$~21 to 34

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

% **Date of Decision: 01.10.2018**

\+ **W.P.(C) 4304/2018 & CM APPL.16759/2018**
SURENDRA KUMAR JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

22

\+ **W.P.(C) 4305/2018 & CM APPL.16760/2018**
SURENDRA KUMAR JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

23

\+ **W.P.(C) 4306/2018 & CM APPL.16761/2018**
SURENDRA KUMAR JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

24

\+ **W.P.(C) 4307/2018 & CM APPL.16762/2018**
SURENDRA KUMAR JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

25

\+ **W.P.(C) 4308/2018 & CM APPL.16763/2018**
SURENDRA KUMAR JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

26

\+ **W.P.(C) 4309/2018 & CM APPL.16764/2018**

SURENDRA KUMAR JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

27

\+ **W.P.(C) 4310/2018 & CM APPL.16766/2018**

SURENDRA KUMAR JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

28

\+ **W.P.(C) 4311/2018 & CM APPL.16768/2018**

VIRENDRA JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

29

\+ **W.P.(C) 4313/2018 & CM APPL.16772/2018**

VIRENDRA JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

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\+ **W.P.(C) 4314/2018 & CM APPL.16774/2018**

VIRENDRA JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

31

\+ **W.P.(C) 4315/2018 & CM APPL.16781/2018**

VIRENDRA JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

32

\+ **W.P.(C) 4316/2018 & CM APPL.16782/2018**

VIRENDRA JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

33

\+ **W.P.(C) 4318/2018 & CM APPL.16786/2018**

VIRENDRA JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

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\+ **W.P.(C) 4319/2018 & CM APPL.16787/2018**

VIRENDRA JAIN ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III, NEW DELHI & ANR. ..... Respondents

Present: Mr.Piyush Kaushik, Adv. for petitioners, in Item Nos.21 to 34.

Mr.Ajit Sharma and Mr.Asheesh Jain, Adv. for respondents in Item Nos.21 to 34.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K.CHAWLA

S.RAVINDRA BHAT, J.(ORAL)

1. In all these writ petitions, the narrow question agitated by the assessees is that assessment order made on 22.12.2017 under Section

153A read with Section 254 of Income Tax Act, 1961 (*hereinafter 'the Act'*) for Assessment Year 2005-06 and subsequent years (up-to 2012-13) covered by search assessment, were barred and therefore, needs to be quashed.

2. The brief facts necessary to decide these writ petitions are that pursuant to search and seizure proceedings under Section 132 of the Act, the assessment was completed for the block period on 28.03.2013 by the concerned Assessing Officer (AO). The Commissioner of Income Tax (A) partly allowed the assessee's appeal on 14.08.2014. The matter was carried further to the Income Tax Appellate Tribunal (ITAT) which remitted the matter back to the AO to complete the assessment *de novo*. The assessee contends that in fact the concerned AO sought tax effect by re-computing the income under Section 153A of the Act, in effect, following the ITAT's order of 18.02.2016. Relying upon that order, the assessment proceedings were taken up after remand by the AO who completed them on 22.12.2017. Relying upon the Full Bench decision of this Court in *Odeon Builders Pvt. Ltd. vs. Pr. Commissioner of Income Tax-4, (*2017) 393 ITR 27, it is urged on behalf of the assessees that the impugned order is *per se* illegal and void. It was contended that apart from the AO's order – made after the ITAT's decision (on 18.02.2016), there is other evidence as well, in the form of reply to the assessee's ITR queries dated 12.03.2018 where the revenue clearly admitted that the order was served by hand to the Commissioner of Income Tax (Departmental Representative) on 30.03.2016. Taking strength from

the then existing proviso to Section 153(2A), it is urged that time available then to the AO in this case was only up-to 31.12.2016, for working out of the remand and completing the assessment.

3. The revenue resisted the proceedings and urged that the impugned order was made within the time prescribed. Firstly, it is urged that petitioners cannot be heard to complain as they did not attend to the queries and co-operate in an assessment proceeding which got delayed. Learned counsel emphasized that as a result the petitioners could not be given any discretionary relief given that the petitioner was an entry provider/facilitator and that the search resulted in addition of `70 crores as income in his hand. Secondly, it was argued that the plain reading of Section 153A of the Act would reveal that it overrides the other provisions of the Act – because of the *non-obstante* clause. Elaborating further, it was submitted that period of limitation prescribed by Section 153B i.e. two years is substantial that excludes search assessment and therefore, excludes applicability of Section 153(2A) which is general and governs all demands other than those concerning search assessment.

4. The question as to what would be the starting point of limitation with respect to any proceedings which are to be initiated by the revenue or any steps to be taken by it, was the precise issue of point of determination by this Court in *Odeon Builders* (supra). The Court then held as follows:

"28. The above decisions under Section 256 (3) are clearly distinguishable. The limitation for the purpose of Section 256 begins to run the moment the order is communicated to the parties. Another distinction to be drawn is that the word used in Section 256 of the Act "served" whereas under Section 260A it is "received". The word "received" has to be seen in the context of the decision in CIT v. Sudhir Choudhrie (supra), which made it mandatory for pronouncement of the orders of the Income-tax Appellate Tribunal. At the time of such pronouncement, apart from the authorized representative of the assessee, the Departmental representative is expected to remain present. Through him the Department becomes immediately aware of the said judgment of the Income-tax Appellate Tribunal.

The "concerned" Commissioner of Income-tax

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.

49. Consequently, where the order is common to several appeals, while for the assessee the starting point for limitation will be when the assessee aggrieved by such order first receives a copy thereof; for the Revenue, the date when the Department representative of the Commissioner of Income-tax (Judicial) first receives a copy thereof will be the starting point for limitation for all the appeals.

50. It is, therefore, not possible to accept the submission that till a particular jurisdictional Commissioner of Income-tax or Principal Commissioner of Income-tax has not received the order of the Income-tax Appellate Tribunal, the period of limitation for filing an appeal against that order does not commence.

Answers to the questions

51. The answers to the questions referred to this Court are answered thus:

Question : (i) What is the correct interpretation to be placed on the expression "received by the assessee or the Principal Chief Commissioner or the Chief Commissioner or Principal Commissioner" in Section 260A (2) (a) of the Act ? Does it mean "received" by any of the named officers including the Commissioner of Income-tax (Judicial)?

Answer : The word "received" occurring in section 260A (2) (a) would mean received by any of the named officers of the Department, including Commissioner of Income-tax (Judicial). The provision at present names four particular officers i.e. the Principal Commissioner, Commissioner, Principal Chief Commissioner, and the Chief Commissioner of Income Tax. These are the only designations of the officers who could receive a copy of the order. In the absence of a qualifying prefix "concerned", the receipt of a copy of the order of the Income- tax Appellate Tribunal by any of those officers in the Department including the Commissioner of Income-tax (Judicial) will trigger the period of limitation.

Question: (ii) Does limitation begin to run for the purposes of Section 260A (2)(a) only when a certified copy of the order of the Income-tax Appellate Tribunal is received by the "concerned" Commissioner of Income-tax within whose jurisdiction the case of the assessee falls notwithstanding that it may have been received by any other Commissioner of Income- tax, including the Commissioner of Income-tax (Judicial) prior thereto? Is it open to the court to read the word "concerned" into section 260A(2(a) of the Act as a prefix to any of the officers of the Department named therein?

Answer : In section 260A(2) of the Act, the words Commissioner of Income-tax, Principal Commissioner of Income-tax or Chief Commissioner of Income-tax are not prefixed or qualified by the word "concerned". There is no warrant for the court to read into the provision such a qualifying word. The Court rejects the contention of the Revenue that limitation for the purposes of section 260A(2)(a) begins to run only when a certified copy of the order of the Income-tax Appellate Tribunal is received by the "concerned" Commissioner of Income-tax within whose jurisdiction the case of the assessee falls notwithstanding that it may have been received by any other Commissioner of Income-tax, including the Commissioner of Income-tax (Judicial) prior thereto.

Question : (iii) In the context of section 254 (3) of the Act, is there an obligation on the Income-tax Appellate Tribunal to send a certified copy of its order to a Commissioner of Income-tax other than the one whose details are given to it during the pendency of the appeal? Will change in the jurisdiction concerning the case of the respondent-assessee to another Commissioner of Income-tax subsequent to the order of the Income-tax Appellate Tribunal have the effect of postponing the time, from which limitation would begin to run in terms of section 260A(2)(a) of the Act, to when such Commissioner of Income-tax receives the order of the Income-tax Appellate Tribunal?

Answer : As far as the obligation of the Income-tax Appellate Tribunal under Section 254 (3) of the Act is concerned, the said obligation is satisfied once the Income-tax Appellate Tribunal sends a copy of an order passed by it to the assessee as well as to the Principal Commissioner of Income-tax or the Commissioner of Income-tax or even the Commissioner of Income-tax (Judicial). The Income-tax Appellate Tribunal has to be simply go by the details as provided to it in the memo of parties. If there is a change concerning the jurisdiction of

the Commissioner of Income-tax and it is some other Commissioner of Income-tax who has jurisdiction, it will not have the effect of postponing the commencement of the period of limitation in terms of section 260A(2)(a) of the Act. The statute is not concerned with the internal arrangements that the Department may make by changing the jurisdiction of its officers. It is for the officer of the Department who first receives a copy of the Income-tax Appellate Tribunal's order to reach it in time to the officer who has to take a decision regarding the filing of an appeal.

Question : (iv) After the decision of this court in CIT v. Sudhir Choudhrie [2005]278 ITR 490 (Delhi), do the decisions in CIT v. Arvind Construction Co. (P.) Ltd. [1992] 193 ITR 330 and CIT v. ITAT [2000] 245 ITR 659 (Delhi) require to be reconsidered, explained or reconciled?

Answer : The decisions in CIT v. Arvind Construction Co. (P) Ltd. (supra) and CIT v. ITAT (supra) were rendered in the context of Section 256 of the Act (and not Section 260A(2)(a) of the Act) and also prior to the decision in CIT v. Sudhir Choudhrie (supra). While the former decisions may not require reconsideration, they require to be reconciled with the latter decision in CIT v. Sudhir Choudhrie (supra). The decisions in CIT v. Arvind Construction Co. (P) Ltd. (supra) and CIT v. ITAT (supra) are of no assistance to the Revenue in its interpretation of Section 260A(2)(a) of the Act.

Question : (v) After the change of procedure where orders of the Income-tax Appellate Tribunal are pronounced in the open, is it incumbent on the Department through its Departmental representative or Commissioner of Income-tax (Judicial) to apply for a certified copy of the order of the Income-tax Appellate Tribunal and should limitation for the purposes of Section 260A(2)(a) be computed from the date on which such certified copy is made ready for delivery by the Income-tax Appellate Tribunal?

Answer : While there is no requirement for the Departmental representative or the Commissioner of Income-tax (Judicial) to apply for a certified copy of the Income-tax Appellate Tribunal, in any event under the extant Income-tax Appellate Tribunal Rules, a copy of the order is sent to the Commissioner of Income-tax (Judicial). In the context of Section 260A(2)(a) of the Act, once an order is listed for pronouncement in the Income-tax Appellate Tribunal, the Departmental representative or the Commissioner of Income-tax (Judicial) should be taken to be aware of the order. From that point, it is a purely an internal administrative arrangement as to how the Departmental representative or Commissioner of Income-tax (Judicial) obtains and further communicates the order to the officer who has to take a decision on filing the appeal. It is possible that immediately after pronouncement, the authorized representative or the Departmental representative or both may apply for a certified copy of the order of the Income-tax Appellate Tribunal. In that case, the time taken for the certified copy to be readied for collection by the applicant will be excluded while computing limitation. But here again, if earlier to such date, a copy is received by a party from the Income-tax Appellate Tribunal, then such earlier date will be the starting point for limitation.

Question : (vi) Whether the receipt of a certified copy of the order of the Income-tax Appellate Tribunal by the Commissioner of Income-tax (Judicial) is sufficient to trigger the commencement of the limitation period under Section 260 A (2) (a) of the Act?

Answer : The receipt of a certified copy of the order of the Income-tax Appellate Tribunal by Commissioner of Income-tax (Judicial) would trigger the commencement of the limitation period under Section 260 A (2) (a) of the Act.

Question : (vii) In the context of a common order of the Income-tax Appellate Tribunal covering several appeals, whether limitation for all the appeals would begin to run when the certified copy is received first by either the Commissioner of Income-tax (Judicial) or any one of the officers of the Department mentioned in Section 260 A (2) (a) or only when the Commissioner of Income-tax "concerned" receives it? Where the same Commissioner of Income-tax has jurisdiction over more than one assessee in the batch, will limitation begin to run for all such appeals when such Commissioner of Income-tax receives the order in either of the assessee's cases?

Answer : Where there, is a common order of the Income-tax Appellate Tribunal covering the several appeals, limitation would begin to run when a certified copy is received first by either the Commissioner of Income-tax (Judicial) or one of the officers of the Department and not only when the Commissioner of Income-tax "concerned" receives it. When the same Commissioner of Income-tax has jurisdiction for more than one assessee, the limitation begin to run for all from the earliest of the dates when the Departmental representative of Commissioner of Income-tax (Judicial) or any Commissioner of Income-tax first receives the order in any of the cases forming part of the batch disposed of by the common order. If there are four separate orders passed, then the limitation begins to run when such separate orders are received first by any officer of the Department.

Question: (viii) Whether administrative instructions issued by the Department for its own administrative convenience can have the effect of altering the time from which limitation will begin to run for the purposes of Section 260 A(2) (a) of the Act?

Answer : Instructions issued by the Department for its administrative convenience cannot alter the time when limitation would begin to run under Section 260A (2) (a) of the Act. To reiterate these administrative instructions are

for the administrative convenience of the Department and will not override the statute, in particular, Section 260A (2) (a) of the Act."

5. It is quite evident from the decision in *Odeon Builders* (supra) that limitation begins (for any purpose under the Act) from the point of time when the departmental representative receives the copy of a decision or an order of the ITAT. The evidence on record in this case clearly establishes that the concerned DR (a Commissioner ranking officer) nominated by the revenue received a copy of the ITAT order dated 30.03.2016. The Starting point of limitation therefore was 31.03.2016.

6. The next question is whether the *non-obstante* clause under Section 153 of the Act, which prescribes a specific period of limitation to complete a search assessment for the block period concerned, could override the general period of limitation. In this context, the Court notices that Section 153 of the Act generally talks of various periods of limitation. It prescribes that no order of assessment shall be made either under Section 143 or Section 144 of the Act any time after expiry of twenty one months from the end of the assessment year in which the income was first assessable. The exception carved by way of Section 153(2) – relates to reassessment and states that in cases covered by it, the period is reduced to nine months from any of financial year in which the notice for re-assessment is served. The relevant provision which applies at that point of time for purpose of this case, reads as follows:

> "*(2A) Notwithstanding anything contained in sub-sections (1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April, 1971 and any subsequent assessment year, an order of fresh assessment in pursuance of an order under Section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under Section 250 or 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 Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner* "

7. During the relevant period when the assessment was completed, the period prescribed was nine months (on account of substitution carried out by the amendment). The special provision under Section 153B of the Act in the opinion of the Court carves out a special period of limitation without which search/block assessments would not be completed. The entire provisions under Chapter XIV relating to block assessment, have been termed by the Supreme Court to be a complete code. At the same time, a specific period of limitation prescribed is for completion of original block assessments for the search and seizure proceedings. The period for issuing notice and completion of block assessment for all the concerned years (7 years) is within two years. Now, in the opinion of the Court, to apply that general two years limitation, the block reassessment proceeding after remand is not a feasible proposition. In the judgments in *Nokia India (P) Ltd.*

vs. Deputy Commissioner of Income Tax, (2017) 85 Taxmann.com 291 (Del.) as well as *Commissioner of Income Tax vs. Bhan Textile P. Ltd.,* (2008) 300 ITR 176 (Del.) are relevant authorities. In *Principal Commissioner of Income Tax vs. PPC Business and Products P. Ltd.*, (2017) 398 ITR 71 (Del.), this Court emphasized the need to initiate the proceedings wherever the revenue wished to proceed further in case of search and seizure within the time and underlined that in case the assessments are not initiated and completed within the time prescribed, the valuable right accrues to the assessee.

8. The general provision of two years, in the opinion of the Court, has been provided with one important objective i.e. to cater to a specific situation where upon search and seizure operation, if new material is found, already completed assessments are revisited. Had Parliament not prescribed such a specific period of limitation, possibly, the assessee's concern would have successfully urged that search and seizure proceedings would be confined only to the concerned year in which the search operation took place. It was proposed to tide over such situation. The only provision that prescribed a period of limitation in respect of remands at the relevant time at least in this case is Section 153(2A). In that sense, that period of limitation prescribed for completion of remand (nine months) constituted a special provision, which applies to every class of remand regardless whether they originate from assessments/re-assessments/revisions or search and seizure assessments. In these circumstances, completion of the assessment proceedings for the

block period by the impugned order dated 22.12.2017 was clearly beyond the period of limitation. As noticed earlier, the last date by which the remand order could have been worked out validly was 31.12.2016.

9. For the forgoing reasons, the petitions have to succeed. The impugned order pursuant to the remand dated 22.12.2017 and all consequential orders and actions are hereby quashed. The writ petitions are allowed. All the pending applications stand disposed of.

S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
JUDGE)

OCTOBER 01, 2018
ssc