

A THE COMMISSIONER OF INCOME TAX, CHENNAI

v.

MOHAMMED MEERAN SHAHUL HAMEED

(Civil Appeal No.6204 of 2021)

B OCTOBER 07, 2021

**[M.R. SHAH AND A.S. BOPANNA, JJ.]**

- Income Tax Act, 1961 – s.263 – Revision order passed under – When not barred by period of limitation provided u/s.263(2) –*
- C *Held: Once it is established that the order u/s.263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order is not beyond the period of limitation prescribed u/s.263(2) – Receipt of the order passed u/s. 263 by the assessee has no relevance for the purpose of calculating the period of limitation provided u/s.263(2) – On facts, order passed by Commissioner u/s.263 was within the period of limitation prescribed u/s.263(2) – Interpretation of Statutes.*

**Allowing the appeal, the Court**

- E **HELD: 1.1 On a fair reading of sub-section (2) of Section 263, Income Tax Act, 1961 as mandated by sub-section (2) of Section 263 no order under Section 263 of the Act shall be “made” after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Therefore the word used is “made” and not the order “received” by the assessee. Even the word “dispatch” is not mentioned in Section 263 (2). Therefore, once it is established that the order under Section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under Section 263 (2) of the Act. Receipt of the order passed under Section 263 by the assessee has no relevance for the purpose of counting the period of limitation provided under Section 263 of the Income Tax Act. In the present case, the order was made/passed by the Commissioner on 26.03.2012 and according to the department it**

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was dispatched on 28.03.2012. The relevant last date for the purpose of passing the order under Section 263 considering the fact that the assessment was for the financial year 2008-09 would be 31.03.2012 and the order might have been received as per the case of the assessee-respondent herein on 29.11.2012. However, the date on which the order under Section 263 has been received by the assessee is not relevant for the purpose of calculating/considering the period of limitation provided under Section 263 (2) of the Act. If the interpretation made by the High Court and the ITAT is accepted in that case it will be violating the provision of Section 263 (2) of the Act and to add something which is not there in the section. The word used is “*made*” and not the “*receipt of the order*”. As per the cardinal principle of law the provision of the statute/act is to be read as it is and nothing is to be added or taken away from the provision of the statute.

Therefore, the High Court has erred in holding that the order under Section 263 of the Act passed by the Commissioner was barred by period of limitation, as provided under sub-section (2) of Section 263 of the Act. The order passed by the Commissioner under Section 263 of the Income Tax Act was within the period of limitation prescribed under sub-section (2) of Section 263 of the Act. [Paras 4.3 - 5][763-B-H; 764-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6204 of 2021.

From the Judgment and Order dated 03.07.2019 of the High Court of Judicature at Madras in Tax Case Appeal No.429 of 2019.

Vikramjit Banerjee, ASG, Rupesh Kumar, Ms. Purnima Bhat, Nalin Kohli, Sughosh Subramanyam, Raj Bahadur Yadav, Mrs. Anil Katiyar, Advs. for the Appellant.

R. Sivaraman, K. Parameshwar, Advs. for the Respondent.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.07.2019 passed by the High Court of Judicature at

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- A Madras in Tax Case Appeal No.429 of 2019, by which the High Court has dismissed the said appeal preferred by the revenue and has confirmed the order dated 04.04.2013 passed by the learned Income Tax Appellate Tribunal (hereinafter referred to as the learned ITAT) in ITA No.2244/Mds/2012, the revenue has preferred the present appeal.
- B 2. The facts leading to the present appeal in nutshell are as under:-
- 2.1 The Assessing Officer (hereinafter referred to as the AO) passed an assessment order under Section 143 (3) of the Income Tax Act (hereinafter referred to as the Act) for the assessment year (AY) 2008-09 vide assessment order dated 30.12.2010. The Commissioner of
- C Income Tax initiated revision proceeding under Section 263 of the Act to revise the assessment order passed by the learned Assessing Officer and issued a notice to the assessee - respondent herein on 01.02.2012. The assessee – respondent herein filed written submissions on 07.03.2012 and 12.03.2012. That the learned Commissioner passed an order under
- D Section 263 of the Act on 26.03.2012 holding that the Assessing Officer had failed to make relevant and necessary enquiries and to make correct assessment of income after due application of mind and thus the assessment order made under Section 143 (3) of the Act was held to be erroneous and prejudicial to the interest of the revenue. The learned Commissioner set aside the assessment order with a direction to Assessing
- E Officer to make necessary enquiries on the aspects mentioned in the order under Section 263. The order passed by the learned Commissioner in exercise of powers under Section 263 of the Act was challenged by the assessee – respondent herein before the learned ITAT. At this stage, it is required to be noted that the order passed under Section 263 of the Act was dispatched by the office of the Commissioner on 28.03.2012.
- F 2.2 The assessee – respondent herein filed an appeal before the learned ITAT on 29.11.2012 submitting that it had come to know about the revision order only when he received notice dated 06.08.2012 under Section 143 (2) read with Section 263 of the Act from the office of the Assessing Officer. Thereafter, the respondent had requested the
- G Assessing Officer to furnish the copy of the order passed by the learned Commissioner which was supplied to him on 29.11.2012. Before the learned ITAT, it was the case on behalf of the assessee – respondent herein that the order passed by the learned Commissioner was beyond the period of limitation prescribed/mentioned under Section 263 (2) of
- H the Act. Vide order dated 04.04.2013 the learned ITAT accepted the

contention on behalf of the assessee – respondent herein and allowed the appeal filed by the assessee by holding that the revision order passed by the learned Commissioner was passed beyond the period of limitation.

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2.3 Feeling aggrieved and dissatisfied with the order passed by the learned ITAT quashing and setting aside the revisional order passed by learned Commissioner under Section 263 of the Act and holding that the order passed by the learned Commissioner was beyond the period of limitation prescribed under Section 263 (2) of the Act, the revenue – appellant herein preferred appeal before the High Court, raising the following substantial question of law:-

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“Whether, on the facts and in the circumstances of the case, the case, the Tribunal had applied its mind and was right in holding that the revision order of the Commissioner of Income Tax under section 263 dated 26.3.2012 revising the assessment order dated 31.12.2010 is barred by limitation provided under section 263(2) by assuming that the last date for passing the assessment order is 31.3.2012 and on the ground that the order was served on 29.11.2012?”

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2.4 By the impugned judgment and order, the High Court has dismissed the said appeal and has confirmed the order passed by learned ITAT holding that the order passed by the learned Commissioner under Section 263 of the Act was barred by limitation. The High Court held that the date on which the order was received by the assessee – respondent herein is the relevant date for the purpose of determining the period of limitation under Section 263 (2) of the Act.

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2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the revenue – appellant herein has preferred the present appeal.

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3. Shri Vikramjit Banerjee, learned Additional Solicitor General (ASG) appearing on behalf of the revenue – appellant has vehemently submitted that the High Court as well as the learned ITAT both have misconstrued and misinterpreted the provision of Section 263, more particularly sub-section (2) of Section 263 of the Act. It is submitted that the High Court has erred in holding that the revision order dated 26.03.2012 passed by the Commissioner under Section 263 of the Act was barred by period of limitation provided under Section 263 (2) of the Act.

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- A        3.1 It is submitted that the High Court has materially erred in holding that the order passed under Section 263 is barred by limitation provided under Section 263 (2) on the ground that order under Section 263 was served on the assessee – respondent herein on 29.11.2012 which was after the expiry of two years from the end of the financial year in which the order was sought to be revised.
- B        3.2 It is vehemently submitted by learned ASG that sub-section (2) of Section 263 of the Act provides that no order shall be '**made**' under sub-section (1) of Section 263 after the expiry of two years from the end of the concerned financial year and the relevant date in the present case to pass the order under Section 263 would be 31.03.2012.
- C        It is submitted that in the present case the order in fact was passed on 26.03.2012 and in fact dispatched on 28.03.2012. It is submitted that therefore the order passed by the learned Commissioner under Section 263 was within the period of limitation prescribed under Section 263 (2) of the Act.
- D        3.3 Shri R. Sivaraman, learned Advocate appearing on behalf of the respondent – assessee relying upon para 15 of the counter affidavit has submitted that as such the order passed by the learned Commissioner under Section 263 of the Act has been acted upon before it was set aside by learned ITAT and thereafter a fresh assessment order has been
- E        passed by the Assessing Officer. It is submitted that therefore as such the issue involved in the present appeal has become academic.
- F        4. We have heard the learned counsel appearing on behalf of the respective parties at length. Though it is the case on behalf of the respondent – assessee that by now the issue involved in the present appeal has become academic, considering the fact that the question of law raised in the present appeal is the pure question of law and therefore we are inclined to decide the said question of law.
- G        4.1 The short question of law which is posed for consideration before this court is, whether in the facts and circumstances of the case, the High Court and the learned ITAT are right in holding that the order passed by the learned Commissioner passed under Section 263 was barred by period of limitation provided under Section 263 (2) of the Act? Whether the High Court is right in holding that the relevant date for the purpose of considering the period of limitation under Section 263(2) of the IT Act would be the date on which the order passed under Section 263 by the learned Commissioner is received by the assessee?

4.2 While deciding the aforesaid issues and question of law, Section 263 (2) of the Income Tax Act, which is relevant for our consideration is required to be referred to, which reads as under:-

“(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.”

4.3 On a fair reading of sub-section (2) of Section 263 it can be seen that as mandated by sub-section (2) of Section 263 no order under Section 263 of the Act shall be “*made*” after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Therefore the word used is “*made*” and not the order “*received*” by the assessee. Even the word “*dispatch*” is not mentioned in Section 263 (2). Therefore, once it is established that the order under Section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under Section 263 (2) of the Act. Receipt of the order passed under Section 263 by the assessee has no relevance for the purpose of counting the period of limitation provided under Section 263 of the Income Tax Act. In the present case, the order was made/passed by the learned Commissioner on 26.03.2012 and according to the department it was dispatched on 28.03.2012. The relevant last date for the purpose of passing the order under Section 263 considering the fact that the assessment was for the financial year 2008-09 would be 31.03.2012 and the order might have been received as per the case of the assessee – respondent herein on 29.11.2012. However as observed hereinabove, the date on which the order under Section 263 has been received by the assessee is not relevant for the purpose of calculating/considering the period of limitation provided under Section 263 (2) of the Act. Therefore the High Court as such has misconstrued and has misinterpreted the provision of sub-section (2) of Section 263 of the Act. If the interpretation made by the High Court and the learned ITAT is accepted in that case it will be violating the provision of Section 263 (2) of the Act and to add something which is not there in the section. As observed hereinabove, the word used is “*made*” and not the “*receipt of the order*”. As per the cardinal principle of law the provision of the statute/act is to be read as it is and nothing is to be added or taken away from the provision of the statute. Therefore, the High Court has erred in holding that the order under

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- A Section 263 of the Act passed by the learned Commissioner was barred by period of limitation, as provided under sub-section (2) of Section 263 of the Act.

In view of the above and for the reasons stated above the question of law framed is answered in favour of the revenue – appellant and

- B against the assessee – respondent herein and it is held that the order passed by the learned Commissioner under Section 263 of the Income Tax Act was within the period of limitation prescribed under sub-section (2) of Section 263 of the Act. The present appeal is allowed accordingly. No costs.

Divya Pandey

Appeal allowed.