

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

M.A.No.05/Hyd/2017
(Arising out of ITA.No.1420/Hyd/2015, Assessment Year 2007-2008)

Srinivas Sashidhar Chaganty, Hyderabad. (Appellant)	vs.	Income Tax Officer, Ward-2(1), Hyderabad. (Respondent)
For Assessee:		Shri D.V. Anjaneyulu
For Revenue :		Shri Phani Raju, DR
Date of Hearing :		23.06.2017
Date of Pronouncement :		12.07.2017

ORDER

PER D. MANMOHAN, VP.

By this application, the assessee seeks recall of the order dated 21.06.2016 on the ground that the Tribunal erred in holding that the assessee did not furnish any evidence with regard to the unexplained investment, overlooking the fact that written submissions were filed which contained detailed explanation.

2. At the outset it may be noticed that as per the present practice followed by the Tribunal, the order was pronounced on 21.06.2016 in the open court and the time limit, reckoned from the end of the month in which the order was passed, is six months for seeking recall i.e., parties are entitled to seek rectification of the said order within six months u/s 254(2) of the Income Tax Act, 1961, as amended w.e.f. 01.06.2016 which reads as under:-

"254 (2) The Appellate Tribunal may, at any time within *"six months from the end of the month in which the order was passed"*, with a view to rectify any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or as the Assessing Officer."

3. The abovementioned provision empowers the Tribunal to *suo moto* rectify its mistake or enable the parties to the order to seek rectification within the period of limitation i.e., "six months from the end of the month in which the order was passed". In the instant case, the order was passed / pronounced on 21.06.2016 and from the end of the month, the period of six months expires on 31.12.2016. Assessee filed the present Miscellaneous Application (MA) on 20.01.2017 on the ground that the order was served upon the assessee on 05.07.2016; Reckoning the time limit from the end of the month of July, the MA filed by the assessee is within the period of limitation. The case of the assessee is that the procedures as well as the period of limitation set out in the Act are mainly intended to subserve the interest of the parties and in tax matters it cannot be considered as lis between in two parties but only tax adjustment, as held by the Hon'ble Madras High Court in the case of CIT vs. Indian Express (Madurai) Pvt. Ltd (140 ITR 705 at 722). Substantial justice has to be given paramount importance and in this case, the Tribunal has overlooked the material papers filed and therefore, the assessee should be given one more opportunity to put forth its grievance by recalling the order passed by the Tribunal. Accordingly, Ld Counsel for the assessee submitted that the expression "order was passed" has to be understood as "date of receipt of the order by the parties". Ld Counsel for the assessee filed brief written submissions incorporating the provisions of sections 254(2), 254(3) of the Act and Rules 34(1) and 35 of the ITAT Rules, 1963 to submit that it is mandatory to serve a copy of the order on the parties and hence, the time limit starts only from the 'date of receipt of the order'. He referred to the orders of the Hon'ble Delhi High Court in the case of CIT vs. Sudhir Choudhrie: Rajiv Choudhrie [2005] 278 ITR 490 wherein, the Court observed that pronouncement of the order is mandatory so as to facilitate the parties to lawfully know the result as well as to avoid unnecessary delay in communication of the orders. He, further, relied upon the decision of the Hon'ble Madras High Court in the case of S.P. Balasubrahmanyam vs. ACIT [2017] 152 DTR 25 (Mad.), at page 34 wherein the Court referred to the provisions of section 12 of the Limitation Act, which speaks of the time taken for obtaining the copy of the decree or order while computing the period of limitation. In para 21 of the judgment, the Hon'ble Madras High Court observed as under:-

"21. Even taking for granted that the judgments of the Apex Court are applicable to the case on hand and that the period of limitation of four years for filing an application for recalling an order filed u/s 254(2) of the IT Act, 1961, has to be computed from the date of service of the order, averments made in the said petition, filed in the year 2015, are bereft of details, as to when the order was served in the address, where the office of the appellant is situated. Order of the Tribunal in ITA No.638/Mad/2011, has been passed on 18th July, 2011, whereas, the appellant has filed the petition on 24th July, 2015, which is beyond four years from the date of passing of the order by the Tribunal on 18th July, 2011. Though Mr. Ja. Balachander, Ld Counsel for the appellant submitted that in the normal course, service of order, on the party would take some time, and therefore the miscellaneous application filed on 24th July, 2015 was just six days exceeding the four years period from the date of passing the order and therefore, the Tribunal ought to have considered the time taken for service of the impugned order and allowed the application for rectification, we are not inclined to accept the said contention, for the reason that, there are no averments in the miscellaneous petition, as to when the order was served on the appellant."

4. From the above observations, Ld Counsel for the assessee submits that while computing the period of limitation u/s 254(2) of the Act, the time taken for obtaining the copy of the order should also be considered.

5. On the other hand, Ld DR submitted that the expression "passed", "initiated" and "served / received" are not interchangeable; the legislature, in its wisdom, used appropriate phraseology with the clear intention befitting the occasion. For example, in section 275(1)(a) of the Act, time limit was "six months from the end of the month in which the order received by the Principal Chief Commissioner, Chief Commissioner or Commissioner, whichever period expires later. In sub-clause (b) thereof, the expression used is "after the expiry of six months from the end of the month in which such order of revision is passed". However, in sub-clause (c) thereof, the expression used is "the period of six months shall be counted from the end of the month in which the action is initiated". Thus, the Legislature was conscious of the difference between the 'date of receipt of the order' and 'date of passing the order'. In section 254(2) of the Act, the Legislature referred to order "passed" and therefore, the assessee should not be given benefit of the period of limitation reckoned from the 'date of receipt of the order'. He, thus, strongly submitted that the MA filed by the assessee is beyond the period of limitation.

6. We have carefully considered the rival submissions and perused the record. Section 254(2) of the Act refers to the period of limitation reckoning from the end of the month in which the order is "passed" and not from the 'date of receipt of the order'. As rightly pointed out by the Ld DR, the expressions "passed" "initiated" and "served / received" are not interchangeable and the Legislature in its wisdom expressly used the phraseology depending on the intention. In the instant case, the expression "passed" cannot be stretched to mean that the period of limitation should be reckoned from the date of receipt of the order.

7. Even if a liberal view has to be taken, it can be considered as the date of uploading of the order. ordinarily anything which is uploaded in the public domain can be accessed by the public at large and even the assessee would have access to the order and such a date always be treated as the service of the order. In the instant case, the noting of the Sr. Private Secretary in the book indicate that the order was uploaded on 21.06.2016. The judgment of the Hon'ble Madras High Court, though referred to the latest provisions, cannot be taken aid of inasmuch as the Hon'ble High Court was dealing with the application filed in 2015, which is a date anterior to the introduction of six months limitation period. Even otherwise, the observations made therein cannot be equated to a finding or order since, the court was not concerned with the latest provisions of the Act. Further, the Hon'ble High Court mentioned that "even taking for granted that the judgments of the Apex Court are applicable to the case on hand the date of service of the order was not even mentioned and the assessee has not applied due diligence and caution"; In other words, the Court concluded that the assessee has not followed due diligence. It was also referred that even the date of order is not placed on record. In such an event, we are afraid that we have no authority to interpret the expression "passed" as being akin to the 'receipt of the order'. Since, the MA is filed beyond the period of limitation even reckoned from the date of uploading in website, we have no other alternative except to dismiss the application as being barred by limitation. Order pronounced in the open court on 12th July, 2017.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated: 12th July, 2017

OKK, Sr.PS

Copy to

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2.	The Income Tax Officer, Ward 2(1), Hyderabad.
3.	CIT (A), Hyderabad.
4.	Pr. CIT-5, Hyderabad.
5.	D.R. ITAT "A" Bench, Hyderabad.
6.	Guard File