AFR
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Case :- INCOME TAX APPEAL No. - 19 of 2010

Appellant :- The Commissioner Of Income Tax-1,Agra And Another
Respondent :- Sh.Chandra Bhan Bansal,Through Legal Representatives
Counsel for Appellant :- A.N.Mahajan/S.C.
Counsel for Respondent :- Rahul Agarwal

With
Case :- INCOME TAX APPEAL No. - 277 of 2011

Appellant :- The Commissioner Of Income Tax-I Agra And Another
Respondent :- Sh.Chandra Bhan Bansal Through Legal Representatives
Counsel for Appellant :- A.N.Mahajan/S.C.
Counsel for Respondent :- Rahul Agrawal
With
Case :- INCOME TAX APPEAL No. - 279 of 2011

Appellant :- The Commissioner Of Income Tax-1,Agra And Another
Respondent :- Sh.Chandra Bhan Bansal,Through Legal Representatives
Counsel for Appellant :- A.N.Mahajan/S.C.
Counsel for Respondent :- Rahul Agrawal

Hon'ble Ashok Bhushan,J
Hon'ble Mahesh Chandra Tripathi,J

(Delivered by Hon'ble Ashok Bhushan,J)

These three appeals have been filed by the Revenue under Section 260-A of the Income Tax Act, 1961 "hereinafter called the "Act, 1961", against the order dated 12/8/2009, passed by the Income Tax Appellate Tribunal allowing the appeals filed by the assessee and cancelling the assessment for all the three years. All the three appeals raise the same question of law and facts, hence they are being decided by this common judgment. It is sufficient to note the facts of Appeal No.19/2010 for deciding the question of law raised in these appeals. Search and seizure operations were conducted on 19/1/1989 at the business premises of firm and residential premises of partners including that of the assessee Late Chandra Bhan Bansal. The assessee was not assessed to tax earlier. Notices under Section 147 (a)/148 of the Act, 1961 were issued to the assessee on 08/11/1989 for the Assessment Years 1986-87, 1987-88 and 1989-90 requiring the assessee to file return. In response to the

notices issued to the assessee, return was filed only for the Assessment Year 1989-90. Challenging the notice dated 08/11/1989, the assessee filed writ petition No.278/1992, for the Assessment Year 1986-1987 and 1987-88 in this Court. A Division Bench of this Court vide its order dated 24/3/1992, stayed the re-assessment proceedings. A Writ Petition No.162/1992 was filed challenging the further proceedings for the Assessment Year 1989-90. A Division Bench of this Court vide order dated 24/3/1992 had passed interim order staying the notices for the Assessment Year 1988-89. Both the above writ petitions were dismissed on 01/8/1995 on the ground that after the death of the sole petitioner, legal representatives of the deceased were not brought on the record. After dismissal of the aforesaid writ petitions, the proceedings for assessment were completed on 04/1/1996 by the Assessing Officer. Against the order dated 04/1/1996, appeals were filed by the assessee before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide order dated 10/12/1996, restored the matter to the file of Assessing Officer for providing proper opportunity to the legal heirs of the assessee. Notices were issued to the legal heirs of the assessee to attend the proceedings before the Assessing Officer. In response to the summons/notices issued to the legal heirs of the assessee the counsel for the legal representatives appeared. One of the objection taken before the Assessing Officer was that the interim order granted by the Allahabad High Court was vacated on 01/8/1995, hence the original assessment was to be completed within 60 days i.e. up to 30/9/1995 in view of Explanation 1 (ii) to Section 153 (3) of the Act, 1961, whereas the assessment having been made on 04/1/1996 was barred by time. The Appellate Authority vide its order dated 26/3/1999 decided all the three appeals. The Appellate Authority rejected the plea of the assessee that assessment is barred by time, however for statistical purposes, the appeals were partly allowed. The order passed by the appellate authority dated 26/3/1999 was challenged by the assessee before the Income Tax Appellate Tribunal. Two sets of appeals were filed by the assessee pertaining to the three assessment years challenging the order dated 26/3/1999 and 17/1/2003, respectively. The Tribunal heard the parties and allowed both the appeals. The Tribunal relying on Explanation 1 (ii) to Section 153 of the Act, 1961 held that the assessment order dated 04/1/1996 was beyond the time prescribed under Section 153 (3) of the Act, 1961. The above

three appeals have been filed against the common order of the Tribunal dated 12/8/2009. In all the three appeals only one substantial question of law was framed on which question all the appeals were admitted. The question of law framed in all these appeals is as follows:

> "(1) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in coming to the conclusion that the assessments made by the A.O. Was barred by limitation on 30-09-95 in view of the proviso to Explanation 1 to Section 153 (2) of the Act?"

We have heard Shri Shambhu Chopra, learned counsel appearing for the Revenue and Shri Rahul Agarwal, learned counsel appearing for the assessee.

Shri Shambhu Chopra, learned counsel appearing for the Revenue submits that the assessment order dated 04/1/1996 was not beyond 60 days and it was within sixty days from the date when the order of the High Court dated 01/8/1995 vacating the interim order was communicated. He submits that the period of limitation for making the assessment is to be reckoned not from the date of the vacation of the interim order, rather from the date the order of the High Court vacating the stay order has been communicated to the Department. He submits that the order vacating the interim could be communicated to the Assistant Commissioner of Income Tax (Investigations) on 18/12/1995, hence the assessment order dated 04/1/1996 is well within time. In addition to the above submission, Shri Shambhu Chopra, learned counsel appearing for the Revenue made one more submission i.e. the assessment order dated 04/1/1996 having been made in consequence to the order of the High Court dated 01/8/1995, dismissing the writ petitions of the assessee, there shall be no period of limitation as per Section 153 (3) (ii) of the Act, 1961.

A Division Bench of this Court while hearing the Income Tax Appeal No.19/2010 on 03/12/2013, in context to the above submission of Shri Shambhu Chopra, learned counsel appearing for the Revenue passed following order which is quoted below:

"Shri Shambhu Chopra, appearing for the revenue prays for and is allowed time to produce the order of the High Court, in which according to him there is a finding or direction, which will make his case fall under Section 153 (3) (ii) of the Income Tax Act, 1961. According to Shri Chopra there is no limitation for framing assessment, re-assessment or re-computation, where the assessment has been framed in view of the finding or direction in pursuance to an order of any Court in a proceeding otherwise than by way of appeal or reference under the Act. Shri Rahul Agarwal, relying upon the judgment of this Court in ***Commissioner of Income Tax, Central Kanpur vs. M/s The Drs. X-Ray & Pathology Institute Pvt. Ltd dated 5.9.2013*** *submits that the limitation starts, when the stay is vacated by the High Court.*

Shri Rahul Agarwal submits that the question, that has been raised in the appeal by the revenue, was not argued in the Tribunal.

Be that as it may, let Shri Shambhu Chopra file a copy of the judgment by which the stay was vacated, to find out whether there was any finding or direction to complete the assessment.

List on ***21.1.2014*** *in the additional cause list."*

When the matter was heard before us, learned counsel for the parties have placed before us the orders passed by the Division Bench of this Court dated 24/3/1992 passed in Writ Petition No.162 of 1992 and 01/8/1995 in Writ Petition No.278/1992. Although, neither any ground was taken with regard to the above submission, nor any question of law was framed when the appeal was admitted on 19/1/2011, but looking to the facts of the present case and submissions made by the learned counsel for the Revenue which was noted by the Division Bench of this Court on 03/12/2013, we permitted the learned counsel for the Revenue to address on the following additional question i.e. :

(1) Whether the assessment order dated 04/1/1996 can be treated to be an assessment made in consequence to or to give effect to any finding or direction contained in the order of the High Court dated 01/8/1995 passed in Writ Petition No.162/1992 and 278/1992 so as to lift the bar of limitation as contained in Section 153 (2) of the Act, 1961.

Shri Rahul Agarwal, learned counsel appearing for the assessee refuting the submissions of Shri Shambhu Chopra, learned counsel appearing for the Revenue submitted that the assessment order dated 04/1/1996 was clearly beyond the limitation period prescribed under Section 153 (2) of the Act, 1961. He submits that the writ petitions having been dismissed on 01/8/1995, the period of stay of the proceedings which was required to be excluded was a period beginning from 24/3/1992 and ending with 01/8/1995. He submits that the statute does not contemplate reckoning of the period from the date of communication of the order of the High Court dismissing the writ petitions on 01/8/1995. The order of the High Court dated 01/8/1995 dismissing the writ petitions was passed in the presence of learned counsel appearing for the Department. Assessee submits that in the order dated 01/8/1995, itself reason has been mentioned for dismissing the writ petitions, hence the submission of Shri Shambhu Chopra, learned counsel for the Revenue that period of 60 days after the dismissal of the writ petition is to be reckoned from the date of communication of the order is misconceived. Shri Rahul Agarwal, further submits that the provision of Section 153 (3) (ii) of the Act, 1961 is not attracted in the present case, since neither there is any finding nor there is any direction in the order of the High Court dated 01/8/1995 on the basis of which the Assessing Officer can claim to frame the assessment order dated 04/1/1996. He submits that the order of the High Court dated 01/8/1995 was an order dismissing the writ petition on account of non bringing of the heirs of the assessee on record. The High Court neither entered into the merits of the case, nor recorded any finding nor issued any direction, hence the plea of Shri Shambhu Chopra,learned counsel appearing for the Revenue that there shall be no limitation in the facts of the present case is wholly misconceived.

We have considered the submissions of the learned counsel for the parties and have perused the record.

Section 153 of the Act, 1961 provides for time limit for completion of assessments and reassessments.

Section 153 (2) and Section 153 (3) (ii) of the Act, 1961 as well as Explanation I (ii), (v), (vi) and proviso which are relevant in the present case are as follows:

> "**Time limit for completion of assessments and reassessments**.
>
> **153.** (1).....
>
> (2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of [one year] from the end of the financial year in which the notice under section 148 was served:
>
> (3) The provisions of sub-sections (1) [,(1A), (1B)] and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, [subject to the provisions of sub-sub-section (2A),] be completed at any time-
>
> (i).....
>
> (ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250,254,260,262,263 or 264 [or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act]:
>
> Explanation 1.-In computing the period of limitation for the purposes of this section-
>
> (i).....
>
> (ii) the period during which the assessment proceeding is stayed by an order or injunction of any court, or
>
> (iia).....
>
> (iii).....
>
> (iv).....
>
> (iva)

(v) in a case where an application made before the Income-tax Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section,[or]

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or"

[**Provided** that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (1), [(1A), (1b)] [(2), (2A) and (4) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:]

[**Provided** further that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149,153B,154,155,158BE and 231 and for the purposes of payment of interest under section 243 or section 244 or, as the case may be, section 244A, this proviso shall also apply accordingly.]"

Notices under Section 147 (a)/148 of the Act, 1961 were issued to the assessee on 08/11/1989. The assessment thus was required to be completed by 31/3/1992 as per the provisions of Section 153(2) as it stood at that relevant time. Writ Petition Nos.162/1992 and 278/1992 were filed by the assessee in which following interim orders were passed by this Court on 24/3/1992.

> "Issue notice.
>
> Further proceedings for the assessment year 1989-90 in pursuance to the notices under section 143 (2) of the Income tax act filed as Annexures 7,8 and 10 to the writ petition shall remain stayed till further orders of this Court. This order shall however, not debar the respondents from taking any fresh action or proceedings for reassessment under section 147 if any action is contemplated for the said assessment year. However, insofar as the assessment year 1988-89 is concerned, further assessment proceedings in pursuance to the notices under section 143(2) issued for that year may continue and assessment may be completed in due course.
>
> It is needless to add that it shall be open to the petitioner to raise such plea as may be available to him under the law impugning the validity of notices Under Section 143(2) for the assessment year 1988-89.
>
> Sd/-A. Singh
> Sd/- R.K.G.
> 24.3.92."

In view of the stay of the assessment proceedings by virtue of provisions of Section 143 (2) explanation 1 (ii) of the Act, 1961 the period of stay of the proceedings has to be excluded. Both the writ petitions were dismissed by this Court on 01/8/1995 by the following order:

> "BY THE COURT
>
> This petition is taken up in revised list.
>
> None appears for the petitioner, Sri Rakesh Ranjan Agarwal,

Advocate is present for the respondent.

This petition was on the list 13.7.1995 on which date this Court was informed that the sole petitioner Chandra Bhan Bansal has died, therefore, appropriate time was granted to the petitioner to bring the legal representatives of the deceased on record. However, despite affording time no application was moved for substitution. This being so this petition is dismissed for non-compliance of the order dated 13.7.1995. The interim order 24.3.1992 is hereby vacated.

Dt/-1.8.1995

Sd/-B.M. Lal.

Sd/-M.C. Agarwal."

The aforesaid writ petitions having been dismissed on 01/8/1995, as per proviso to Explanation 1 to Section 153, the assessment was to be completed by 30/9/1995, but in the present case the assessment was completed on 04/1/1996 i.e. beyond 30/9/1995. The submission of Shri Shambhu Chopra, learned counsel appearing for the Revenue to save the assessment from being beyond the period of limitation is that the period of 60 days is to be computed from the date of communication of the order. He submits that the order of the High Court dated 01/8/1995, dismissing the writ petitions could be received by the office of the ACIT (Investigation) on 18/12/1995. There are two reasons due to which the said submission cannot be accepted. Firstly, the order of the High Court dated 01/8/1995, dismissing the writ petitions was passed in the presence of the learned counsel for the revenue, hence the submission that it was communicated on 18/12/1995 has no relevance, and secondly the provision of Explanation 1 (ii) of Section 153 of the Act, 1961 which is to the following effect:

"Explanation 1- In computing the period of limitation for the purposes of this Section -(i) .....

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any Court, or .....shall be excluded".

The above statutory scheme clearly indicates that for computing the period of limitation the period during which the assessment proceedings is stayed shall be excluded. In excluding the above period, the concept of communication of the order of the Court cannot be imported. The exclusion of the period has been provided because of stay or injunction by any Court during which the assessment proceedings are stayed. The intention is clear that when the limitation for assessment has started it can be stayed only by an order or injunction of any Court and as soon as the order or injunction of the Court is vacated, the period of limitation shall re-start since after the vacation of the order of the Court, there is no embargo on the authorities to proceed with the assessment. The submission of Shri Shambhu Chopra learned counsel appearing for the Revenue that the limitation will start again only when the order is communicated to the Department thus cannot be accepted. The other reason for not accepting the above submission is also equally potent. Explanation 1 (v) and (vi) to Section 153 of the Act, 1961 are also part of the same statutory scheme. In Explanation 1 (v) and (vi) to Section 153 of the Act, 1961 the statutory scheme provides for computing the period of limitation from the date when the order under sub-section (1) of Section 245D and 245Q is received by the Commissioner. Thus, the legislature has provided for excluding the period from the date of communication of the order where they so intended. The use of concept of communication of receiving the order in the same provision which is absent in Explanation 1 (ii) concerned clearly indicates that for the purposes of Explanation 1 (ii), the communication of the order of the Court vacating the stay order or injunction is not contemplated.

The Division Bench judgment of this Court relied on by Shri Rahul Agarwal, learned counsel appearing for the assessee in **Income Tax Appeal No.219/2013, Commissioner of Income Tax Central Kanpur Vs. M/s The Drs. X-Ray & Pathology Istitute Pvt. Ltd.**, also supports the submission made by the learned counsel for the assessee. In the said case following was laid down.

> "*The department has preferred the appeal on following questions of law:-*

"1. Whether the Hon'ble ITAT has erred in law and on facts in annulling the assessment without appreciating the fact that the communication of dismissal of the assessee's writ petition against the proceedings initiated u/s 158BC of the I.T. Act, 1961, was made to the AO on 09.11.2009, and then the AO could not have proceeded to take up the assessment proceedings before 09.11.2009, consequently the period of limitation was counted from such date.

2. Whether the Hon'ble ITAT has erred in law and on facts in applying the ratio of the decision of Hon'ble Court in the case of CCE Vs M.M. Rubber & Co. (1992) Suppl. WP (C) No.4821/2010 page 16 of 68 1 SCC 471 and Municipal Corporation of Delhi Vs Qimat Rai Gupta & Others (2007) 7 SCC 209.

3. Whether Hon'ble ITAT was justified in ignoring the provisions of Income Tax Act in the case of a proceeding under the I.T. Act and applying the provisions of High Court Rules which would be applicable in the case of proceedings in the High Court only."

In this case search was conducted at the assessee's address on 14.9.2002 and notice under Section 158BC of the Act was issued on 29.4.2003. Consequent thereto the return was filed by the assessee on 16.6.2003. The search proceeding was challenged by the assessee before the High Court by filing writ petition. The assessment proceedings were stayed vide interim order dated 12.2.2004. The interim order was vacated on 26.8.2009.

Section 158BC provides to complete assessment proceedings within two years. It further provides that period during which the proceedings have been stayed shall be excluded.

In the present case the stay was vacated by the High Court on 26.8.2009. The A.O. took the date of vacation of the interim order to be the date, when it was received by him on 9.11.2009 and passed assessment order on 22.6.2010, which was clearly beyond two years as limitation would restart from 26.8.2009 and

ended on 15.4.2010.

Apart from the fact that the Assessing Officer had sufficient time the Tribunal has held that there is no procedure in the High Court to communicate the order to the party to make it effective. The provisions of the Income Tax Act for filing of the appeal from the date of service of the order will not be attracted to calculate the period of limitation to complete the assessment.

In the present case we are not concerned with limitation for any particular act to be performed, but the arrest of the limitation by an interim order passed by the High Court. As soon as the order was vacated, the limitation will restart and will exhaust itself on the period of limitation provided under the Act.

In order to appreciate the submissions of Shri Sambhu Chopra that A.O. should get knowledge of the order, the facts as to when the counsel appearing for the department applied for copy and communicated to the A.O. have not been brought on record. Shri Sambhu Chopra has relied upon ***Auto & Metal Engineers & Ors. v. Union of India & Ors., (1998) 229 ITR 399*** *with regard to limitation of assessment proceedings in explanation of Section 153 and the effect of the stay order and* ***Commissioner of Income Tax v. Durga Shankar Kansara, (2008) 305 ITR 249 (Raj.).***

In both the cases cited for the revenue the limitation as provided under Section 158BE was under consideration. The question as to whether the order should be communicated by the Court, which had stayed the proceedings to restart the period of limitation was neither raised nor considered.

We do not find any error of law in the judgment of the Tribunal holding that the assessment was clearly barred by limitation. The questions of law as framed are not substantial questions of law, which may arise for consideration from the facts of the case.

The income tax appeal is dismissed"

In view of the foregoing discussions, the question no.1 as framed is answered in favour of the assessee and against the Revenue and the order of the Tribunal deserves to be confirmed.

Now we come to the additional question which has been framed by us as noted above.

The provisions of Section 153 (3) (ii) of the Act, 1961 are clear and explicit. The said provision provides that where the assessment, re-assessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, the provisions of sub-section (1) (1a) and (1b) of the Act, shall not apply. Thus, where the assessment, re-assessment or re-computation is made on the assessee or any person in consequence of or to give effect to any finding or direction in an order of any Court in a proceeding otherwise than by way of appeal or reference under this Act, the period of limitation as provided under Section 153 (2) of the Act, 1961 shall not be attracted. What are the findings or directions as contemplated in the above provision is the question now to be answered.

The Apex Court had occasion to consider the expressions "finding and direction" as contained in Section 153 (3) (ii) of the Act, 1961 in **Rajinder Nath Vs. Commissioner of Income Tax, Delhi, 120,ITR,14.** The Apex Court laid down following in the above case:

> *"The expressions " finding " and " direction " are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to*

render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in s.153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions " finding " and "direction" in s. 153(3)(ii) of the Act must be accordingly confined. S. 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order under s. 143 or s. 144 or s. 147: ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC) and N. K. T. Sivalingam Chettiar v. CIT [1967] 66 ITR 586 (SC). The question formulated by the Tribunal raises the point whether the AAC could convert the provisions of s. 147(1) into those of s. 153(3)(ii) of the Act. In view of s. 153(3)(ii) dealing with limitation merely, it is not easy to appreciate the relevance or validity of the point."

The provision of Section 153 (3) (ii) of the Act, 1961 came up for consideration before several High Court's including this Court in large number of cases. In **Goombira Tea Co. P.Ltd. Vs. Income-Tax OfficerA-Ward, Karimgunj, Assam, 125 ITR, 260.** The Calcutta High Court in the said

case also laid down following:

> "*While, therefore, Sub-sections (1) and (2) of Section 153 provide for the time-limit for completion of assessment and reassessment, Sub-section (3) makes such provision inapplicable under certain circumstances, one of which is that such assessment or reassessment can be made in consequence of or to give effect to any finding or direction contained in an order under certain provisions of the Act or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Act. In a recent decision of the Supreme Court in Rajinder Nath v. CIT [1979] 120 ITR 14, it has been observed as follows (p. 18);*
>
> *" The expressions ' finding ' and ' direction ' are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression 'direction' in Section 153(3)(ii) of the Act, it is now*

well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions ' finding ' and ' direction ' in Section 153(3)(ii) of the Act must be accordingly confined. Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order under Section 143 or Section 144 or Section 147 : ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC) and N. K. T. Sivalingam Chettiar v. CIT [1967] 66 ITR 586 (SC).”

In the above observation of the Supreme Court, it has been laid down, inter alia, that the finding and direction must be necessary for the disposal of the particular case, and that Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. An authority or court, therefore, cannot simply for the purpose of lifting the bar of limitation give a finding or direction. Unless such a finding or direction is necessary for the disposal of the proceeding before such authority or court the provision of Section 153(3)(ii) will not be attracted. When making any finding or direction the authority or court will not take into consideration the provision of Section 153(3). It makes the finding or gives the direction, if required under the facts and circumstances of the case, for the proper disposal of the case. It may be that the assessment or reassessment has become barred by limitation during the pendency of a case before the authority or court, but that will be no consideration for making a finding or a direction, unless it is necessary for the disposal of the case.”

In **Raj Kishore Prasad Vs. Income-Tax Officer, 195 ITR, 438,** a Division Bench of our Court had occasion to consider the expressions “finding or direction”. In the said case, the Commissioner has simply dropped the proceedings. The High Court held that when the proceedings were

dropped, there shall be no question of any finding or direction. Following was laid down by the Division Bench in the said case.

> *"In the instant case, it is quite clear from a perusal of the order of the Income-tax Commissioner dated March 29,1979, which, according to the respondent, is the basis for the issue of a notice under section 148 and for reopening of the assessment that the order contained no "finding" or "direction". Under that order, the Commissioner simply drooped the proceedings which were initiated him under section 263 of the Act. The order did not go beyond that. It is erroneous to say that the order contained any "finding" or "direction" within the meaning of section 150 (1). In fact, the meaning of these two words as used in the Income-tax Act have been explained by the Supreme Court in the case of Rajinder Nath v. CIT [1979] 120 ITR 14 (headnote):*
>
> *"The expressions 'finding' and 'direction' in section 153 (3) are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case.*
>
> *As regards the expression 'direction' in section 153(3) (ii) of the Act, it is now well- settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions 'finding' and 'direction' in section 153(3) (ii) must be accordingly confined. Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court."*

Same view has been taken by another Division Bench of this Court in **Commissioner of Income-Tax Vs. S.P. Mishra, 297, ITR, 352.** Following was laid in paragraph 13 which is quoted below:

"13. The argument of learned Counsel for the Revenue is that reassessment has been made after issuing notice under Section 148 with a view to give effect to the finding of the Commissioner of Income-tax (Appeals) contained in his order of assessment for the year 1997-98 and, therefore, the case was governed by Section 153(3). This argument has to be seen in the light of the findings recorded by the Commissioner of Income-tax (Appeals) for the assessment year 1997-98, wherein he has made the following observations:

"The appellant claims to have taken 28 bighas of agricultural land on lease.... But the learned authorised representative claimed that the land was not cultivated. However, he claimed for the first time before me that the appellant derived agricultural income of Rs. 1,80,000 from his ancestral orchard measuring 2 acres. No such claim of orchard was made before the Assessing Officer and no evidence has been given before me. The nature and number of trees have not been mentioned. It is also not clear whether the orchard is in the name of the appellant and the orchard of 2 acres cannot produce income of Rs. 1,80,000. Keeping in view of these facts, I hold that the Assessing Officer was justified in taxing Rs.1,80,000 as income from other sources."

A perusal of the aforesaid finding reveals that it considered a fresh plea taken by the assessee in appeal, to rebut the finding recorded by the Assessing Officer in respect of the alleged agricultural land but this finding cannot be extended for the period covered by the assessment years 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97. There is no direction in the aforesaid order to the effect that the finding recorded in respect of the agricultural income/assessee being possessed of the agricultural land, be given effect to, much less in the earlier assessment years.

The Tribunal has relied upon the case of Rajinder Nath v. CIT [1979] 120 ITR 14 (SC), in reaching the conclusion that the notice under Section 147 was barred by limitation. In the aforesaid

case, the apex court interpreted the words "in consequence of or to give effect to any finding or direction contained" as incorporated in clause (ii) of sub-section (3) of section 153. Their Lordships in the said case held that clause (ii) of section 153(3) are limited in meanings. It must be for disposal of a particular case in respect of a particular assessee and in relation to the particular assessment year. Further, it was held that (page 20): "Therefore, in our judgment, the order of the Appellate Assistant Commissioner contains neither a finding nor a direction within the meaning of Section 153(3)(ii) of the Income-tax Act in consequence of which, or to give effect to which the impugned assessment proceedings can be said to have been taken."

In our opinion, the Tribunal did not commit any error in recording a finding that the present case was not a case for giving effect to any finding recorded or direction issued by the Commissioner of Income-tax (Appeals) in its order passed for the assessment years 1997-98. That being so, the period of limitation cannot be saved by applying the provisions of Section 153(3)(ii) of the Act.

Under the circumstances, no substantial question of law arises."

Shri Shambhu Chopra, learned counsel appearing for the Revenue has placed reliance on the judgment of Madhya Pradesh High Court in **Commissioner of Income-Tax Vs. Agha Abdul Jabbar Khan,187, ITR 587 (M.P.).** Following was the question which was considered in the above case.

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the direction given by the Appellate Assistant Commissioner was wholly unwarranted and redundant?"

The Madhya Pradesh High Court in the said case laid down that once

the Appellate Assistant Commissioner came to the conclusion that the Income-tax Officer had no jurisdiction to reopen the case under section 147 (a) of the Act, and the order of reassessment was liable to be quashed, he had no jurisdiction to make any further direction for recomputing the amount of capital gains. The Apex Court's judgment in Rajinder Nath's case was also relied on. Following was laid down by the Madhya Pradesh High Court in the said case.

> " *Having heard learned counsel for the parties, we are of the view that the aforesaid question of law deserves to be decided in favour of the assessee and against the Revenue. In the appeal preferred by the assessee before the Appellate Assistant Commissioner, the only question that required decision was whether, in the facts and circumstances of the case, the Income-tax Officer had jurisdiction to reopen the assessment under Section 147(a) of the Act. Once the Appellate Assistant Commissioner came to the conclusion that the Income-tax Officer had no jurisdiction to reopen the case under Section 147(a) of the Act and the order of reassessment was liable to be quashed, he had no jurisdiction to make any further direction for recomputing the amount of capital gains, because as held by the Supreme Court in Rajinder Nath v. CIT [1979] 120 ITR 14, such direction was not necessary for the disposal of the appeal before the Appellate Assistant Commissioner."*

The aforesaid case does not in any manner support Shri Shambhu Chopra, learned counsel appearing for the Revenue.

The next case relied on by Shri Shambhu Chopra, learned counsel appearing for the revenue is **T.M. Kousali Vs. Sixth Income-Tax Officer, 155 ITR 739.** In the said case, the Karnataka High Court had occasion to consider the provisions of Section 153 (3) (ii) of the Income Tax Act, 1961. Following was laid down by the Karnatka High Court in the said case.

> " *Both sides do not dispute that if s. 153(3)(ii) of the Act does not apply, the impugned notices are barred by time and,*

therefore, the only question that calls for a critical examination is the true scope and ambit of s. 153(3)(ii) of the Act. That section that is material as amended by the Direct Taxes (Amendment) Act of 1964, which came into force on October 6, 1964, reads thus :

"153. (3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A), be completed at any time -...

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act."

Section 153(3) in clear terms lifts the bar of limitation for reopening of assessments to which certain periods of limitation are prescribed under s. 153(1) and (2) of the Act. Sri Ramabhadran also does not dispute this position also. But, he contends that the words "or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act" should be given a restricted meaning and should be read as referable to proceedings of the very assessee for the very assessment period either before a High Court or the Supreme Court that can deal with an assessment under the Constitution and not to every order of every court in other legal proceedings like the land acquisition proceedings."

Another Division Bench judgment of the Calcutta High Court in **Commissioner of Income-Tax Vs. Chitranjali, 159 ITR 801,** has been relied on by Shri Shambhu Chopra, learned counsel appearing for the Revenue. Following was laid down by the Calcutta High Court in the said case.

"In the instant case, the assessment has been completed

on a return filed by the assessee within the period prescribed under section 153(1)(a) of the Act. It was not contended that in view of the subsequent return filed, the original return was invalid or non est. Section 139(5) permits an assessee, if he discovers an omission or wrong statement in the original return to file a revised return at any time before the assessment is made. Such revised return does not wash away the original return. Such revised return does not exonerate the assessee of any default or offence committed with reference to the original return. As a matter of fact, in this case, the Income-tax Officer in the course of the assessment initiated penalty proceedings under section 271(1)(c) of the Act. An originally filed return is a return in all essential respects and the revised return only cures the defects contained in the original return. In disposing of an appeal, the Appellate Assistant Commissioner may confirm, reduce, enhance or annul the assessment or he may set aside the assessment or refer the case back to the Income-tax Officer for making a fresh assessment in accordance with the direction given by him. On appeal from the assessment, if it was completed within the period of limitation, the Appellate Assistant Commissioner may set aside the assessment and direct the Income-tax Officer to make a fresh assessment, if the assessment is otherwise not in conformity with law or procedure. The Income-tax Officer has the same power in making such fresh assessment as he had originally while making the assessment under section 143 of the Act. If the Appellate Assistant Commissioner does not limit the scope of the enquiry by the Income-tax Officer to any specific aspect or issue, but only sets aside the entire assessment and directs the Income-tax Officer to make the assessment afresh, the power of the Income-tax Officer is not affected by anything which he might have omitted to do in the original order of assessment which was set aside by the Appellate Assistant Commissioner. In this case, the entire assessment order was challenged and the Appellate Assistant Commissioner, after accepting the contention of the assessee about the infirmity in the assessment, set aside the

assessment directing the Income-tax Officer to make a fresh assessment. The Income-tax Officer in reframing the assessment can take into account all the returns filed before him.

Section 153(3)(ii) of the Act provides that where an assessment is made in consequence of or to give effect to any finding or direction contained in the order passed by the Appellate Assistant Commissioner under section 250 of the Act, the limitation prescribed under section 153(1)(a) or 153(1)(c) will not apply. Therefore, once the original assessment was completed within the period of limitation, there is no further prohibition for making a fresh assessment in consequence of or to give effect to any finding or direction contained in the order passed by the Appellate Assistant Commissioner."

In the above case, the appellate authority has set-aside the assessment made by the Income Tax Officer and directed for making fresh assessment. In the said background it was held that the limitation prescribed under Section 153 (1) will not apply. The said case is not applicable and also does not help Shri Shambhu Chopra, learned counsel appearing for the Revenue.

The last case relied on by Shri Shambhu Chopra, learned counsel appearing for the Revenue is the Division Bench judgment of the Madras High Court in **J.K.K. Natarajah & Ors. Vs. Wealth-Tax Officer, Central Circle-VII, Madras & Ors, 142, ITR, 804.** A similar provision in the Wealth Tax Act,1957 namely:Section 17 A(4) came up for consideration in the aforesaid case. In the said case the Madras High Court held that the bar of limitation otherwise prescribed under the Wealth Tax Act, 1957 shall not apply in this context to any direction issued by the High Court. Following was laid down by the Madras High Court.

"Section 17A(4) lays down that the bar of limitation otherwise prescribed under the Act shall not apply to any assessment or reassessment made on an assessee in consequence of, or to give effect to, any direction contained in any order of a Court otherwise than by way of reference. Orders

of the High Court under art.226 of the Constitution are covered by this provision. In the foregoing paras. of this judgment we have shown how the valuation orders and the consequential assessment orders are bad in law. Our decision, however, is founded on the limited ground that the petitioners have not been given a fair hearing by the Valuation Officer. This procedural shortcoming, however, can be made good, if the valuation officers were directed to comply with the provisions of s.16A and redo their valuations.

We accordingly think it proper in this group of writ petitions to quash and set-aside the petitioners' assessments to wealth-tax for the assessment years 1965-66 to 1974-75, and also quash the orders passed under s.16A on which the said assessment orders are based. We may make it clear that the valuation orders hereby set-aside include not only those orders having reference to the assets of the partnership firms in which the petitioners are partners, but also other valuation orders having reference to the petitioners' own individual properties. We may further make it clear that while the valuation orders are set aside, there will be a direction to all the valuation officers concerned to take up the proceedings de novo and proceed with the valuation in accordance with the law. In such proceedings, the petitioners will be at liberty to raise all contentions of law and fact, including those which they have raised in these writ petitions which we have not considered in this judgment."

The order of the High Court passed in Writ Petition Nos.162/1992 and 278/1992 has been quoted above. In the order dated 01/8/1995, neither there is any finding nor there is any direction which can be relied on by the Assessing Officer for framing the assessment. There being neither any direction nor any finding within the meaning of Section 153 (3) (ii) of the Act, 1961, the submission of Shri Shambhu Chopra, learned counsel appearing for the Revenue that there shall be no limitation for making assessment cannot be accepted.

In view of the foregoing discussions, the additional question as framed by us is also answered in favour of the assessee and against the Revenue.

In the result all the appeals are dismissed.

Order Dated:22/5/2014.
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