2024:DHC:3061-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 21 March 2024**
Judgment pronounced on: 16 April 2024

\+ W.P.(C) 7015/2022

SUNSHINE CAPITAL LIMITED .....Petitioner

Through: Mr. Amol Sinha and Mr.Kshitiz Garg, Advs.

Versus

DEPUTY COMMISSIONER OF INCOME TAX- CIRCLE-9(1), DELHI & ORS. .....Respondents

Through: Mr. Sanjay Kumar, Ms. Easha and Ms. Hemlata Rawat, Advs. for Revenue.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The petitioner has filed the instant writ petition under Articles 226 and 227 of the Constitution of India praying for the following reliefs:-

> "a. This Hon'ble Court be pleased to allow the present Writ Petition and pass a writ of mandamus, or any other appropriate Writ, Order or Direction under Article 226/227 of the Constitution of India directing the Respondents to give appeal effect of the orders passed by Ld. ITAT, Delhi in ITA No.787/DEL/2014 & ITA No.5517/DEL/2017 for A.Y. 2008-09.
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> b. This Hon'ble Court be pleased to allow the present Writ Petition and pass a writ of mandamus, or any other appropriate Writ, Order or

Direction under Article 226/227 of the Constitution of India directing the Respondents to issue refund of Rs. 25,44,671/- along with interest thereby de-freeze the three bank accounts maintained with Indian Overseas Bank Limited bearing A/C No. (003502000022314), ICICI Bank Ltd. bearing A/C No. (000705035988) & Punjab & Sind Bank bearing A/c No. (00131100015265) and two properties attached namely as Vishal Infrabuild Limited situated at CTS No. 5853, I Floor, Emer Corner, Maratha Colony, Congress Road, Belgaum, Karnataka-590006 & another property namely as DLF Limited, Flat No. 2701 , R Tower, Moti Nagar, New Delhi."

2. The facts of the present case exhibit that the petitioner had filed its Income Tax Return [**"ITR"**] for the Assessment Year [**"AY"**] 2008-09, declaring a total income of ₹19,92,354/- which was processed by the respondents under Section 143(1) of the Income Tax Act, 1961 [**"Act"**]. The ITR of the petitioner was picked up for scrutiny and an assessment order under Section 143(3) of the Act was passed by the respondents on 31 December 2010, whereby, the total income of the petitioner was assessed to be ₹100,42,66,390/- for the concerned AY.

3. Additionally, it is stated that respondent no.1 had seized two properties of the petitioner namely, Vishal Infrabuild Limited situated at CTS No. 5853, I Floor, Emer Corner, Maratha Colony, Congress Road, Belgaum, Karnataka-590006 and DLF Limited, Flat No. 2701, R Tower, Moti Nagar, New Delhi.

4. Aggrieved by the said assessment order, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeal) [**"CIT(A)"**], challenging the additions which were made by the respondents. The CIT(A), *vide* order dated 29 November 2013, partly allowed the appeal in favour of the petitioner, whereby, out of total disallowance of ₹22,74,040/-, disallowance only to the tune of ₹5,27,321/- was upheld.

5. However, the petitioner assailed the order of the CIT(A) before the Income Tax Appellate Tribunal [**"ITAT"**], which came to be decided on 8 October 2018, wherein, the matter was remanded back to the file of the Assessing Officer [**"AO**"] for the purpose of fresh assessment. Also, by virtue of the said order, the demand being reflected on the Income Tax Business Application [**"ITBA"**] portal in the quantum came to be deleted by the ITAT.

6. During the interregnum, the DCIT, Circle-10(3), New Delhi, passed a penalty order under Section 271(1)(c) of the Act on 27 March 2015. Subsequently, the appeal against the said penalty order was also dismissed by the CIT(A) on 28 February 2017.

7. Thereafter, on 2 March 2020, the penalty order passed under Section 271(1)(c) of the Act was dropped by the ITAT on account of quantum assessment being remanded back to the file of the AO and a demand of ₹33.98 Crore towards penalty was also deleted. During the period between 30 July 2020 to 10 August 2021, the petitioner made several representations to the respondents praying for rectification of the error with respect to the demand being reflected on the ITBA portal and the issue of refund.

8. Since no reply was received by the petitioner upon its representations, it filed an application in accordance with the Right to Information Act, 2005 [**"RTI Act, 2005"**] on 13 August 2021 to Tax Recovery Officer to give appeal effect to the order passed by the ITAT. Pursuant to the said RTI application, an order was passed by respondent no.3 on 3 November 2021, wherein, it expressed its inability to give appeal effect on the ground that it had not received the order passed by

the ITAT for the concerned AY through a proper channel.

9. Further, on 10 December 2021, the petitioner preferred an appeal against the order dated 3 November 2021, passed by respondent no.3 under Section 7 of the RTI Act, 2005. The said appeal was decided by the first appellate authority under the RTI Act, 2005 on 13 January 2022 stating that the information provided to the petitioner is adequate.

10. Subsequently, upon receipt of the information dated 13 January 2022, an application was preferred by the petitioner on 1 February 2022 before the registry of the ITAT in order to seek information of service of order passed on 8 October 2018. On 10 March 2022, the petitioner was provided with the information by the registry of the ITAT that the order passed in the case of the petitioner was duly sent to the CIT (Judicial) on 24 October 2018 for further action. On 11 March 2022 and 30 March 2022, the petitioner made subsequent representations to the respondents to rectify the error with respect to the reflection of demand on the ITBA portal and issue refund, but to no avail.

11. The petitioner, therefore, filed the instant writ petition to ventilate its grievance against the inaction of the respondents.

12. Mr. Amol Sinha, assisted by Mr. Kshitiz Garg, learned counsel appearing on behalf of the petitioner submitted that the action of the respondents in not giving appeal effect and not issuing the income tax refund is completely unreasonable and unjustifiable. According to him, despite the order passed by the ITAT being communicated to the concerned authority of the Income Tax Department [**"Department"**] within the stipulated time, the respondents have failed to pass a fresh assessment order *qua* the petitioner for the concerned AY. He contended that the time limit of twelve months prescribed under

Section 153(3) of the Act for passing a fresh assessment order for the

concerned AY in light of the ITAT order dated 8 October 2018 has already expired and therefore, the respondents cannot be allowed to pass a fresh assessment order at this stage.

13. Learned counsel further submitted that the respondents ought to have deleted the demand of ₹34.70 Crores for quantum and ₹33.98 Crores for penalty appearing to be due on the ITBA portal against the petitioner as the same stood deleted till the passing of the fresh assessment order, which was never done. While taking this Court through various representations submitted by the petitioner to the respondents for giving the appeal effect, he contended that the respondents have failed to pay any heed to the said representations.

14. He also submitted that the total demand for all the AYs against the petitioner is ₹40,22,661/-, whereas, an amount of ₹65,67,332/- is already lying with the respondents. He, therefore, contended that retention of the amount to the tune of ₹25,44,671/- by the respondents is contrary to the settled position of law and the petitioner is entitled for refund of the same.

15. On the contrary, Mr. Sanjay Kumar, assisted by Ms. Easha and Ms. Hemlata Rawat, learned counsel appearing on behalf of the respondents submitted that since the order of the ITAT never reached the concerned authority of the Department i.e., CIT (Judicial), the remand as directed by the ITAT order dated 8 October 2018 could not be complied with. He submitted that the ITAT is bestowed with the responsibility to provide the order to the concerned authority which it had failed to perform.

16. While drawing our attention to the copy of the emails written to

the DCIT, Central Circle, which is annexed as *Annexure-R1* and letter

dated 16 July 2021 written to the Registrar of the ITAT, annexed as *Annexure-R2*, learned counsel submitted that upon receipt of the application from the petitioner for giving the appeal effect, the respondents had promptly written to various concerned authorities for providing the order in question. He, however, submitted that no reply was received from the concerned authorities.

17. He further contended that as per Section 153(3) of the Act, the limitation period of nine months or twelve months, as the case may be, would start at the point when the order from the ITAT is received by the Principal Commissioner or the Commissioner. He, therefore, contended that since in the instant case, the order was never received by the CIT (Judicial) or any other Principal Commissioner or Commissioner, the limitation period to pass assessment order in terms of the remand could not be said to have been expired.

18. Learned counsel has relied upon the decision of a Full Bench of this Court in the case of **CIT v. Odeon Builders P. Ltd. (Delhi) [FB]** [2017 SCC OnLine Del 7622] to submit that the limitation period would begin only when a certified copy of the order of the ITAT is received by any Commissioner including CIT (Judicial).

19. We have heard the learned counsel appearing on behalf of the parties and perused the record.

20. The fulcrum of the solitary issue which arises for our consideration in the present petition pertains to whether the limitation period for the remand by the ITAT would have to be strictly construed to begin from the date when the order of the ITAT is "received" by the concerned authority through an appropriate mechanism, particularly in

light of the provisions of Section 254 read with Section 153(3) of the

Act and the judgment rendered by this Court in *Odeon Buildwell (supra).*

21. The legal landscape in the present *lis* relates to sub-Section 3 to Section 153 of the Act which stipulates that an order for fresh assessment pursuant to an order under Section 254 or Section 263 or Section 264 of the Act may be made at any time before the expiry of a period of nine months. The said provision further encapsulates that the aforesaid period has to be calculated from the end of the financial year in which the order under Section 254 of the Act is received by the authorities mentioned in the said Section. For the sake of clarity, Section 153(3) of the Act is extracted hereunder as:-

> "(3) Notwithstanding anything contained in [sub-sections (1), (1-A) and (2)], an order of fresh assessment [or fresh order under Section 92-CA, as the case may be,] in pursuance of an order under Section 254 or Section 263 or Section 264, setting aside or cancelling an assessment, [or an order under Section 92-CA, as the case may be] may be made at any time **before the expiry of nine months from the end of the financial year in which the order under Section 254 is received by the Principal Chief Commissioner or Chief Commissioner or [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,]** or, as the case may be, the order under Section 263 or Section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,]:
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> [Provided that where the order under Section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under Section 263 or Section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.]"

22. The respondents have heavily stressed upon the usage of the word "received" in Section 153(3) of the Act in order to strike a

distinction between the "receipt" of the order and "knowledge" of the order by the concerned authorities. According to the respondents, a plain and literal interpretation of the said provision would yield that the latter would not constitute a valid interpretation and the same has to be strictly confined to the "receiving" of the certified copy of the order by the concerned authorities.

23. Additionally, much reliance has been placed by the respondents on the dictum laid down by the Full Bench of this Court in the case of *Odeon Buildwell (supra)*, which according to them, is a determinative authority on the aspect of limitation for passing a fresh assessment order and which shall be triggered only when the certified copy of the order is received by the Commissioner including the CIT (Judicial). Undoubtedly, though the decision in *Odeon Buildwell (supra)* revolves around the interpretation of Section 260A of the Act, a closer scrutiny of the provision thereof would suggest that insofar as the usage of the phrase "received" is concerned, the language couched in Section 260A of the Act is similar to that of Section 153(3) of the Act. Hence, it is beneficial to draw an equivalence between both the Sections with regard to the abovementioned aspect.

24. It is noteworthy to refer to the following discussion in the case of *Odeon Buildwell (supra)* to clarify the scope and nature of Section 153(3) of the Act:-

> "39. The interpretation of the prefix "the" has to be both purposive and contextual. The object of the provision is to enable the filing of appeals within a period of limitation. As it is, the period of limitation (120 days) is considerably longer than in routine cases (30, 60 or a maximum of 90 days). **The interpretation has to serve the purpose of not lengthening the period of limitation further, but to ensure that the time limit is strictly adhered to. Relaxation of the period**

of limitation in such cases has to be an exception and not the rule.

The decisions in Consolidated Coffee v. Coffee Board (supra) and Shree Ishar Alloys Steels Ltd. v. Jayaswal Neco (supra) were rendered in the context of different statutes where the wording of the provisions in question dictated the result of the interpretative exercise. They are not useful in the interpretation of the word "the" which precedes the words Commissioner of Income-tax or Principal Commissioner of Income- tax in section 260A(2)(a) of the Act.

40. The context in which the interpretative exercise is to be undertaken is that of the statute of limitation. Usually, the commencement of limitation is that point when there is "knowledge" of an order or judgment. In the context of section 260A(2)(a), the question that should be asked is : "when was the Department/Revenue aware of the order" and not "when was that particular Commissioner of Income-tax or Principal Commissioner of Income- tax having jurisdiction have knowledge of the order". **Once a responsible officer or representative of the Department such as its Departmental representative or the Commissioner of Income-tax (Judicial) is aware of the order, then from that point it is a purely internal administrative arrangement as to how the said officer obtains and further communicates the order to the officer who has to take a decision on filing the appeal**. Of course, the time taken to obtain a copy of the order by such Departmental representative or Commissioner of Income-tax (Judicial) would be excluded. **However, the period of limitation will not cease to run only because the "concerned" officer has not yet received the order.**

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43. Viewed differently, the contextual interpretation of the expression "receive" would be when the parties notified of the pronouncement are represented at that time in the open court. When pronounced, both parties are said to receive it. The agency which they choose for transmission to the official or executive component to authorise an appeal is not the concern of the judicial system."

[Emphasis supplied]

25. Evidently, from the extract of the relevant portion of the judgment in *Odeon Buildwell (supra)* in the preceding paragraph, it is seen that the contextual interpretation of the phrase "received" postulates the time when are the parties notified about the pronouncement and are represented at that instant in the open court. It

was held that the solitary reason of non-receiving of the order by the concerned authority cannot consequently make the period of limitation cease to run. The Court further noted that once a responsible authority including the Department's Representative is aware of the order, the communication of the order is purely an administrative arrangement which has to be carried out internally within the Department.

26. Further, in the case titled as **CIT v. Qualcomm Incorporated** [ITA 63/2024] of this Court, we had an occasion to examine a similar set of arguments raised by the parties therein. *Vide* order dated 16 February 2024, this Court dismissed the appeal of the Revenue, while extensively dealing with the exposition of law laid down in the case of *Odeon Buildwell (supra)* in respect of the issue raised in the instant petition. The relevant extract of the said order is culled out as under:-

> "13. The Full Bench firstly took note of the ITAT having adopted the practice of pronouncing orders in terms of the observations as rendered by the Court in Commissioner of Income Tax v. Sudhir Choudhrie. It thus took note of both the authorized representative of the assessee as well as of the Department becoming aware of the judgment of the ITAT upon its pronouncement. It also took note of the significant distinction which existed between Section 256(3) and Section 260A with the former using the word "served" as distinguished from "received" as occurring in Section 260A. **The Full Bench thereafter proceeded to reject the contention of the Department that the receipt of the order of the ITAT must be considered as being service upon the jurisdictional Commissioner holding that the acceptance of such a view would amount to rewriting 153(2A) and construing that provision contemplating receipt of the order by the "concerned" Commissioner or Principal Commissioner of Income Tax.**
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> 15. As is evident from the aforesaid extracts, **the Full Bench had unequivocally found that while examining the issue of limitation, one would have to pose the question of when the Department became aware of the order and not when the concerned Commissioner or Principal Commissioner may have been served or had derived knowledge. It proceeded further to observe that**

once a responsible officer of the Department becomes aware of

the order, the period of limitation would commence form that point in time."

[Emphasis supplied]

27. Recently, the High Court of Bombay in the case of **Lakhpatrai Agarwal v. CIT** [2023 SCC OnLine Bom 372] has held that the legislative intent behind the enactment of Section 254(3) of the Act does not prescribe shifting of the onus of proving the receipt of the order under the said provision on the assessee. It was further noted that the expression "is received" used in Section 153(3) of the Act cannot mean to extend the limitation till perpetuity. The relevant paragraph of the said decision is reproduced as under:-

> "26. We are unable to agree with the respondent's counsel's contention that they have not received the order dated February 18, 2010. Section 254(3) itself provides for the Income-tax Appellate Tribunal to send a copy of the order to both the assessee and to the Commissioner; therefore, the onus would lie on the respondent to prove that they had not received the said order. If we had to accept the contention of the respondent it would have led to extending the time for compliance with the order dated February 18, 2010 for almost 12 years at least in this case. Further, it would lead to shifting the onus on the assessee to oversee that the Principal Commissioner or Commissioner, as the case may be, receives the copy of the order. We do not agree as it does not appear to be the intention of the Legislature. **We are unable to accede to the contention of the respondent to construe the words "is received" in section 153(3) to mean "till it is received" and thereby extend the limitation in perpetuity. It has to be a reasonable period of time especially when the respondents are a party to the proceeding."**

[Emphasis supplied]

28. Notably, in the case of *Lakhpatrai Agarwal (supra)*, the issue pertained to the inaction of the respondents therein to comply with the order of the ITAT on the pretext of not receiving the order of the ITAT, which remanded back the matter to the AO as per Section 153(3) of the

Act. Subsequently, the prescribed period of nine months had elapsed in the said case. The Court noted that since the respondents therein were party to the proceedings, they could have requested for a copy of the order from the ITAT and therefore, the respondents were directed to issue the refund alongwith the interest and to release the seized belongings.

29. It can, therefore, be safely concluded that the expression "received" employed in Section 153(3) of the Act would not strictly mean that a certified copy of the order of the ITAT, in the given facts and circumstances, ought to have been necessarily supplied to the concerned authority through an appropriate mechanism devised by the respondents.

30. Further, sub-Section 3 to Section 254 of the Act casts a duty upon the ITAT to send the copy of the orders passed under Section 254 of the Act to the assessee as well as to the Principal Commissioner or Commissioner. A conspectus of Section 254 read with Section 153(3) of the Act would reveal that the said provisions cannot be made applicable to the detriment of the petitioner in the case at hand.

31. Having examined the scheme, intent and scope of Section 254 read with Section 153(3) of the Act, more importantly the nature of the expression "received" used in the said Section, we deem it apposite to test the findings of the foregoing discussion on the edifice of the facts of the present case.

32. Admittedly, after receiving no response from the concerned authorities to the representations, the petitioner sent a letter dated 1 February 2022, addressed to the Assistant Registrar of the ITAT,

enquiring about the dispatch details of the ITAT order dated 8 October

2018 sent to the concerned authorities. The said letter, which has been annexed with the writ petition as *Annexure P-13*, was responded by the Assistant Registrar, ITAT, which noted that the copy of the said order dated 8 October 2018 was forwarded to the CIT (Judicial) on 24 October 2018.

33. It is also manifested from the penalty appeal order dated 2 March 2020 that the Senior Departmental Representative duly participated in the proceedings, wherein, the appeal was disposed of while placing reliance on the order of the ITAT dated 8 October 2018. Also, the representations made by the petitioner to various officers of the Department would show that the Department was apprised of the ITAT order in question.

34. The facts, thus, show that the ITAT sent the order to the Department on 24 October 2018, however, the Department denies having received the same. In any case, for deciding controversy in the instant case, it is sufficient to take note of the ITAT's stand of sending a copy the order to the Department. Moreover, the petitioner, as early as on 30 July 2020 itself, made the first communication to the Department to give appeal effect. The record would show that the subsequent representation sent by the petitioner on 9 July 2021 to the Department contains all the requisite information of the orders passed by the concerned authorities in the case of the petitioner. It appears that no concrete steps have been taken by the Department. Even the petition came to be filed on 3 May 2022 and the respondent had entered appearance on advance notice on 5 May 2022. Except harping upon the word "received", the Department does not seem to have taken any

measure to give the appeal effect. On the contrary, the petitioner has

been running from pillar to post for the redressal of its grievance.

35. Therefore, there is no force in the argument put forth by the respondents that the order was not received by the concerned authority through appropriate channel. In any case, as decided in *Odeon Buildwell (supra)*, the ground raised by the respondents is only an internal arrangement of the Department and the same cannot be stretched to mean that it is a valid ground for the extension of the limitation period. The underlying rationale of the Legislature behind the enactment of Section 153(3) of the Act and setting the limitation therein, cannot be envisaged to expand the time limit for passing of a fresh assessment. Rather, the said provision entails a strict adherence to the time period within which the remand order in the present case should have been complied with by the respondents.

36. Taking into consideration the ITAT's response that the concerned order was sent on 24 October, 2018, the Department ought to have passed the order to give the appeal effect within twelve months from then. However, the same has not been done by the Department till date.

37. In view of the aforesaid, since the respondents have failed to comply with the order of the ITAT in passing a fresh assessment order within the stipulated time, the instant writ petition is allowed with the following directions:-

i. The respondents shall ensure that the demands of quantum amounting to ₹34.70 Crores and penalty amounting to ₹33.98 Crores being reflected in the ITBA portal shall be removed within two weeks of the passing of this judgment.

ii. The amount of ₹25,44,671/- lying with the respondents be

refunded to the petitioner alongwith applicable interest as per law.

iii. The properties of the petitioner namely, Vishal Infrabuild Limited situated at CTS No. 5853, I Floor, Emer Corner, Maratha Colony, Congress Road, Belgaum, Karnataka-590006 and DLF Limited, Flat No. 2701, R Tower, Moti Nagar, New Delhi be released within two weeks of the passing of this judgment.

iv. The three bank accounts, details of which are mentioned in the prayer clause, be defreezed by the respondents within two weeks from the date of passing of this judgment.

38. The writ petition is disposed of in the aforesaid terms alongwith the pending application(s), if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

APRIL 16, 2024/MJ