Findoc Finvest Private Limited vs Deputy Commissioner Of Income Tax And ... on 7 March, 2025

Author: Sanjeev Prakash Sharma

Bench: Sanjeev Prakash Sharma

CWP-9658-2024
2024 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9658
9658-2024 (O&M)
Reserved on : 17.12.2024
Pronounced on : 07th March, 2025

FinDoc Finvest Private Ltd. ...Petitioner

Vs.

Deputy Commissioner of Income Tax Central Circle-01 and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. Rohit Jain, Advocate,
Mr. Ritesh Mohindra, Advocate,
Mr. Paras Money Goyal, Advocate,
Mr. Samarth Chaudhari, Advocate and
Mr. Nitesh Bansal, Advocate for the petitioner.

Mr. Yogesh Putney, Sr. Standing Counsel with
Mr. Vaibhav Gupta, Standing Counsel
f the respondents/revenue.
for

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SANJEEV PRAKASH SHARMA, J.

1. The petitioner-company petitioner by way of this writ petition has sought quashing of undated assessment order Annexure P/1, for the assessment year 2022-2023, 2023, passed under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act') and penalty notices Annexures P/2 and P/3 dated 04.04.2023 passed under Sections 270A and 271AAC of the Act and has further prayed for quashing the consequential action, action which has been taken under the said order/notices.

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2. Learned senior counsel for the petitioner submits that the impugned assessment order is liable to be set aside on various grounds. He has invited attention to the provisions of Sections 143(3), 144A, 151 and 153D of the Act, to submit that the Assessing Officer in the case of the present petitioner has not acted in accordance with the provisions of the Act. It is his submission that the Assessing Officer who in his quasi judicial capacity has to make the assessment on his independent application of mind and there is no requirement in law of obtaining approval from his superior officers before finalizing an order of assessment. It is stated that while there exist provisions under the Act, wherein approval/recommendation of superior authority has been stated to be prescribed like the provisions under Section 144A, Section 151 and 153D; but there is no such similar provision under Section 143(3) of the Act.

3. It is his further submission that even such approval/ recommendation under the aforesaid provisions are justiciable and can be challenged before the Court on the ground of; approval/recommendation being not appropriate; granted mechanically or obtained from wrong authority. However, where there is no provision, the order of assessment would be vitiated in law if the Assessing Officer consults or seeks approval of the assessment from his superior officers. It is his submission that in the petitioner's case, the Assessing Officer has mentioned of having consulted three times his superior officers i.e. respondent No.2 and discussed the case on 26.10.2023, 11.01.2024 and 14.03.2024 and thereafter passed the order after due approval from him.

4. Carrying his submission further, learned senior counsel has stated that the first show cause notice which was received by the assessee-

2 of 23 Neutral Citation No:=2025:PHHC:033945-DB Page |3 CWP-9658-2024 (O&M) petitioner is dated 11.03.2024, requiring the petitioner to submit its response on 15.03.2024. He therefore, contends that the Assessing Officer arrived at conclusion based upon the discussions with his superior officers. Before reply to show cause was received, the respondent No.2 was never consulted and therefore, the approval was mechanically granted by respondent No.2 to the assessment order.

5. In response to the submission of the respondents relying on CBDT circular dated 15.07.2022, it is submitted that Section 119 of the Act only empowers CBDT to issue orders/instructions/directions for administration of the Act and not interfering with the quasi judicial function of the Assessing Officer or CIT (Appeals) or empowers it to issue beneficial instructions/ directions relaxing the provisions in terms of Section 190(2)(A to C). In the circumstances, he argues that the CBDT

circular dated 15.07.2022, would be contrary to the provisions of Section 119 of the Act proviso (a), as it requires the Assessing Officer to carry out assessment of an assessee in a particular manner. It is his submission that the circular would amount to interfere with the quasi judicial power to complete assessment by the Assessing Officer and forces respondent No.1/Assessing Officer to abdicate his quasi judicial function in favour of superior officers, which would be impermissible in law.

6. The second limb of argument advanced by learned senior counsel is with respect to the order of assessment being barred by limitation as laid down for the AY: 2022-2023, in terms of Section 153 of the Act, as the same has been issued after 31.03.2024 and uploaded on the e-filing income tax portal only on 04.04.2024. The last date to make the impugned assessment order in normal course would be on or before 31.03.2024 and no 3 of 23 Neutral Citation No:=2025:PHHC:033945-DB Page |4 CWP-9658-2024 (O&M) order of assessment could have been passed thereafter. In support thereof, he has invited attention to Annexure P/20 and P/21, which are the screen shot of e-filing portal as on 01.04.2024, reflecting the proceedings open while e- filing portal screen shot of 04.04.2024, reflects of the passing of the assessment order. No real time alert was received by the petitioner on or before 01.04.2024. Further, submitted that no order was sent via email to the petitioner. He refers to Rule 127 of the Income Tax Rules, CBDT notification 02/2016 and the intimation of the email address provided to the authorities in terms of Rule 127(2)(b)(4). Document Annexure R/1, has also been referred wherein the delivery status reflects 'sending failed', email ID 'not specified', particulars of documents 'not specified' and assessment by tax payer on 04.04.2024.

7. The document Annexure P/22, has been referred to reflect that the tax or return confirmation in email also shows there being no orders sent prior to 04.04.2024. It is also submitted that there has been no order sent by physical post and the penalty notices were issued only on 04.04.2024. Learned counsel has also assailed the order on the ground of assessment order not accompanied by form ITNS-150A which reflects that form ITNS- 150A although dated 31.01.2024, was issued 14.05.2024, DIN number refers to FY: 2024-2025 and RTI response confirms that DIN of form ITNS-150A was generated on 14.05.2024.

8. He has further invited attention to the assessment order which reflects that it is undated and DIN number mentioned in the assessment order and the demand notices are invalid which has been admitted by the revenue. E-filing portal screen shots dated 15.05.2024, Annexure P/23, reflects two DINs issued on PAN of the petitioner on 31.03.2024. The DIN number 4 of 23 Neutral Citation No:=2025:PHHC:033945-DB Page |5 CWP-9658-2024 (O&M) ITBA/COM/S/91/2023-24/1063787982(1) relates to intimation letter and DIN ITBA/COM/M/17/2023-24/1063787900(1) relates to assessment order. There is no separate DIN for demand notice. Annexure P/28, e-filing portal screen shot dated 16.05.2024, reflects 3rd DIN shown to be issued on 31.03.2024, which relates to ITNS-150A. He therefore, submits that the assessment order has never left the control of respondent No.1 on or before 01.04.2024 and thus, it has to be declared invalid and barred by limitation.

9. The third limb of argument advanced by learned senior counsel is with regard to the assessment proceedings having been completed in violation of the principles of natural justice. It is stated that a

personal hearing was specifically requested by the assessee-petitioner but the said request was neither acceded to nor addressed in the impugned order by the Assessing Officer. He submits that the Assessing Officer has thus pre-judged his case based on ex parte documents which were never confronted to the petitioner and were revealed only for the first time in the assessment order. Learned counsel submits that so far as the assessment order is concerned, it is based on a show cause notice issued on 11.03.2024, providing only four days time to furnish reply, which was not sufficient and cannot be said to be in consonance with the fundamental principles of natural justice.

10. In support of his contentions, learned senior counsel has placed reliance on the following judgments:-

> Anirudhsinhji Karansinhji Jadeja vs. State of Gujarat [1995] 5 SCC 302, Noor Mohammad vs. Khurram Pasha [2022] 9 SCC 23, CIT vs. SPL Siddhartha Ltd. [2012] 345 ITR 223 (Del), Ghanshyam K. Khabrani vs. ACIT [2012] 346 ITR 443 (Bom), CCE vs. Ratan Melting & Wire Industries [2008] 13 SCC 1 (SC) [CB], S.B. Adityan vs. 5 of 23 Neutral Citation No:=2025:PHHC:033945-DB Page |6 CWP-9658-2024 (O&M) Income Tax Officer [1964] 51 ITR 453 (Mad), LML Ltd. vs. ACIT [1994] 205 ITR 585 (Mad), CIT vs. Barkelite Hylam Ltd. [1999] 237 ITR 392 (AP), Gujarat Gas Co. Ltd. vs. Jt. CIT [2000] 245 ITR 84 (Guj), CCE vs. M.M. Rubber and Company AIR 1991 SC 2141, Government Wood Works vs. State of Kerala [1988] 69 STC 62 (Ker), CIT vs. Rai Bahadur Kishore Chand and Sons [2010] 1 taxmann.com 165 (P&H), Munjal BCU Centre of Innovation and Entrepreneurship vs. CIT 2024: PHHC:
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> 030865-DB and Suman Jeet Agarwal vs. ITO [2022] 449 ITR 517 (Del).

11. Learned counsel appearing for the respondent supports the order passed by the Assessing Officer. He further submits that the power is available to the CBDT to issue instructions to subordinate authorities and the circular has been issued by the CBDT on 15.07.2022, which requires respondent No.1/Assessing Officer to obtain approval from respondent No.2 prior to passing of the assessment order. The said circular issued by the CBDT is valid and in accordance with the provisions of Section 119(2)(A) of the Act and even otherwise, there cannot be any harm in the Assessing Officer taking approval from his superiors for passing of assessment order. He submits that no prejudice can be said to have been caused to the assessee- petitioner on account of the same. The authorities cannot be said to be having any malice as against the petitioner and to reach a final conclusion the Assessing Officer's action of consulting his superiors for the purpose of issuing notice or for examining the concealment in return, cannot be said in any manner to be unjustified nor it prejudices the case of the petitioners. It is his submission that merely because there is no date mentioned in the order, the order would not be vitiated in law.

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12. Learned counsel has further submitted that the order was actually passed on 31.03.2024 and was delivered to the assessee electronically through e-proceedings on 31.03.2024 at 8:26:39 pm. It was a

clerical mistake that the date was not mentioned in the assessment order. However, the date of assessment was mentioned in the demand notice which has been issued on a later date i.e. 04.04.2024. It is submitted that the date on the demand notice has no relevance with the assessment order or the vice versa.

13. He further submits that the department has two options to upload assessment order either firstly to upload the scanned order through assessment module on ITBA and secondly to upload the same through common function module on ITBA. While uploading scanned assessment order in assessment module of ITBA, system generated DIN, which has been written manually on the assessment order bearing No.ITBA/AST/M/ 143(3)/23-24/1063772490(1) and ITBA/AST/M/143(3)/2023-24/1063772472 (1), however, while submitting the order on system finally, due to technical glitch-system error, assessment order and demand notice could not be uploaded through system module system and the DIN so generated mentioned in handwritten form on assessment and demand notice remained unexecuted. It is submitted that the assessment order and demand notice were communicated to the assessee through common function facility with DIN No.ITBA/COM/S/91/2023-24/1063787982(1) and ITBA/COM/S/91//2023- 24/1063787900(1) and communicated to the assessee through the aforesaid DINs at 08:26 pm on 31.03.2024. It is highlighted that the intimation sheet is generated by system and the date is also automatically filled on it. The fact is evident from the sheet itself, thus, the Assessing Officer has no role in it. The 7 of 23 Neutral Citation No:=2025:PHHC:033945-DB Page |8 CWP-9658-2024 (O&M) relevant sheet generated through ITBA contains DIN No.ITBA/COM/S/91/2023-24/1063787982(1) and ITBA/COM/S/91//2023- 24/1063787900(1) and, therefore, it cannot be said that the orders were not passed on 31.03.2024.

14. It is his assertion that the limitation as on 31.03.2024 is for making of an order and not for the communication of the order, in terms of the limitation prescribed under Section 153 of the Act. Learned counsel submits that the issue is no more res-integra in view of the judgment passed by the Hon'ble Supreme Court in the case of 2022 (1) SCC 112, The Commissioner of Income Tax, Chenni vs. Mohammed Meeran Shahul Hameed, wherein, it has been held that the date of limitation has to be seen on the date when the order has been made not the date when it has been received or communicated. Learned counsel also relied on the judgment passed by the Jharkhand High Court at Ranchi in Prakash Lal Khandelwal vs. The Commissioner of Income Tax, Ranchi and others, WP(T) No.1901 of 2022, decided on 21.02.2023, wherein the said judgment was followed.

15. As regards not granting of personal hearing is concerned, he submits that the petitioner was served with several notices before 11.03.2024, but he did not respond to the same and only submitted his reply on 15.03.2024. Taking into consideration all his contentions, the order has been passed and on facts he has also submitted that there is huge violation of tax concealment which cannot be brushed aside on the ground of violation of principles of natural justice. It is further submitted that there was no denial to file further reply and while the petitioner did on 20.03.2024 and 22.03.2024, and they have also been considered. It is submitted that the concept of 8 of 23 Neutral Citation No:=2025:PHHC:033945-DB Page |9 CWP-9658-2024 (O&M) personal hearing on specific request of the assessee is applicable in the case of faceless scrutiny assessments only and the office of the DCIT, Central Circle-I, being a part of the Central Charges, is exempted from the

concept of faceless scrutiny. It is stated that when the assessee had filed its replies, he could have reached the office and sought personal hearing also which he did not make and, therefore, it cannot be said that the order is vitiated on the ground of violation of principles of natural justice.

16. It is further submitted that so far as the demand notices are concerned, they were issued on 04.04.2024, but cannot be said to be beyond limitation as they are separately governed and have to be necessarily passed after the assessment. He has invited attention to Section 275 of the Act for the said purpose.

17. We have considered the submissions and pleading placed before us.

18. Before we deal with the facts of the case, it would be apposite to quote relevant provisions of Section 119, 153 and 275:

> Instructions to subordinate authorities.
>
> (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:
>
> Provided that no such orders, instructions or directions shall be issued :-
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> (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
>
> (b) so as to interfere with the discretion of the [the Joint Commissioner (Appeals) or] the [Commissioner (appeal] in the exercise of his appellate functions.

(2) Without prejudice to the generality of the foregoing power:-

> (a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections 3[115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK,] 4[139,] 143, 144, 147, 148, 154, 155 5[, 158BFA], 6[sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C 7[, 234E]], 8[270A,] 271 9[, 271C, 271CA] and 273 or otherwise), general or special orders in respect of 10[any class of incomes or fringe benefits] or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income- tax authorities in the work relating to assessment or collection of

revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) xx xx 10 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 11 CWP-9658-2024 (O&M) Time limit for completion of assessment, reassessment and re-

computation.

153. (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable.:

Provided: xx Provided further: xx Provided also: xx Provided: xx Provided further: xx Provided also: xx Provided also: xx Provided: xx Provided further : xx Provided also: xx Provided also: xx Provided: xx Provided further: xx Provided : xx Provided further: xx Provided also: xx Provided also: that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2022, the provisions of this sub-Section shall have effect, 11 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 12 CWP-9658-2024 (O&M) as if for the words 'twenty-one months', the words 'twelve months' had been substituted.

Bar of limitation for imposing penalties.

2[(1)] No order imposing a penalty under this Chapter shall be passed.

(a) In a case where the relevant assessment or other order is the subject-matter of an appeal to the [Joint Commissioner (Appeals) or to the Commissioner (Appeals) under Section 246] [or section 246A] or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the (Joint Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner], whichever period expires later:

Provided : xx xx"

(b) xx xx

(c) xx xx

19. From the perusal of the aforesaid provisions, we find that the limitation provided under Section 153(1) of the Act, for issuance of notice and making of an order of

> assessment under Section 143 or 144 of the Act, is only twelve months for the assessment year commencing on or after 1st day 12 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 13 CWP-9658-2024 (O&M) of April, 2022 from the end of assessment year in which the income was first assessable. Thus, the period would end on 31.03.2024.

20. As regards Section 119 of the Act as noticed above, we find that while Section 119(1) of the Act, restrains the Board from issuing any instructions to subordinate authorities, which may lay down instructions of such a nature requiring the Income Tax Authorities to make particular assessment in a particular manner or to interfere with the discretion of the Joint Commissioner and Commissioner (Appeals) while exercising their appellate function. However, the Board would be within its powers to instruct and lay down guidelines for efficient management of assessment work and collection of revenue or issue guidelines/principles/procedure which are to be followed by Income Tax Authorities for work relating to assessment. The Circular dated 15.07.2022, issued by the CBDT relied upon by the respondents directs the Assessing Officer to seek approval of the assessment made by him under Section 143 or 144 of the Act from the Joint Commissioner. The Circular dated 15.07.2022, cannot be objected to and comes within the ambit of powers available to the CBDT as above.

21. Although, the approval can be taken from the Joint Commissioner of the assessment order, the question arises that while examining the return and conducting assessment, can the Assessing Officer seek guidance or discuss the case with the Joint Commissioner and whether his consultation with the Joint Commissioner would amount to abdication of his powers. In Anirudhsinhji Karansinhji Jadeja case (supra), the Hon'ble Supreme Court was examining the issue relating to the powers vested with DSP by Section 20-A of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and has observed as under:-

> 13 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 14 CWP-9658-2024 (O&M) "11. The case against the appellants originally was registered on 19th March, 1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20A (1)? This is a case of power conferred upon one authority being really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A (1) was not exercised by the DSP at all.
>
> 12. Reference may be made in this connection to Commissioner of Police vs. Gordhandas Bhanji, 1952 SCR 135, in which the action of Commissioner of Police in cancelling the permission granted to the respondent for construction of cinema in

Greater Bombay at the behest of the State Government was not upheld, as the concerned rules had conferred this power on the Commissioner, because of which it was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of 14 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 15 CWP-9658-2024 (O&M) forwarding an order which another authority had purported to pass.

13. It has been stated by Wade and Forsyth in 'Administrative Law', 7th Edition at pages 358 and 359 under the heading 'SURRENDER, ABDICATION, DICTATION' and sub- heading "Power in the wrong hands" as below:-

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.....".

"Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise....".

14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion."

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22. In SPL Siddhartha Ltd. case (supra), it was held that the procedure laid down under the Income Tax Act, has to be strictly followed. Thus, principally the law is settled as held in Nazir Ahmed v. King Emproer1936 (BC) 253 (2), applying the principle of 'taylor v. taylor' Ch.D (431), that 'where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to Judicial Officers making a record under Section 164.'. Thus, as held in CIT vs. Anjum M.H.Ghaswala & Ors.2002 (1) SCC 633, by the Constitutional Bench that 'it is a normal rule of construction that when a statue vests certain powers in a authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statue itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)

(a)in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in

sub-section (2) of Section 119.'

23. Section 116 of the Act, defines the Income Tax Authorities as different and distinct authorities. Such different and distinct authorities have to exercise its powers in accordance with law in specified circumstances. Thus, the Assessing Officer would have to exercise its own discretion to reach a conclusion and would not be influenced by any other officer. In view thereto, we find force in the contention raised by the learned senior counsel for the petitioner that the concerned Assessing Officer was influenced by the consultation and discussion with his superior officers. In fact the order passed by the Assessing Officer appears to have been already prepared even before the reply was received as the consultations have been conducted on 16 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 17 CWP-9658-2024 (O&M) 26.10.2023, 11.01.2024 and 14.03.2024 by the Assessing Officer as mentioned by him in the order itself. Again after the reply was received and the order was passed by the Assessing Officer, the same has been approved by the Joint Commissioner. As such, we find that the Joint Commissioner has in fact comprehensively and actively participated in the making of the assessment order while his role was only limited to the approval of the assessment order in terms of the CBDT Circular. Thus, we find the order to be vitiated in law.

24. In view of the above, the assessment order cannot be result of an independent application of mind and exercise of discretionary power by the Assessing Officer in terms of Section 143(3) of the Act and but is an order passed under the influence and directions of the superior officers. It is to be noticed that the consultation with a superior officer would be akin to directions of the superior. There is no room available for discretion where consultation is sought from a superior officer while if a superior officer consults his subordinates, the discretion continues to stay with him. He may choose not to follow the advice of his subordinate but the opposite would be untrue. We are, thus, of firm view that the order has been passed whereby the Assessing Officer has abdicated his authority and, therefore, the order has become vitiated in law.

25. The next aspect which requires to be examined is the contention relating to the non-compliance of principles of natural justice.

26. While the learned counsel for the revenue contends that they had sent several notices to the petitioner, which were deliberately ignored, we find that the petitioner had conveyed and intimated the respondents of its fresh email IDs and the notices issued to the petitioner under Section 142(1) 17 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 18 CWP-9658-2024 (O&M) of the Act, on 08.09.2023, 15.09.2023, 17.10.2023, 06.12.2023 and 19.12.2023, were never received as they were sent on a different email of the Chartered Accountant who was no more working with the petitioner's company. The notices served dated 11.03.2024, was served on them on 13.03.2024 and the company has submitted its reply on 20.03.2024, wherein, opportunity of personal hearing has been demanded. From the reply which has come on record, it is apparent that the petitioner was not provided any opportunity of personal hearing albeit the respondents have stated that it was the responsibility of the petitioner to have approached and appeared before the concerned authority and if they would have appeared, the authority would have heard them personally.

27. The provision of providing personal hearing emanates from the principles of natural justice 'audi alteram partem' and a person is required to be given such an opportunity, so that, all the aspects which he/she wants to convey, would be attended to. The caveat is such an opportunity must be demanded. A presumption cannot be drawn that after a demand is made, the person would have to himself appear without being provided any particular date. In our opinion, the submissions advanced by the respondents, therefore, are misconceived and we are unable to accept the contentions of the respondents that it was the duty of the petitioner's company to appear before the concerned Assessing Officer after having filed its reply. We, therefore, held that the Assessing Officer has failed to follow the basic principles of natural justice while passing the impugned order and the petitioner was not provided fair and reasonable opportunity to put up its defence and the order passed is, therefore, liable to be struck down as illegal and arbitrary.

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28. The next contention raised before us is with regard to the order of assessment being time barred. At the cost of repetition, we reiterate that the last date for making the order of assessment was 31.03.2024. In M.M. Rubber case (Supra), the Hon'ble Supreme Court was examining the then provisions of the Income Tax Act, 1922, Section 33(A)(2) with reference to right of revision provided to an aggrieved assessee and limitation provided under Section 33(A)(a) to suo-moto call for record by the authority for revising the order and observed as under:-

> "12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed there for. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locuspaetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.
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> 13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made 19 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 20 CWP-9658-2024 (O&M) aware of passing of such order. Therefore Courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him on the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains, The knowledge of the party affected by Such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and

> binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set. This is based upon, as observed by Rajamanner, CJ in Muthia Chettiar v. CIT, supra "a salutary and just principle". The application' of this rule so far as the aggrieved party is concerned is not dependant on the provisions of the particular statute, but it is so under the general law."

29. In Rai Bahadur Kishore Chand case (supra), the Division Bench of this Court has observed as under:-

> "5. We find no force in the contention raised by the learned Counsel for the revenue. The basic question to be decided in this case is "Whether the impugned assessment order was passed within the statutory period of limitation upto 31-3-2004 or not ?" The Tribunal after perusing the evidence on record and taking into account the non-production of assessment record before the Bench has given a finding of fact that the impugned 20 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 21 CWP-9658-2024 (O&M) assessment order for the assessment year 2001-02 was passed after the statutory time limit. The Tribunal has noted the fact that the revenue was given more than 5 opportunities to produce record of the Department to challenge the specific grounds of appeal taken by the assessee to the effect that assessment order dated 26-3-2004 was not served upon him within the statutory period of limitation and as such the same is liable to be quashed being passed after the statutory time limit and ultimately, the Departmental Representative stated before the Tribunal that the matter may be decided in the light of the facts on record of the case. While dismissing the appeal of the revenue , the Tribunal has given a categoric finding that no evidence has been adduced by the Department to show that the impugned order dated 26-3- 2004 passed by the assessing officer was indeed passed before the statutory time limit."

30. The revenue before us has contended that the order which is undated, was actually passed and made on 31.03.2024 and was also placed on portal on 31.03.2024. In support of their contention, they further submitted that the order of demand placed on portal along with order of assessment on 04.04.2024, mentions of the assessment order having been passed on 31.03.2024 and, therefore, it has taken pains to submit that actually the order of assessment was made on 31.03.2024 and a presumption should be drawn in their favour. We are unable to accept the contention raised by learned counsel for the revenue that the orders were made on 31.03.2024 and therefore, it is not relevant as to when they were communicated. Since there is no date on the order, a presumption of the order having been issued on 21 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 22 CWP-9658-2024 (O&M) 31.03.2024, cannot be made. It appears that the officers of the department having noticed their folly, in order to save themselves from the question of passing orders beyond limitation period (presuming it to be 31.03.2024), mentioned of the orders being issued on 31.03.2024 in the demand notice.

31. The another contention raised on behalf of the revenue that since the order was made on 31.03.2024, the same is in terms of the limitation prescribed under Section 153 of the Act and the judgment passed by the Hon'ble Supreme Court in Mohammed Meeran Shahul Hameed case (supra) and the order cannot be set aside on that count, in our opinion, is misconceived.

32. Firstly as noticed above, there is no date mentioned on the assessment order, hence, it cannot be presumed that the order was made on 31.03.2024. We also notice that portal of the assessee was active as on 01.04.2024 and it reflected therein that no assessment has been made, as is apparent from the screen shots placed on record by the petitioner which have not been disputed by the respondents. While the assessment order is reflected on portal on 04.04.024 in order to further verify, we ask the counsel for the revenue to place on record the email sent by them to the petitioner on 31.03.2024, relating to having passed the assessment order but the revenue filed evasive application, wherein details of dates when emails were sent have been shown but from the chart placed before us along with the application, it is apparent that no email was sent to the assessee containing the assessment order on 31.03.2024. A flimsy attempt has been made to cover up the mistake.

33. It is a fact that for covering one mistake you make more mistakes one after the other. However, we are satisfied after examining all 22 of 23 Neutral Citation No:=2025:PHHC:033945-DB P a g e | 23 CWP-9658-2024 (O&M) the documents placed before us that there has actually been no order made on 31.03.2024 and, therefore, the judgment passed by the Hon'ble Supreme Court in the case of Mohammed Meeran Shahul Hameed case (supra), would have no application and would not save the time barred order of assessment. We also find that so far as the party who is effected by the order or decision would only consider the limitation from the date it acquires the knowledge and for him the limitation would start from the said date. Be that as it may, since we have reached to the conclusion that order passed was not made upto 31.03.2024, the period in terms of proviso added vide Finance Act, 2022 w.e.f. 01.04.2022, will apply to the facts of the case and the order is to be termed as time barred and beyond the period of limitation prescribed therein.

34. In view of the aforesaid discussion, the order of assessment is found to be non est and not sustainable in the eyes of law. Accordingly, order of assessment is quashed and set aside. Consequences thereof shall follow. Writ petition is allowed accordingly.

35. All pending misc. application(s) also stand dismissed.

(SANJEEV PRAKASH SHARMA) JUDGE (SANJAY VASHISTH) JUDGE 07th March, 2025.

rajesh

1. Whether speaking/reasoned? : Yes/No

2. Whether reportable? : Yes/No 23 of 23