IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Judgment Reserved On 16.08.2021	Judgment Pronounced On 31.08.2021

W.A.Nos.1912 and 1913 of 2021
and
C.M.P.No.12405 of 2021

M/s.Madras Race Club,
Rep., by its Secretary, S.Nirmal Prasad,
P.O.Box No.2639, Race Course Road,
Guindy, Chennai-600 032. .. Appellant in both Appeals

[Cause title accepted vide Court order dated
05.07.2021 made in C.M.P.Nos.9646 & 9650 of 2021
in W.A.SR Nos.53707 & 53706 2021]

-vs-

The Deputy Commissioner of Income Tax,
Company Circle IV(1),
Room No.430, 4th Floor Main Building,
'Ayakar Bhavan',
121, Nungambakkam, High Road,
Chennai-600 034. .. Respondent in both Appeals

Appeals under Clause 15 of Letters Patent against the common order dated 23.04.2021 made in W.P.Nos.28434 of 2014 and 3005 of 2013 respectively.

Prayer in W.P.Nos.3005 of 2013 & 28434 of 2014:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records in PAN: AAACM7640R dated 11.01.2013 and 24.10.2014 relating to Assessment Year 2007-08 on the file of the respondent and quash the same.

For Appellant (In both Appeals)	:	Mr.R.V.Easwar, Senior Counsel for Mr.G.Baskar
For Respondent (In both Appeals)	:	Ms.Hema Muralikrishnan, Senior Standing Counsel

COMMON JUDGMENT

T.S.Sivagnanam, J.

The appellant, in these appeals, is the writ petitioner in W.P.Nos.3005 of 2013 and 28434 of 2014, which were dismissed by common order dated 23.04.2021.

2.In this judgment, the appellant shall be referred to as "the assessee" and the respondent as "the Revenue".

3.In W.P.No.3005 of 2013, the assessee prayed for issuance of Writ of Certiorari to quash the order passed by the respondent dated 11.01.2013, by which the respondent rejected the objections filed by the assessee to the reopening of the assessment for the assessment year 2007-08.

4.The prayer sought for in W.P.No.28434 of 2014 was to quash the order of assessment passed by the respondent-Revenue dated 24.10.2014, under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") along with a notice of demand under Section 156 and notice under Section 247 read with Section 271(1)(c) of the Act for the assessment year 2007-08.

5.The learned Single Bench dismissed both the writ petitions and in W.P.No.28434 of 2014, granted liberty to the assessee to file statutory appeal against the order of the assessment dated 24.10.2014.

6.The assessee is a company incorporated under Section 25 of the Indian Companies Act, 1956. The assessee filed their returns of income for the assessment years 2005-06, 2006-07, 2007-08 and 2008-09 and the assessments were completed by orders dated 19.12.2007, 26.12.2008 and 29.12.2009 under Section 143(3) of the Act and 11.12.2010 under Section 143(1) of the Act.

7.The assessee would contend that in the course of assessment proceedings, the Assessing Authority had considered all the issues arising out of the returns of income filed and the computation of tax, there upon had sought various particulars from the assessee, which were furnished and after seeking necessary clarification, the assessments were completed.

8.It is submitted that one of the issues, which was raised by the Assessing Officer, related to the classification of interest income from deposits with banks that were returned by the assessee for the assessment under the head 'business'. The Assessing Officer was of the view that the said income from interest was liable to be assessed under the head 'income from other sources' and not under the head 'business' as returned by the assessee. Notwithstanding the stand taken by the assessee, the Assessing Officer completed the assessments for the assessment years 2005-06 to 2007-08 bringing to tax the income from interest under the head 'other sources' as against the income claim made by the assessee under the head 'business'.

9.The assessee challenged the assessments by filing appeal before the Commissioner of Income Tax (Appeals)-VI, Chennai (for brevity "the CIT(A)"). An alternate submission was made before the CIT(A) stating that in the event, the income earned from interest was brought to tax under the head 'income from other sources', the loss returned by the assessee would be liable to be set off against the same. The CIT(A) called for a remand report from the Assessing Officer on this alternate submission, which was submitted by remand report dated 15.02.2012. The CIT (A) rejected the stand taken by the assessee and confirmed the order passed by the Assessing Officer. On the alternate claim of set off of the income against the loss, accepted the ground and directed the Assessing Officer to set off the income from interest from the loss incurred. The said order of the CIT(A) pertaining to the assessment years 2005-06 and 2006-07 were given effect to by order dated 21.06.2012.

10.So far as the assessment year 2008-09 is concerned, the assessee submitted that it is only an intimation under Section 143(1) of the Act thereby, the return of income submitted by the assessee stood accepted. While so, the assessee received a notice from the respondent dated 20.04.2011, under Section 148 of the Act stating that he has reason to believe that there is escapement of income in relation to the assessment year 2007-08 and called upon the assessee to file their return of income. The assessee by letter dated 28.04.2011, requested the return filed originally be treated as a return in response to the notice under Section 148 of the Act and requested for furnishing the reasons for reopening and by communication dated 30.05.2011, the reasons for reopening were furnished. Along with the reasons for reopening, the respondent issued notice under Section 143(2) of the Act. The assessee would contend that this procedure is incorrect, as the assessee was entitled to file their objections to the reopening of the assessment pointing out that the income from interest has been offered to tax under the head 'business' by the assessee whereas, the Assessing Officer brought it under the head 'income from other sources', which was affirmed by the CIT(A) and the alternate submission made by the assessee was considered and relief was granted to the assessee and therefore, there is no escapement of income, as the issue, proposed to be reassessed, was already part of the assessment order passed at the first instance.

11.With regard to the second issue, pertaining to the receipt of lease rent amounting to Rs.3.9 Crores, the assessee stated that a specific query was raised by the Assessing Authority at the first instance and the assessee has given their response vide letter dated 18.12.2009, and it is only thereafter, the assessment was completed. Therefore, the assessee contended that the assumption of jurisdiction under Section 148 of the Act was wholly incorrect and it amounted to review of the order of assessment and it is impermissible in law. The respondent by order dated 11.01.2013, rejected the objections stating that the income cannot be set off against the business losses and referred to the Lease Deed entered into between the assessee with M/s.DLF Properties Ltd., for a period of 66 years and proposed to treat the transaction of lease as a sale and tax the deposits received from the lessee under the head 'capital gains'.

12.The assessee would contend that the order rejecting the objections did not deal with the issues pointed out by the assessee which were, in fact, discussed during the original assessment. This order dated 11.01.2013, was impugned in W.P.No.3005 of 2013, which writ petition was admitted and an order of interim stay was granted on 06.02.2013. The order of interim stay was extended from time to time till 08.06.2014 by order dated 08.04.2014. According to the assessee on and after 08.06.2014, since there was no interim order, the limitation for commencing reassessment proceedings would start soon after the expiry of the date on which the order of interim stay stood expired, i.e., 08.06.2014.

13.It is submitted that the said writ petition in W.P.No.3005 of 2013 was tagged along with the batch of cases and dismissed by order dated 04.07.2014 on the ground that it was not maintainable. The assessee filed Special Leave Petition before the Hon'ble Supreme Court challenging the order dated 04.07.2014 and the matter was pending before the Hon'ble Supreme Court. While so, the respondent issued notice dated 12.09.2014 proposing to proceed with the reassessment. This was rejected by the assessee vide letter dated 22.09.2014, not only on the ground of Special Leave Petition was pending, but on other grounds as well. The respondent issued another notice dated 17.09.2014, which is stated to have been received by the assessee on 20.10.2014 proposing to proceed with the reassessment and in the interregnum, an order was passed on 17.10.2014 rejecting the objections to reassessment on the ground of lack of jurisdiction. It is submitted that the letter dated 17.09.2014 has been pre-dated. On 24.10.2014, the assessee addressed the Assessing Officer stating that the notice is beyond the period of limitation as prescribed under Sections 153(2), 153(4), Explanation (ii) and the proviso thereunder. This was explained by the assessee stating that the time limit for completion of assessment of 60 days had expired and therefore, the proceedings are barred by limitation. The respondent did not accept the stand taken by the assessee and by order dated 24.10.2014, completed the assessment stating that the copy of the order passed by the Court was received by the Department only on 28.08.2014 and was communicated to the respondent-Assessing Officer only on 04.09.2014. The assessment was also completed on merits and this order of assessment dated 24.10.2014 was impugned in W.P.No.28434 of 2014. Since the challenge to the reassessment proceedings is the substantive challenge, the arguments were advanced on either side largely on the grounds, which were raised in W.A.No.1912 of 2021 as well as as to how the order rejecting the objections of the assessee dated 11.01.2013, is not in accordance with law.

14.Mr.R.V.Easwar, learned Senior Counsel appearing for Mr.G.Baskar, learned counsel for the appellant-assessee submitted that the order of assessment dated 24.10.2014, for the assessment year 2007-08 is barred by limitation and liable to be set aside. It is submitted that the notice under Section 148 of the Act was issued on 20.04.2011. The limitation for completion of the reassessment under Section 153(2) is one year from the end of the year when the notice under Section 148 of the Act was served on the petitioner and that is on or before 31.03.2013.

15.It is submitted that the assessee had filed W.P.No.3005 of 2013 challenging the order rejecting the objections filed by the assessee to the reopening and an order of interim stay was granted on 06.02.2013 and the interim order was in force till 08.06.2014. It is submitted that the period of stay has to be excluded as per Explanation (i) to Section 153(2) and such period would be from 06.02.2013 to 08.06.2014. In terms of the proviso to Section 153, after excluding the period of stay, the limitation referred to in Section 153(2) is less than 60 days, the limitation stand extended to 60 days. Therefore, it is submitted that the order of reassessment ought to have been passed within 60 days from 08.06.2014, i.e., on or before 07.08.2014. However, the reassessment order was passed on 24.10.2014.

16.It is further submitted that even as on the date when the Assessing Officer issued the first notice proposing to pass an order of reassessment, vide notice dated 12.09.2014, the proceedings had already become time barred. Therefore, it is submitted that the reassessment proceedings is barred by time and wholly without jurisdiction. Further, it is submitted that the writ petition was dismissed on 04.07.2014, the Revenue was represented by their Standing Counsel and they had clear knowledge of the dismissal of the writ petition and the closing of the connected miscellaneous petitions. Therefore, the stand taken by the Assessing Officer stating that he had received the copy of the order passed in the writ petition only on 04.09.2014 cannot be accepted.

17.The learned Senior Counsel also referred to the circular issued by the Central Board of Direct Taxes (CBDT) with regard to the role of the Standing Counsel for the Department and submitted that the Department having been represented by a counsel are aware of the fact that there was no interim order beyond 08.06.2014 and that the writ petition was dismissed on 04.07.2014.

18.It is further submitted that the assessee, in the writ petition, had also challenged the reassessment proceedings on merits and referred to the order passed by the CIT(A) dated 28.03.2012 and the remand report, which was called by the CIT (A), dated 15.02.2012 and submitted that the reassessment is a change of opinion, which is impermissible in law. Similar is the submission with regard to the issue of assessability of interest as well as the lease income of M/s.DLF Properties Ltd. Further, it is submitted that the Assessing Officer not brought on record any material to justify that the reassessment proceedings are nothing but review. Further, it is submitted that the proposed assessment amount of Rs.3.9 Crores under the head 'other sources' would not result in any escapement of Revenue even if the income is assessed under the head 'other sources' and therefore, there was no occasion to invoke Section 148 of the Act. Further, it is submitted that the order dated 28.03.2012 passed by the CIT(A) had attained finality and the proceeding, reopening the assessment, has the effect of reviewing the order passed by the appellate authority, which is impermissible in law, as the Assessing Officer is bound by the order passed by the CIT(A) on the principle of judicial discipline.

19.Further, it is submitted that the principle of consistency was required to be followed, which had not been done by the Assessing Officer. Further, it is submitted that the Assessing Officer erred in applying Section 50C to the lease transaction, when there was no sale of land. In support of his contention, the learned counsel placed reliance on the decision of the High Court of Allahabad in CIT vs. Chandra Bhan Bansal reported in (2014) 46 taxmann.com 180 (Allahabad)] for the proposition that in terms of the provisions of Explanation 1(i) to Section 153(3), period of limitation for assessment can be stayed only by an order or injunction of any Court and as soon as the said order or injunction of Court is vacated, the period of limitation shall re-start even though order vacating injunction is not communicated to department.

20.Reliance was placed on the decision in the case of Saheb Ram Om Prakash Marketing (P.) Ltd. vs. CIT reported in [(2017) 86 taxmann.com 155 (Delhi)]. In the said case, reassessment notice was issued on 27.03.2012, but the High Court had stayed all proceedings qua the said notice and stay had been vacated on 09.12.2016, and the order of reassessment has to be necessarily passed within 60 days, that is, on or before 08.01.2017, and the same having not been passed within the said time, it is the order which is time barred.

21.The learned Senior Counsel referred to the decision of the Privy Council in General Accident Fire and Life Assurance Corporation, Ltd. v. Janmahomed Abdul Rahim reported in AIR 1941 PC 6.

22.On the above grounds, the learned Senior Counsel sought for setting aside the order rejecting the objections filed by the assessee to the reassessment as well as the order of reassessment dated 24.10.2014.

23.Ms.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondent submitted that the writ petition challenging the order of reassessment is not maintainable, as the assessee has an effective alternate remedy of filing an appeal before the CIT(A) and without exhausting the same, the assessee may not be permitted to question the correctness of the reassessment proceedings by way of a writ petition. Further, it is submitted that the objections raised by the assessee for the reopening had been properly construed by the Assessing Officer and a speaking order has been passed on 11.01.2013 and thereafter, reassessment proceedings were commenced and concluded by order dated 24.10.2014 and therefore, the assessee cannot, now, question the order rejecting the objections to the reopening proceedings and therefore, nothing survives for adjudication in W.A.No.1913 of 2021.

24.It is further submitted that the objections raised by the assessee were properly dealt with by the Assessing Officer by stating that once the income from lease rental is assessed under the head 'income from other sources', as the same does not fall either under the head 'business' or under the head 'income from property', along with interest income, the loss incurred by the assessee on account of conducting of horse races cannot be set off against these income in view of the provisions of Section 74A of the Act, although the loss from the racing activity can be carried forward for four subsequent years to be set off against any income from the same activity. Further, the Assessing Officer pointed out that the Lease Deed with M/s.DLF Properties Ltd., is for a period of 66 years and the assessee has raised Rs.60 Crores as non-interest bearing deposit, the physical possession of the property has been handed over to the lessee and by placing reliance on the decision in the case of R.K.Palshikar (HUF) vs. CIT [(1998) 172 ITR 311], held that the lease in question would fall within the definition of "deemed sale" and the income earned out of the said lease/deemed sale is taxable under the head 'capital gains'.

25.Further,the Assessing Officer pointed out that in the document, the lease amount has been mentioned as Rs.1,37,96,32,000/- and the same is proposed to be adopted as sale consideration and Rs.4,39,811/- is taken as the indexed cost of purchase in accordance with Section 50C of the Act and capital gains has to be computed on the same. It is further submitted that while passing the order of reassessment dated 24.10.2014, the Assessing Officer has elaborately dealt with the issue regarding limitation and it was pointed out that the assessee was issued with notice dated 17.10.2014, proposing the method of computing the income under various heads of income and completing the reassessment proceedings and thereby, provided with an opportunity to file their objections, if any.

26.The assessee had not filed their objections either with regard to the method of computing the income or about assessing the income under various heads exist, but submitted a letter stating that the limitation of 60 days needs to be computed from the date of the Court order, i.e., from 04.07.2014 in view of the provisions of Section 153(2) of the Act and the time limit expired on 03.09.2014. The Assessing Officer pointed out that this submission is not tenable, as if the Court order is not received by the Revenue for a period of 60 days from the date of the order. It is not practicable for any order to be passed within 60 days in the absence of knowledge as to what is the finding rendered by the Court. Therefore, the assessee would contend that unless and until the order is received by the Assessing Officer, it cannot be stated that the stay granted has not been vacated. Further, the Assessing Officer pointed out that if any attempt is made by the Assessing Officer to proceed with the matter is stayed by the Court without the knowledge of the contents of the order, it would lead to a situation where contempt proceedings may be initiated and therefore, it was submitted that the intention of the legislature as laid down in the proviso should be understood as 60 days from the date of receipt of the Court's order not on the date on which the Court order was pronounced.

27.The Assessing Officer further stated that the order of the Court was received in the office of the CIT(Judicial) on 28.08.2014, which was communicated to the office of the respondent on 04.09.2014 and in this regard, referred to the seal fixed by the Registry of this Court in the certified copy of the order. It is submitted that the copy application was filed on 04.07.2014, i.e., the date on which the order was passed, the copy was made ready on 26.08.2014 and delivered to the counsel on 27.08.2014 which in turn was received by the office of the CIT(Judicial) on 28.08.2014 and received by the Assessing Officer on 04.09.2014.

28.The learned Senior Standing Counsel referred to the scanned copy of the endorsement in the certified copy of the order, which was reproduced in the assessment order. Further, the Assessing Officer pointed out that it is not practicably possible for an order to be passed on 03.09.2014 after providing an opportunity of hearing to the assessee to fulfil the principles of natural justice. Therefore, it was contended that the time limit of 60 days should be reckoned from the date of receipt of the order by the Revenue and the contends thereon are known to the Assessing Officer, who is required to act as per the directions in the said order.

29.It is further submitted that the assessee subsequent to 03.09.2014, had submitted letters dated 22.09.2014 and 23.10.2014, but had not raised any objection with regard to the limitation, but only pleaded to keep the proceedings in abeyance, as they have filed Special Leave Petition before the Hon'ble Supreme Court against the order passed by the High Court. Therefore, it is submitted that the plea of limitation raised by letter dated 24.10.2014 is a new plea.

30.With regard to the merits of the reassessment, the learned Senior Standing Counsel submitted that the Assessing Officer has elaborately considered all the issues and has recorded reasons in paragraphs 4 to 8 of the reassessment order dated 24.10.2014 and if the assessee is aggrieved by the reassessment on its merits, they should file an appeal before the first appellate authority and the writ petition is not maintainable. In support of her contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Jeet Singh and others Vs. Union of India and others reported in [(2011) 13 SCC 534] and Housing Board Haryana vs. Housing Board Colony Welfare Association reported in [(1995) 5 SCC 672].

31.On the above grounds, the learned Senior Standing Counsel sought to sustain the order in both the writ petitions and also pointed out that the learned Writ Court had granted liberty to the assessee to file an appeal, if so advised.

32.We have elaborately head the learned counsels for the parties and carefully perused the materials placed on record.

33.The challenge to the reassessment proceedings is primarily and largely on the ground of limitation. The challenge to the order rejecting the objections filed by the assessee to the reopening proceedings has merged with the impugned order of reassessment dated 24.10.2014 in which, not only with regard to the justifiability of the reopening has been mentioned, coupled with the fact as to how in the opinion of the Assessing Officer, the order of reassessment is not time barred. After referring to the finding on the aforementioned two points, the Assessing Officer proceeded to complete the assessment under Section 143(3) read with Section 147 of the Act on merits.

34.So far as the challenge to the order of reassessment on the ground of merits is concerned, consistently the Hon'ble Supreme Court and this Court has been slow to exercise its jurisdiction under Article 226 of the Constitution of India by examining the order of assessment/reassessment on the merits of the case as objected by the assessee, as it has been found that the remedy by way of appeal before the CIT(A) is not only an effective, but efficacious remedy. Furthermore, it has been pointed out that the first appellate authority is entitled to re-appreciate the facts and he is entitled to call for a remand report from the Assessing Officer, he is also entitled to admit additional documents after following the procedure under the Act. Thus, the assessee would have an effective remedy before the CIT(A) which authority will not only be entitled to examine the aspect as to whether the Assessing Officer was right on facts, but also as to whether the Assessing Officer was right on law for having formed an opinion while completing the assessment. Therefore, we are not inclined to go into the correctness of the order of reassessment on the merits and the learned Single Bench was right in its observation that the assessee has to agitate all the issues before the appellate authority and not before the Writ Court.

35.As mentioned earlier, the primordial and pivotal point on which the writ petitions have been filed is on the ground that the reassessment proceedings is barred by limitation. The Assessing Officer has given his reasons as to why the order of reassessment is not barred by limitation. It cannot be disputed by the assessee that the limitation is not purely a question of law, it is a mixed question of fact and law. Therefore, we would be well justified in making an observation that the assessee would be entitled to raise the question of limitation also before the appellate authority as well as on the merits of the reassessment. In fact, the assessee would be well within its jurisdiction to claim that the appellate authority should decide the issue of limitation as first among the several issues that may be raised before the appellate authority.

36.The entire argument of the learned Senior Counsel for the assessee hinges upon as to how the time limit prescribed under proviso to Section 153(2) read with Explanation 1(ii) is to be computed. The notice under Section 148 of the Act for reopening the assessment for the assessment year 2007-08 is dated 20.04.2011. The assessee submitted their objections dated 08.06.2011, which were rejected by order dated 11.01.2013. The said order was subject matter of challenge in W.P.No.3005 of 2013. It is not in dispute that an order of interim stay was granted on 06.02.2013 staying all further proceedings pursuant to the order dated 11.01.2013, relating to the assessment year 2007-08 on the file of the respondent. The order of interim stay continued to remain in force.

37.It is submitted by the learned Senior Counsel for the assessee that the order of interim stay was extended from time to time and till 08.06.2014. It is the submission that beyond 08.06.2014, the order of interim stay was not extended. The writ petition was dismissed by order dated 04.07.2014. The copy of the reported decision in the case of Joint Commissioner of Income-tax vs. Kalanithi Maran reported in [(2014) 366 ITR 453 (Madras)] shows that there were writ appeals as well as writ petitions, which were heard as a batch by the Hon'ble Division Bench. In the preamble of the said order, the category of cases have been spelt out from which, we find that the writ petitions were filed challenging the assessment order, those filed challenging the notice issued under Section 148 of the Act or speaking order or show cause notice issued under Section 143(2), there were cases where writ petitions were filed challenging the assessments completed pursuant to intimation under Section 143 (1) and reassessment notices issued within 4 or 6 years. The other category of cases were challenging the notices issued for reassessment within 4 years from the relevant assessment years where assessment orders were passed under Section 143(3)/147 of the Act. The next category of cases were those filed challenging the speaking orders of reassessment issued after 4 years, but within 6 years. The writ appeals filed by the Revenue challenging the interim orders granted in the writ petitions were also tagged along with the batch. Thus, we find that there are six category of cases, which were clubbed together and heard by the Hon'ble Division Bench. The writ petition filed by the assessee in W.P.No.3005 of 2013 was clubbed with the fourth category of cases, which are cases where the writ petitions were filed challenging the speaking order where notices of reassessment were issued within 4 years from the relevant assessment year where original assessment orders have been passed under Section 143(3)/147 of the Act. The Hon'ble Division Bench framed two issues for consideration, which are as hereunder:-

> "(1) Whether an order passed by the assessing officer on the objections of an assessee can be assailed before the Court under Article 226 of the Constitution of India?
>
> (2) Whether an assessment/re-assessment order passed under Section 147 read with 143(3) of the Income-tax Act, 1961 is to be tested by a Court of law under Article 226 of the Constitution of India?"

38.On a perusal of the above issues, which were framed for consideration, it is vividly clear that the Hon'ble Division Bench did not deal with the facts on each of those cases, which were clubbed to be heard together. In other words, the issues were legal issues as to whether the assessees can assail the order of the Assessing Officer rejecting the objections by filing writ petition under Article 226 of the Constitution of India. The ultimate conclusion of the Hon'ble Division Bench was that the writ petitions were not maintainable and all the issues involved are adjudicatory issues. Accordingly, all the writ petitions were dismissed. Consequently, the writ appeals filed by the Revenue against the interim orders were allowed and time was granted to the assessee to file statutory appeal before the appellate authority. Thus, we find that the Hon'ble Division Bench did not examine the merits of each and every cases, as the issues framed for consideration were purely questions of law.

39.As mentioned above, the lead cases before the Hon'ble Division Bench were writ appeals filed by the Revenue challenging the interim orders granted in the writ petition. There were writ appeals also viz., W.A.Nos.347 to 349 of 2014, those writ appeals obviously did not pertain to the appellant, but pertained to others and the writ petitions were tagged along with the writ appeals. Therefore, the situation is very clear, which has been understood not only by the assessee as well as the Revenue that not only the correctness of the interim orders granted in the writ petitions to be decided by the Hon'ble Division Bench, but also the maintainability of the writ petitions. Therefore, it would be impermissible for the assessee to take a stand that the interim orders granted in the writ petitions stood expired on 08.06.2014 and beyond that, there was no interim order and therefore, limitation commenced from the said date is an argument, is not tenable.

40.The cases referred to by the learned Senior Counsel for the assessee more particularly, in the case of Chandra Bhan Bansal (supra) and Saheb Ram Om Prakash Marketing (P.) Ltd. (supra) are all individual cases, where the Court was called upon to interpret the period of limitation. The litigation before us is quite distinct and different. We say so because the Hon'ble Division Bench was dealing with a batch of cases of which, there were three writ appeals and more than 51 writ petitions, which were filed during 2012, 2013 and 2014.

41.As mentioned above, the writ appeals were intra-court appeals before the Hon'ble Division Bench against the interim order granted in the writ petitions. On a perusal of the judgment/order passed by the Hon'ble Division Bench dated 04.07.2014, it is not clear as to whether there was any interim order granted by the Hon'ble Division Bench staying the order of interim stay granted in those writ petitions. Nevertheless, the assessee as well as the Revenue reconciled with the fact that the entire batch was clubbed together and heard. Therefore, we are convinced to state that the stand taken by the assessee before us as well as before the learned Single Bench is unacceptable.

42.As mentioned, there was no adjudication done by the Hon'ble Division Bench on the merits of each of the assessee's case. The Hon'ble Supreme Court in Jeans Knit Private Ltd. vs. Deputy Commissioner of Income Tax reported in (2017) 390 ITR 0010 (SC), had set aside the judgment of the Hon'ble Division Bench. The judgment/order reads as follows:-

> "We have heard learned counsel for the parties at length and all these matters can be disposed of by a short order.
>
> We find that the High Courts in all these cases have dismissed the writ petitions preferred by the appellant/assessee herein challenging the issuance of notice under Section 148 of the Income Tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. These writ petitions are dimsissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in Calcutta Discount Limited Company vs. Incom Tax Officer, Companies District I, Calcutta & Anr.

[(1961) 41 ITR 191 (SC)]. We, thus, set aside the impugned judgments and remit the cases to the respective High Courts to decide the writ petitions on merits.

We may make it clear that this Court has not made any observations on the merits of the cases, i.e. the contentions which are raised by the appellant challenging the move of the Income Tax Authorities to re-open the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments.

We are conscious of the fact that the High Court has referred to the Judgment of this Court in Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, [(2013) ITR 357 (SC)]. We find that the principle laid down in the said case does not apply to these cases.

During the pendency of these appeals, stay of re-assessment was granted, which shall continue till the disposal of the writ petitions before the High Courts.

The appeals are allowed in the aforesaid terms."

43.To be noted that the Hon'ble Supreme Court had observed that during the pendency of the appeal before it, stay of reassessment was granted, which was directed to be continued till the disposal of the writ petitions before the High Court. Assuming the learned Senior Counsel for the appellant is correct, after the order was passed by the Hon'ble Supreme Court, the order of stay stood revived, which would mean that even after, the order of stay was not extended beyond 08.06.2014, which is deemed to have been extended from 09.06.2014 pursuant to the judgment/order of the Hon'ble Supreme court dated 08.12.2016. In fact, the assessee was basking under the said interim order and therefore, it would not lie in the mouth of the assessee to now contend that the proceedings are barred by limitation. That apart, the stay petition filed by the assessee in W.P.No.3005 of 2013 was pending on the file of the Hon'ble Division Bench and only by order dated 04.07.2014, the miscellaneous petitions were closed. The learned Single Bench had taken note of certain practical difficulties which a litigant would face be it a private person or the Government, when matters are not listed before court. The argument on behalf of the appellant wants us to adopt a laser edge approach and if such proposition is to be accepted, it would result in great prejudice to the litigant, who approaches the Court. There are several decisions which hold that even if the interim orders are not extended, as long as the matters are pending before the Court, the authorities, who are bound by the interim orders, though initially granted for a limited period, would always be guided by the fact that the main case is still pending and would await the decision of the Court. The Assessing Officer while completing the reassessment proceedings, has rightly made an observation that had he proceeded further without knowing as to what was the nature of the order passed by the Court, there is every likelihood that he would be hauled up for contempt. Thus, we find that the argument as projected by the appellant is wholly unacceptable and in the facts and circumstances of the case as we have elaborated above, such an argument can never be advanced by the appellant.

44.The appellant having enjoyed the benefit of the interim order passed by the Hon'ble Supreme Court on 08.12.2016, restoring the position, which stood as on 08.06.2014, are not entitled to maintain a challenge to the reopening/reassessment on the ground of limitation.

45.As mentioned above, the Hon'ble Division Bench dismissed the writ appeals and writ petitions by judgment/order dated 04.07.2014. The writ petition in W.P.No.28434 of 2014 was filed on 28.04.2014. As pointed out by the Assessing Officer, the assessee in their letters dated 22.09.2014 and 23.10.2014, did not raise any objection regarding limitation, their prayer was to keep the proceedings in abeyance as they have filed Special Leave Petition before the Hon'ble Supreme Court. It is only on 24.10.2014, the date on which the reassessment order was passed, the assessee raised a plea regarding limitation. Simultaneously they were pursuing the matter before the Hon'ble Supreme Court and as could be seen from the judgment/order of the Hon'ble Supreme Court dated 08.12.2016 reported in (2017) 390 ITR 0010 (SC), the appellant-assessee had the benefit of an order of stay of reassessment proceedings. Therefore, the assessee's plea that the proceedings are barred by limitation is absolutely frivolous and cannot be entertained and rightly rejected by the Assessing Officer as well as by the learned Single Bench. Therefore, the assessee has to necessarily avail the appellate remedy as against the order of reassessment dated 24.10.2014 and agitate all issues on merits except the contentions with regard to the limitation, which we have rejected in this appeal.

46.For all the above reasons, the writ appeals fail and they are dismissed. We sustain the liberty granted to the assessee by the learned Single Bench and permit the assessee to file an appeal to the statutory appellate authority within four weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

The Deputy Commissioner of Income Tax,
Company Circle IV(1),
Room No.430, 4^{th} Floor Main Building,
'Ayakar Bhavan',
121, Nungambakkam, High Road,
Chennai-600 034.

+1cc to Mrs.Hema Muralikrishnan, Advocate Sr No.43745
+2ccs to Mr.G.Baskar, Advocate Sr No.43465

W.A.Nos.1912 and 1913 of 2021

PA (CO)
PR (15/09/2021)