Assessment Order passed by the Assessing Authority against the Assessee on 13.11.2000 was within limitation and was not hit by the bar of limitation. In the present case, the Block Assessment in question was made against the Assessee for the period 01.04.1988 to 01.07.1998 in terms of provisions of Section 158BC (c) read with Section 153 of the Act. The observations of the learned Tribunal in the impugned order are quoted below for ready reference:

"3.On hearing both sides in detail, we find that the only issue involved in the appeal is the calculation of the limitation period in a case where reference for special audit was made by the Assessing Authority under section 142(2A). The issue is - what is the period to be excluded for the purpose of computing the limitation.

4.Section 153 speaks about the time limit for completion of assessment and reassessment. As per Explanation 1(iii) below section 153(3), the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under 142(2A) and ending with date on which he is required to furnish the report, is to be excluded.

5.In the present case, the Assessing Officer vide his order dated 17.4.2000 directed the assessee to get his accounts audited and submit the report by 31.7.2000. This period has to be excluded while computing the limitation for passing a block assessment order.

6.According to the assessee, the order of the Assessing Officer was served on him only on 20.4.2000 and therefore, only the period from 20.4.2000 to 31.7.2000 can be excluded while computing the limitation period as per which the block assessment order should have been passed on 11.11.2000. In fact, in the present case, the block assessment was passed on 13.11.2000.

7.Therefore, it is clear that while the dispute is raised on the basis of the two days, i.e. whether 17.4.2000 is to be reckoned or 20.4.2000 is to be reckoned. If argument of the assessee is to be accepted, the order should have been passed on 11.11.2000. But, it is to be seen that 11.11.2000 was a Saturday, which was holiday for Central Government offices. The next day 12.11.2000 was a Sunday. The immediately following working day was 13.11.2000. The block assessment order has been passed on the day of 13.11.2000. Therefore, the case of two days relied by the assessee has been undone by the successive holidays on 11.11.2000 and 12.11.2000. These holidays defeat the case of the assessee. Therefore, there is no question of any limitation as argued by the assessee. This block assessment has been passed within the period of limitation framed by law.

8.In result, the appeal filed by the assessee on the question of limitation is dismissed."

3.We have reformulated the question in the following manner:

"Whether the period of limitation prescribed under Section 153BE Explanation (iii) will commence from the date of direction/order of the Assessing Authority under Section 142(2A) of the Act ending with the date before which a report of the special audit under Section 142(2A) of the Act is to be furnished or not?"

or

"Whether the period of limitation to be excluded under Section 153 of the Act will commence from the date of receipt of the order/direction by the Assessee of the special audit under Section 142(2A) of the Act?"

4.The learned counsel for the Assessee urged that since the order under Section 142(2A) of the Act was passed by the Assessing Authority on 17.04.2000, but was served upon the Assessee only on 20.04.2000, therefore, the period commencing from 20.04.2000 till 31.07.2000 viz., 102 days only will be excluded and added to the period of limitation for passing the Block Assessment which otherwise required to be passed on 31.07.2000, but was actually passed on 13.11.2000 viz., beyond 102 days of the excluded period of limitation and therefore, the Block Assessment was hit by limitation as prescribed in Section 158BE read with Section 153 of the Act and the learned Tribunal has erred in holding the same to be in limitation.

5.On the other hand, the learned counsel for the Revenue has urged that the terms of Section 142(2A) of the Act read with Section 158BE of the Act, Explanation 1 thereto, the period of limitation to be excluded is a period commencing from the day on which the Assessing Officer directs the Assessee to get his accounts audited under sub-section (2A) of Section 142 and ending on the day on which the Assessee is required to furnish a Report of such audit under that sub-section. He drew the attention of this Court that Section 158BE of the Act and Section 142(2A) of the Act which are quoted below for ready reference.

Section 158BE

"Time limit for completion of block assessment.

158BE. 34[(1) The order under section 158BC shall be passed—

(a) within one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as

the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995, but before
the 1st day of January, 1997;
(b) within two years from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.
(2) The period of limitation for completion of block assessment in the case of the other person referred to in section 158BD shall be—
(a) one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997; and
(b) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.]
[Explanation 1.—In computing the period of limitation for the purposes of this section,—
(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
(ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or"

Section 142(2A):
"142.Inquiry before assessment.
.....
[(2A) If, at any stage of the proceedings before him, the [Assessing] Officer, having regard to [the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and] the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the [[Principal Chief

Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, nominated by the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the [Assessing] Officer may require :
[Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.]
(2B) The provisions of sub-section (2A) shall have effect notwithstanding that the accounts of the assessee have been audited under any other law for the time being in force or otherwise.
(2C) Every report under sub-section (2A) shall be furnished by the assessee to the [Assessing] Officer within such period as may be specified by the [Assessing]Officer :
Provided that the [Assessing] Officer may, [suo motu, or] on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit ; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub- section (2A) is received by the assessee."

6.On a bare perusal of the provisions of the Act quoted above, it is very clear that the period of limitation prescribed in Section 158BE of the Act excludes the period commencing from the date on which the Assessing Officer directs the Assessee to get his accounts audited viz., the date of the order under Section 142(2A) of the Act. The date of order or direction to get the accounts audited is important and not the date on which such order or direction under Section 142(2A) of the Act is served on the Assessee or received by the Assessee. In the present case, the order under Section 142(2A) of the Act was made by the Assessing Authority on 17.04.2000 directing the Assessee to get the special audit completed and furnished the report on or before 31.07.2000. The difference between these two dates is 105 days. If these 105 days are added to the last date before which the Audit Report was furnished viz., 31.07.2000, the date of assessment will get extended upto 13.11.2000. The assessment for block period in the present case was made by the

Assessing Authority admittedly on 13.11.2000 itself and therefore apparently the said assessment is within limitation.

7.The contention of the learned counsel for the Assessee is that the period of exclusion should be computed from the date on which the order under Section 142(2A) of the Act was served upon the Assessee viz., on 20.04.2000 till 31.07.2000 which will give the exclusion period of 102 days only and therefore, the Assessment Order passed on 13.11.2000 will be hit by the bar of limitation. This contention in our considered opinion is misconceived and contrary to the clear and bare language of the provisions of the Act which employed the word "directs the Assessee to get his accounts audited". These words are in contra distinction to the words employed in Section 142(2A) proviso where the extension of period by 180 days will become effective from the date when the order of extension is received by the Assessee. The proviso to Section 142(2A) quoted above, clearly uses the words "received by the Assessee" and not "directs the Assessee". This distinction of two different phrases at two different places cannot be intermixed or confused with each other.

8.We draw support for the reasons, which we have given above, from the decision of the Delhi High Court in the case of Nokia India Pvt. Ltd. V. Additional CIT, [2018] 402 ITR 517 (Delhi), when dealing with the similar controversy, the Division Bench of the Delhi High Court clearly held that Clause (iii) of Explanation 1 to Section 153 of the Act refers to the period commencing from the date when the Assessing Officer directs the Assessee to get his accounts audited under Section 142(2A) ending with the date on which the Assessee is required to furnish the report of the audit. Paragraphs 27 and 28 of the Judgment of Delhi High Court are quoted below for ready reference:

> "For the reasons elucidated, we do not find any merit in the said contention raised and the interpretation placed by the petitioner. Section 142 (2A) of the Act empowers the Assessing Officer to pass an order directing the special audit. Clause (iii) of Explanation 1 to Section 153 refers to the period commencing from the date when the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of Section 142 ending with the date on which the assessee is required to furnish the report of such audit, and states that this period is to be excluded. The starting point is the date on which the Assessing Officer directs the assessee to get his accounts audited and not the date on which the said order is received by the assessee. The period of exclusion under clause (iii) of Explanation 1 to

section 153 ends on the last date on which the assessee is required to furnish his report of special audit. This is end point and not the beginning.

The proviso to sub-section (2C) of section 142 serves a different purpose and stipulates the outer time limit within which the special audit must be completed. It postulates and states that the Assessing Officer cannot grant extension for a period exceeding 180 days. This period would commence not on the date when the order is passed, but from the date on which the direction under sub-section (2A) of section 142 is received by the assessee. The reason is obvious. There could be some time gap between the date of passing of the order for special audit and the date when the order is communicated to the assessee. The time period stipulated by the Assessing Officer for completion of special audit would commence only from the date when the assessee is communicated and receives the order and not the date of the order. The outer time limit of 180 days specified in the proviso has been fixed with reference to the date on which the direction under sub-section (2A) of section 142 is received by the assessee and not from the date of the passing of the order."

9.In view of this clear position, we are of the opinion that there is no merit in the appeal filed by the Assessee.

10.Before we part, we may observe that the reason given by the learned Tribunal in para 7 of its impugned order for holding the Block Assessment Order passed on 13.11.2000 to be within limitation on the ground that though as per argument of the Assessee, the limitation would have expired on 11.11.2000 which was a Saturday and the following day i.e., 12.11.2000 being a Sunday, the order passed on 13.11.2000 would be saved, because of the said two non-working days is not the correct reasoning, but the order passed on 13.11.2000 was even otherwise within limitation as per the clear provisions of the Act which excluded the period of a special audit from the date of issuance of directions on 17.04.2000 till 31.07.2000 = 105 days which extended the limitation for completing the assessment upto 13.11.2000 per se. Therefore, even though the reason assigned by the learned Tribunal for holding the assessment to be within limitation is incorrect, but the conclusion arrived at by the learned Tribunal is legally sustainable conclusion as per the interpretation of the provisions of the Act given by us herein above.

11.In view of the same, the Appeal filed by the Assessee is liable to be dismissed and accordingly, it is dismissed and the question of law arising the matter is answered in favour of the Revenue and against the Assessee. No order as to costs.

Sd/-
Deputy Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Income Tax Appellate Tribunal
'A' Bench, Chennai.

2.The Deputy Commissioner of Income Tax
Special Investigation Circle
Erode

3.The Commissioner of Income Tax(Appeals)
Chennai-34

+1cc to M/s.T.R.Senthil Kumar Advocate, S.R.No.105732

T.C.A.No.935 of 2009

aa03/02/2020