HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

INCOME TAX APPEAL NO. 27 OF 2015

BETWEEN:

SRI. S.V.SRINIVASA BABU,
S/O. SRI. S.V.RATNAIAH,
AGED ABOUT 50 YEARS,
NO.7, 1ST FLOOR, 32ND CROSS,
KILARI ROAD, BENGALURU-560053.

...APPELLANT

(BY SRI. S.PARTHASARATHI, ADVOCATE along with
SMT. JINITA CHATTERJEE, ADVOCATE)

Digitally signed by VALLI MARIMUTHU
Location: HIGH COURT OF KARNATAKA

AND:

THE DEPUTY COMMISSIONER
OF INCOME TAX(INVESTIGATION),
CIRCLE-2(1), BENGALURU.

...RESPONDENT

(BY SRI. E.I.SANMATHI, SENIOR STANDING COUNSEL)

THIS ITA IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, ARISING OUT OF ORDER DATED 19.09.2014 PASSED IN ITA No.15/BANG/2012, FOR THE ASSESSMENT YEAR 01.04.1988 TO 27.03.1999 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE ORDER OF

THE INCOME TAX APPELLATE TRIBUNAL DATED 19/09/2014 BEARING ITA No.15/BANG/2012 FOR THE BLOCK ASSESSMENT PERIOD 01/04/1988 TO 27/03/1999 AND ETC.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Heard Sri S. Parthasarathi, learned counsel, along with Smt. Jinita Chatterjee, learned counsel for the appellant-Assessee, and Sri E.I. Sanmathi, learned Senior Standing Counsel for the respondent-Revenue.

2. This appeal is filed by the Assessee, impugning the order passed in ITA(SS)A No.15/Bang/2012 dated 19.09.2014, relating to the Block Assessment Period from 01.04.1988 to 27.03.1999.

3. The appeal is admitted for consideration of the following substantial questions of law:

> *"i) Whether the Tribunal was justified in upholding the dismissal of the first appeal by alleging non-payment of admitted tax?*

ii) When the proceedings under Chapter XIV-B of the Act were challenged as unlawful, and the return filed in pursuance of the notice under Section 158BC of the Act was not in accordance with law and accordingly non est, whether the tax payable on the income on such invalid return can be considered for the purpose of applying the provisions of Section 249(4)(a) or (4)(b) of the Act to deny admission of the appeal filed by the before the first Appellant Authority?

iii) Whether, when the income declared in the return being involuntary and under forced circumstances and did not reflect the real income of the appellant, can there is admitted tax as contemplated under Section 249(4)(a) or (4)(b) of the Act for entertaining the appeal filed under Section 246A of the Act?

iv) Whether the Tribunal was right in following the judgment of this Hon'ble High Court in the case of D.Komalakshi vs. DCIT (2007) 292 ITR 99 in preference to the judgment of this Hon'ble High Court in the case of T.Govindappa Setty vs. ITO (1998) 231 ITR 892?"

4. The facts in brief are that the Assessee was issued a notice under Section 158BC of the Income-tax Act, 1961 [for short, 'the Act'] on 21.06.1999, pursuant to the search

conducted on 27.03.1999 under Section 132(1) of the Act. The notice was served on 03.07.1999. The Assessee filed the block return of income on 12.01.2000. The Assessing Officer, thereafter, completed the assessment under Section 158BC read with Section 143(3) of the Act on 26.03.2001, determining the taxable income. Aggrieved, the Assessee preferred an appeal before the Commissioner of Income-tax (Appeals) [for short, 'CIT(A)'].

4.1 The CIT(A)-IV rejected the appeal on the ground of delay and latches. The Tribunal, at the instance of the assessee, condoned the delay and directed CIT(A) to re-hear the matter on merits. The CIT(A)-II under order dated 27.02.2009 rejected the appeal for non-payment of admitted tax as required under Section 249(4) of the Act. The Assessee thereafter preferred an appeal before the Tribunal. The Tribunal, while rejecting the contention of the Assessee as regards the validity of the return of income, held that the CIT(A) could not proceed to admit the appeal unless the admitted tax was paid.

5. Sri S. Parthasarathi, learned counsel, along with Smt. Jinita Chatterjee, learned counsel for the appellant-Assessee, submits that a notice under Section 158BC was issued on 21.06.1999 and served on 03.07.1999, requiring the Assessee to file a return in the prescribed form. It is submitted that the maximum time permissible for filing the return was 45 days. Accordingly, the return ought to have been filed on or before 19.07.1999, whereas the block return of income came to be filed only on 12.01.2000, beyond the prescribed period of 45 days. Hence, it is contended that the return of income so filed is invalid and any income disclosed therein cannot be treated as admitted income.

5.1 Learned counsel further submits that the Assessing Officer completed the assessment on the basis of an invalid return. When the validity of such a return is questioned in appeal before the CIT(A), there is no requirement to pay the admitted tax. In other words, it is the submission of learned counsel that the liability to pay admitted tax arises only when the income is admitted in a valid return of income. It is contended that, as the return of income filed on 12.01.2000, though disclosing certain income, was itself invalid, no liability

to pay admitted tax would arise. Learned counsel, therefore, submits that in such circumstances, Section 249(4)(a) of the Act is not attracted and cannot be invoked in the present case.

6. On the other hand, Sri E.I. Sanmathi, learned Senior Standing Counsel appearing for the respondent-Revenue, submits that even if the Assessee's contention regarding the validity of the return of income and the consequent block assessment order is to be examined, the CIT(A) can do so only after admitting the appeal under Section 249 of the Act. Unless the appeal is admitted, the CIT(A) cannot assume jurisdiction to decide the matter. It is, therefore, submitted that irrespective of the nature of challenge raised in the appeal, the payment of admitted tax is mandatory. The Tribunal, while rightly appreciating sub-section (4) of Section 249 of the Act, has held that the appeal before the CIT(A) was not maintainable on account of non-payment of the admitted tax.

7. We have carefully considered the submissions advanced on both sides and have perused the appeal records

8. Section 158BC of the Act, as in force at the relevant time, reads as follows:

" Procedure for block assessment.

158BC. *Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,-*

[(a) the Assessing Officer shall-

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the Ist day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (1) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period:"

9. The prima facie undisputed facts indicate that the block return of income, filed on 12.01.2000, was submitted after the expiry of the 45-day period prescribed under Section 158BC of the Act. The Assessing Officer, taking cognizance of the return, has completed the block assessment and determined the tax liability.

10. Before proceeding further, it is necessary to note another aspect. In the return of income filed on 12.01.2000, the Assessee admitted undisclosed income of Rs.40,00,000/-. However, the Assessee has not paid the tax on the admitted income.

11. The appeal filed before the CIT(A) was rejected on the ground of delay and laches. When the matter was further appealed before the Tribunal, the maintainability of the appeal before the CIT(A) and compliance with Section 249(4)(a) of the Act came to be examined. The Assessee contends that, since the validity of the return in which the income is admitted is questioned before the CIT(A), there is no obligation to pay the admitted tax. It is further contended that unless the income is admitted in a validly filed return, a mere admission cannot

impose a condition to pay the admitted tax. Section 249(4) of the Act reads as follows:

> "*(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,-*
>
> *(a) Where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or*
>
> *(b) Where no return has been filed by assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:*
>
> ***Provided** that, in a case falling under clause (b) and on an application made by the appellant in this behalf, the Joint Commissioner (Appeals) or the Commissioner (Appeals) may, for any good and sufficient reason to be recoded in writing, except him from the operation of the provisions of that clause."*

12. The remedy of appeal under Section 249 is statutory in nature. The right of appeal is provided subject to certain conditions. It is a settled position that the right of appeal can be exercised only in accordance with the conditions so attached. Such conditions may be waived only by the Appellate Authority vested with the requisite power.

13. A plain reading of sub-section (4) of Section 249 of the Act reveals that the statute does not confer any discretion to waive the payment or deposit of admitted tax under any circumstance. The only permissible interpretation is that payment of admitted tax is mandatory for the admission of the appeal. Unless this pre-condition is satisfied, the CIT(A) cannot assume jurisdiction to adjudicate the grounds raised in the appeal. This bar applies even where the legality or otherwise of the income admitted by the Assessee in the return, which is under challenge, is in question. Since the statute has made no provision for any exception or conferred authority to waive the requirement, the finding of the Tribunal cannot be regarded as unsustainable.

14. Sri Parthasarathi, learned counsel, further contends that the term 'return' referred to in sub-section (4) of Section 249 contemplates a valid return in the eye of law. This proposition is advanced to urge that, unless the income is admitted in a valid return, the payment of admitted tax is not a pre-condition. We find it difficult to accept this submission on a plain reading of sub-section (4) of Section 249 of the Act.

Acceptance of this contention would require Clause (a) of sub-section (4) to be effectively altered or re-written by impliedly inserting the word 'valid' before 'return'. It is a settled position that, while interpreting a fiscal statute, no words can be omitted or implied into the section.

15. Learned counsel has relied upon the judgment of this Court in ***T. Govindappa Setty v. Income Tax Officer and another***,***[(1998) 231 ITR 892 (Kar.)]***. The said judgment was rendered in a writ petition under Article 226 of the Constitution of India, wherein the challenge was made to an intimation issued under Section 143(1)(a) of the Act. We further note that the factual matrix, the orders impugned, and the directions issued therein are not identical to the facts of the present case. Accordingly, the judgment is of no assistance to the Assessee.

16. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in ***Shriram Investments v. Commissioner of Income Tax***, ***(2024) 301 Taxman 393 (SC)***, and the judgment of the Allahabad High Court in ***Commissioner of Income Tax v. Umang Agarwal***, ***(2014)***

365 ITR 164 (All.), to contend that a return of income filed beyond the prescribed time is *non est*. However, this contention is sought to be raised in the appeal before the CIT(A), and to enable the CIT(A) to consider such contentions, the appellant must first overcome the requirements of sub-section (4) of Section 249 of the Act. As the order impugned in the present appeal has not adjudicated the correctness or otherwise of the block assessment order based on the return filed beyond the prescribed period, we find it difficult to address this contention in the present appeal, as it does not arise from the order under challenge.

17. The Tribunal is justified in holding that the Assessee's appeal before the CIT(A) is not maintainable for non-payment of admitted tax under Section 249(4)(a) of the Act. We find no reason to take a different view, nor has any demonstrable ground been shown for interference.

18. In view of the foregoing, the appeal is liable to be dismissed, and the substantial questions of law are answered against the appellant-Assessee.

19. At this stage, learned counsel for the appellant-Assessee submits that, if some time is granted for the deposit of the admitted tax, the appellant would make the payment and the CIT(A) may be directed to adjudicate the appeal on merits. We find that, if this submission is not accepted and the deposit of admitted tax is not permitted, the appellant would be rendered remediless. In the larger interest of justice, we find it appropriate to accept the submission.

20. For the foregoing reasons, the following order:

(i) The appeal is ***disposed of.***

(ii) The substantial questions of law are answered in favour of the Revenue and against the Assessee.

(iii) The appellant-Assessee is permitted to deposit the admitted tax within three months from today.

(iv) On such deposit, delay in filing the appeal before CIT(A) is condoned; the CIT(A) is directed to adjudicate the appeal No.ITA.26/R-9/CIT(A)/IV/2001-02.

(v) The order of CIT(A) dated 11.12.2010 is set aside with a direction to adjudicate the same on merits upon deposit of admitted tax, as directed above.

(vi) It is needless to observe that tax paid by the Assessee in connection with the return of income in question shall be adjusted against admitted tax.

(vi) Considering that the assessment of 2001, on restoration, CIT(A) is directed to decide the appeal within six months thereafter, subject to co-operation of the Assessee.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

MV
List No.: 1 Sl No.: 23