

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NOS.31, 32, 33, 34, 35 & 36 OF 2017

Mrs. Natalina Vaz,
Age 47 years, Indian National,
Residing at Bunglow No. 4,
Models Meridien,
Marine Road, Caranzalem,
Ilhas, Goa.
PAN NO. AAYPV2385F

... Appellant.

Versus

1. The Commissioner of Income Tax,
Central Circle, Bangalore.
2. The Assistant Commissioner of
Income Tax, Central Circle,
Panaji, Goa.
3. The Principle Commissioner of
Income, Panaji, Goa.

... Respondents.

WITH

TAX APPEAL NOS.37, 38, 39, 40, 41 & 42 OF 2017

Mrs. Vanda Afonso
Age 48 years, Indian National,
Residing at H. No. E- 374,
Tivai Waddo, Calangute
Bardez, Goa.
PAN NO. ABOPA3000B

... Appellant.

Versus

1. The Commissioner of Income Tax,
Central Circle, Bangalore.
2. The Assistant Commissioner of
Income Tax, Central Circle,
Panaji, Goa.

3. The Principle Commissioner of
Income, Panaji, Goa.

... Respondents.

Mr. P. Pardiwala, Senior Advocate with Mr. J. Sanghavi, and Mr. H. D. Naik, Advocates for the Appellants-Assessees.

Ms. S. Linhares, Standing Counsel for the Respondents-Revenue.

**Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.**

Reserved on:- 31st March 2021

Pronounced on : 5th April 2021

JUDGMENT (*Per M. S. Sonak, J*)

Today, we have disposed of the companion appeals being Tax Appeal Nos. 19 of 2017 to 30 of 2017, which were instituted by the spouses of the Appellants/assesseees.

2. The action of the Revenue against the present Appellants/assesseees was based upon the assessment made against their spouses by resort to the provisions of Section 153C of the IT Act. Now that we have set aside the impugned judgment and order in the connected appeals instituted by the spouses, based on the same reasoning, the impugned judgments and orders in these matters will also have to be set aside and the matters will have to be remanded to the ITAT for fresh disposal of the appeals. In fact, the ITAT had disposed of the revenue's appeals against the present appellants/assesseees and their spouses by a common judgment and order.

3. Mr. Pardiwala, learned Senior Advocate for the assesseees, pointed out that in the present case yet another issue which goes to the root of the jurisdiction arises and the same will have to be considered by the ITAT irrespective of whether or not any cross-objections were filed by the Appellants/assesseees or not.

4. Mr. Pardiwala submits that the action, in this case, has been taken by resort to the provisions of Section 154 of the IT Act concerning the rectification of mistake. He submits that in the present matters there was no order made by the Assessing Officer assessing returns of income filed by the Appellants/assesseees. He submits that the powers under Section 154 can only be exercised to rectify the mistake apparent from the records in any order made under the provisions of the IT Act or to amend any intimation or deemed intimation referred to in clauses (b), (c) and (d) of Section 154(1) of the IT Act. He submits that in the absence of any order or intimation, no powers under Section 154 could at all have been exercised by the Revenue.

5. Mr. Pardiwala submits that even if it is held that very acceptance of returns filed by the Appellants/assesseees is to be treated as some kind of order then, the bar of limitation provided under Section 154(7) will be attracted. He submits that the rectification orders have been made way beyond the period of four years from the date of such alleged orders and therefore, the same are *ex facie* barred.

6. The record indicates that these issues were sought to be

raised by the Appellants/assesseees by filing cross-objections before the ITAT. However, the ITAT had refused to condone the delay of 248 days in filing the cross-objections and therefore these contentions were not even considered by the ITAT.

7. By following the reasoning in the companion appeals, we hold that the Appellants/assesseees did not have to file any cross-objections to raise the aforesaid jurisdictional issue and support the orders of CIT (Appeals) which had been impugned before the ITAT. In any case, by applying the same reasoning as was applied in the connected appeals, we hold that there was sufficient cause shown to condone the delay of 248 days in instituting the cross-objections. As noted earlier, the cause shown was identical and even the reasoning for not accepting such cause was also identical.

8. Therefore, upon remand the ITAT will have to permit the Appellants/assesseees to urge the aforesaid issues, together with the issue relating to compliance with the jurisdictional parameters before any action under Section 153C came to be initiated against the spouses of the Appellants/assesseees. In this case, the action against the Appellants/assesseees is premised on the liability of their spouses and the provisions of Section 5A of the IT Act, which are peculiar to the State of Goa.

9. Accordingly, the substantial question of law No.4 as also the additional substantial question of law is answered in favor of the

Appellants/assesseees. The impugned judgment and orders made by the ITAT are hereby set aside and the matters are remanded to the ITAT for adjudication of the appeals instituted by the Revenue, in accordance with law and on their own merits. In such appeals, by applying our reasoning in the connected appeals, even the present Appellants/assesseees are to be permitted to raise the aforesaid jurisdictional issue in the context of provisions of Sections 153C and 154 of the IT Act. All contentions of both parties are expressly kept open.

10. The parties to now appear before the ITAT on 26th April 2021 at 11.00 a.m. and file authenticated copy of this order. We request the ITAT to dispose of such appeals as expeditiously as possible by granting a full opportunity to both the assesseees as well as the Revenue.

11. These appeals are disposed of in the aforesaid terms. However, in the facts and circumstances of the present case, there shall be no order as to costs.

12. The Misc. Civil Applications, if any, pending are also disposed of in the aforesaid terms.

SMT. M.S. JAWALKAR, J.

M.S. SONAK, J.

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