

आयकर अपीलीय अधिकरण
मंडळ पीठ "J"
श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं. 2142/मुं/ 2021 (नि.व. 2015-16)
ITA NO. 2142/MUM/2021(A.Y.2015-16)

M/s. Supermax Personal Care Pvt. Ltd.
Wagle Estate P.O., LBS Marg
Thane 400604

PAN: AAOCS7144Q

..... अपीलार्थी / Appellant

बनाम Vs.

Dy. Commissioner of Income Tax - 3(4)
World Trade Centre, 29th Floor
Cuffe Parade, Mumbai 400005

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Nishant Thakkar &
Shri Hiten Chande

प्रतिवादी द्वारा/Respondent by : Shri Vinod Tanwani

सुनवाई की तिथि/ Date of hearing : 04.10.2022

घोषणा की तिथि/ Date of pronouncement : 26.12.2022

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 30.09.2021 passed u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 [in short 'the Act'], for the Assessment Year 2015-16.

2. Shri Nishant Thakkar appearing on behalf of the assessee submits at the outset that he would be making submissions only on the jurisdictional issue

raised in Ground No. 10 of the appeal at this stage. In case the assessee succeeds on Ground No. 10, the other grounds would become academic.

3. Narrating the facts of the case the learned Authorised Representative of the assessee (Id. AR) submits that the impugned assessment order dated 30.09.2021 has been passed beyond the period of limitation, hence the same suffers from jurisdictional defect. The Id. AR submits that as per the provisions of Section 144C(13) of the Act, the Assessing Officer (AO) has to pass final assessment order within one month from the end of the month in which Dispute Resolution Panel (DRP) directions are received. In the instant case, the DRP directions u/s. 144C(5) of the Act are dated 18.03.2021, hence the due date to pass the final assessment order as per Section 144C(13) of the Act was 30.04.2021. Whereas, the final assessment order was passed by the AO on 30.09.2021. Hence, the assessment order was passed much beyond the period of limitation as specified in Section 144C(13) of the Act. The Id. AR submitted that the case of assessee is squarely covered by the decision of Hon'ble Bombay High Court in the case of Shell India Markets (P.) Ltd. vs. Additional/Joint/Deputy/Assistant CIT reported as 139 taxmann.com 335/443 ITR 366. The Id. AR further submitted that the Hon'ble Bombay High Court in the aforesaid case has also considered various circulars and notifications issued by the CBDT extending the time period for passing orders in the wake of unprecedented situation caused due to Covid-19 pandemic. The Hon'ble Court held that relaxation of limitation to pass the order does not apply to the assessment order to be passed u/s. 144C(13) of the Act.

4. Per contra, Shri Vinod Tanwani representing the Department vehemently defended validity of the impugned assessment order. The Id. DR submitted that the assessment order has been passed by the AO within the

period of limitation as extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA).

5. We have heard the submissions made by rival sides and have examined the sequence of events to ascertain whether the assessment order has been passed within the period of limitation as prescribed under the provisions of Section 144C(13) of the Act. The Id. AR of the assessee has placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Shell India Markets (P.) Ltd. (supra) and submitted that impugned order is time barred and the relaxation allowed under TOLA would not be applicable to the assessment order passed in consequence to the directions of the DRP. The dates and the events in the case of assessee and in the case of Shell India Markets (P.) Ltd. are tabulated herein below for comparative analysis: -

Sr. No.	Particulars	Dates in SPEPL (ASSESSMENT YEAR 2015-16)	Dates as per Shell India Order (ASSESSMENT YEAR 2016-17)
1	Notice for assessment	23.03.2018 (u/s. 148)	19.09.2019 [u/s. 143(2)]
2	Due date to pass the draft order	31.12.2019 [u/s. 153(2) r.w.s. 153(4)]	31.12.2019 [section 153(1) r.w.s. 153(4)]
3	Draft assessment order u/s. 144C(1) of the Act	23.12.2019	26.12.2019
4	Objections filed against draft order u/s. 144C(2) of the Act	21.01.2020	24.01.2020
5	Due date for DRP to pass the order as per section 144C(12) of the Act	30.09.2020	20.09.2020
6	Extension of due date u/s. 3 of TOLA, 2020 for DRP to issue directions	31.03.2021	31.03.2021
7	DRP directions u/s. 144C(5) of the Act	18.03.2021	20.03.2021
8	Due date to pass the final assessment order as per 144C(13) of the Act	30.04.2021	30.04.2021
9	Order passed u/s. 143(3) r.w.s. 144C(13) of the Act	30.09.2021	30.09.2021

6. Before proceeding further to decide the issue it would be imperative to refer to the relevant provisions of Section 144C of the Act: -

“Section 144C

.....

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

7. A bare perusal of Section 144C(13) would show that the AO is duty bound to pass final assessment order within a period of one month from the end of the month in which the DRP directions are received. As mentioned in the above table the DRP passed directions on 18.03.2021. As per the stamp on the directions, the same were received by the Assessing Officer on 25.03.2021. This fact has not been disputed by the Revenue. In terms of the provisions of Section 144C(13) of the Act, the AO was required to pass final assessment order on or before 30.04.2021. Whereas, in the instant case, the order was passed much beyond the period of limitation and hence, is without jurisdiction.

7.1 Now, the question arises that since the entire proceedings before the DRP and thereafter were carried out during Covid-19 pandemic the relaxation allowed by the Special Act TOLA would apply to the assessment order passed in pursuant to the directions of the DRP? This issue has been examined by the Hon'ble Jurisdictional High Court in the case of Shell India Markets (P.) Ltd. (supra). The relevant dates in the case of Shell India Markets (P.) Ltd. has already been tabulated in the comparative table above.

8. The issue before the Hon'ble High Court for consideration was: -

“8. Therefore, the short points that we have to consider and decide in this petition are – (a) whether the petitioner’s case is covered under the Relaxation Act? And (b) whether the time to complete assessment u/s. 144C(13) in petitioner’s case could be stated to have been extended till 30th September 2021?”

9. The Hon'ble High Court after considering relevant provisions of Section 144C, provisions of TOLA, the circulars and notifications, viz. Notification No. 20/2021 dated 31.03.2021, Notification No. 38/2021 dated 27.04.2021 and Notification No. 74/2021 dated 25.06.2021 and the submissions of both the sides held as under: -

“14. We are inclined to agree with the submissions made by Mr. Mistri. We would also add that there was no dispute that the Assessing Officer, but for the Relaxation Act and the notifications issued therein, had to complete the assessment under Section 144C(13) latest by 30th April 2021.

15. Sub-section (1) of Section 3 of the Relaxation Act extends the time-limit with respect to an act for which limitation falls between the period from 20th March 2020 to 31st December 2020. Since the directions of DRP were issued and received by Assessing Officer only on 20th March 2021, petitioner’s case does not fall under sub-section (1) of Section 3 of the Relaxation Act as the time-limit for completion of assessment does not fall within the period from 20th March 2020 to 31st December 2020.

16. Sub-section (1) of Section 3 of the Relaxation Act also provides that the Central Government, by notification, can extend the period to such other date after 31st December, 2020. Therefore, CBDT issued the first Notification No.20/2021. Clause A of this notification provides that where the specified Act is the Income-tax Act, and the completion of any action referred to in clause (a) of sub-section (1) of Section 3 of the Act relates to passing of an order under Section 144C(13) of the Act and 31st March 2021 is the end date, during which the time-limit specified in the Act falls for completion of such action, 30th April 2021 shall be the end date to which the time-limit for completion of such action shall stand extended. The notification, therefore, provides that if the time-limit to complete the assessment under Section 144C(13) was expiring on any date upto 31st March 2021, the said date for completion was extended

upto 30th April 2021. Since in this case, the time-limit for completion of assessment was not expiring as of 31st March 2021, in our view, Notification No.20/2021 is not applicable.

17. Coming to the applicability of Notification No.38/2021 issued on 27th April 2021, Clause (A) of the notification provides that where the specified Act is the Income-tax Act, and the completion of any action referred to in clause (a) of sub-section (1) of Section 3 of the Relaxation Act, relates to passing of an order under Section 144C(13) of the Act and the time-limit for completion of such action expires on 30th April 2021 “due to its extension by earlier notifications”, such time-limit shall further stand extended to 30th June 2021. The expiry of time-limit for completion of assessment or for passing the order in petitioner’s case under Section 144C(13) of the Act on 30th April 2021 was not due to an earlier extension of time-limit by an earlier notification but was on account of the fact that the directions were issued by the DRP on 20th March 2021. As per Section 144C(13) of the Act, an assessing officer has one month from the date of the end of the month in which the directions are received by him to pass the final order / complete assessment, therefore, in our view, the time-limit of 30th April 2021 not being on account of extension by earlier notification, Notification No.38/2021 is also inapplicable to petitioner’s case.

18. Coming to Notification No.74/2021 issued on 25th June 2021, Clause (A) of the notification provides that where the specified Act is the Income-tax Act, and the completion of any action referred to in clause (a) of subsection (1) of Section 3 of the Relaxation Act, relates to passing of an order for assessment or re-assessment under the Act and the time limit for completion of such action under Section 153 or Section 153B thereof expires on 30th June 2021 due to its extension by earlier notifications, such time-limit shall further stand extended to 30th September 2021. There is no extension of time-limit under this notification for completion of assessment or passing of any order under Section 144C(13) of the Act. In our view, therefore, Notification No.74/2021 is also not applicable to the case at hand.

19. Even if we hold that the Relaxation Act was applicable to petitioner’s case as well, still, the extension vide Notification No.74/2021 is applicable only to cases where the time-limit has already been extended by earlier notifications. Since the time-limit in petitioner’s case has not been extended by earlier notifications, Notification No.74/2021 was not applicable to petitioner’s case.

20. Coming to Mr. Suresh Kumar's submissions that the Assessing Officer could have passed a consequential order by 31st March 2021 also and the Notifications No.20/2021 and 38/2021 were applicable along with Notification No.74/2021, the Relaxation Act is very clear inasmuch as it would apply only to those cases for which limitation falls within the period 20th March 2020 and 31st December 2020 or such other date after 31st December 2020 as the Central Government may, by notification, specify in this behalf. The time-limit in petitioner's case was 30th April 2021 and hence, the provisions of Relaxation Act will not be applicable to petitioner's case at all.

21. As far as Mr. Suresh Kumar's submission that the Notification No.74/2021 dated 25th June 2021, to give purposive interpretation the word 'and' used should be read as 'or' as noted in paragraph No.12(d) above, statutes have to be construed in such a way that every word has a place and everything is in its place. If the precise words used are plain and unambiguous, the courts are bound to construe them in the ordinary sense in their judgments. The words of statute are to be first understood in the natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The reason for doing so is to give effect to the intention of the Parliament. Therefore, by reading the notification as it stands, and not as suggested by Mr. Suresh Kumar, neither does it lead to any absurdity nor does it suggest anything to the contrary. Therefore, we cannot and we should not read the word 'and' as 'or'.

22. Even if for a moment we hold that Relaxation Act is applicable to petitioner's case, the time-limit provided by Notification No.38/2021 expired on 30th June 2021. Notification No.74/2021, on which respondents have relied upon to submit that time has been extended upto 30th September 2021, specifically excludes Section 144C(13) of the Act. If that also was to be included, Notification No.74/2021 would have expressly provided for it as it has provided in Notifications No.20/2021 and 38/2021.

23. Notification No.20/2021 and Notification No.38/2021 specifically referred to the time-limit for passing the final assessment order under Section 144C(13) of the Act. There is, however, no specific reference to the time-limit under Section 144C(13) of the Act in Notification No.74/2021. Therefore, it is clear that CBDT has not extended the time-

limit for passing any order under Section 144C(13) of the Act vide Notification No.74/2021 dated 25th June 2021, and hence, there is no extension of time-limit to 30th September 2021 to pass the order under Section 144C(13) of the Act.”

10. Thus, the Hon'ble High Court concluded that the time limit for completion of the assessment order u/s. 144C(13) of the Act was upto 30.04.2021. The relaxation under TOLA would not be applicable to the assessment orders passed in consequence to the DRP directions received by the Assessing Officer on 20.03.2021. The assessment order passed on 30.09.2021 was time barred. Similar are the facts in the present case. Therefore, we have no hesitation in holding that the assessment order dated 30.09.2021 in the present case is barred by limitation and is without jurisdiction. The assessee succeeds on ground No. 10 of the appeal.

11. Since, the assessee has got relief on the legal/jurisdictional issue, the other ground raised in the appeal have become academic at this stage.

12. In the result assessment order dated 30.09.2021 is quashed and the appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 26th day of December, 2022

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 26/12/2022

n.p.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT-
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar) /
Sr.Private Secretary
ITAT, Mumbai