

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**MONDAY, THE TWENTY THIRD DAY OF DECEMBER  
TWO THOUSAND AND TWENTY FOUR**

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

**INCOME TAX TRIBUNAL APPEAL NO: 27 OF 2009**

Appeal filed under Section 260A of the Income Tax Act, 1961 against the Order dated 26.09.2008 passed in I.T.A No. 217/Hyd/08 for the Assessment Year 1993-94 on the file of the Income Tax Appellate Tribunal, Hyderabad Benches "A", SMC, Hyderabad preferred against the Order dated 13.12.2007 passed in ITA.No. 404/I TO-5(3)/CIT(A)-V/2006-07 on the file of the Commissioner of Income Tax (Appeals) – V, Hyderabad preferred against the Order dated 15.09.2006 passed in PAN No. ACYPB 0286D/1993-94 on the file of the Income Tax Officer, Ward-5(3), Hyderabad.

**Between:**

Smt. Srikantadevi Baldwa, W/o Ramkrishna Baldwa, aged about 70 years, Occ: Business 5-8-352, Chirag Ali Lane, Abids, Hyderabad

**...APPELLANT**

**AND**

1. Commissioner of Income-Tax, Andhra Pradesh-IV, Hyderabad. Aayakar Bhavan, Basheerbagh, Hyderabad.
2. Income Tax Officer, Ward-5 [3], Aayakar Bhavan, Basheerbagh, Hyderabad.

**...RESPONDENTS**

**Counsel for the Appellant: Mr.Siddarth Toshnival, Learned Counsel rep  
Mr. K.L.RATHI, Learned Counsel**

**Counsel for the Respondents: Sri. J V PRASAD (Senior Standing Counsel For  
Income-Tax)**

**The Court delivered the following: JUDGMENT**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**  
**AND**  
**THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

**I.T.T.A. No.27 of 2009**

**JUDGMENT:** *(Per the Hon'ble Sri Justice J.Sreenivas Rao)*

Mr. Siddharth Toshnival, learned counsel appears for Mr.K.L. Rathi, learned counsel for the appellant/assessee.

Mr. J.V. Prasad, learned Senior Standing Counsel for Income Tax Department for the respondents.

2. This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") has been filed by the assessee. The subject matter of the appeal pertains to assessment year 1993-94. The appeal was admitted on the following substantial question of law:

"Whether the order dated 15.09.2006 passed by the Assessing Officer under Section 220(2) of the Income Tax Act, 1961, is barred by limitation?"

3. **Brief facts of the case:**

3.1 Facts giving rise to filing of this appeal briefly stated are that the assessee filed returns for the assessment year 1993-94 and the Income Tax Officer, Ward-1(9), Hyderabad passed

order on 26.03.1996 under Section 143(3) of the Act on a total income of Rs.4,56,200/- and issued demand notice for Rs.2,99,828/- and thereafter demand notice and assessment order were duly served on the assessee. Consequently, an order was passed by the Commissioner of Income Tax (Appeals)-1, dated 28.08.1996. Thereupon another order was passed on 02.07.1997 by the Income Tax Officer, Ward-1(9), Hyderabad to give effect to the said appellate order. The total income of the assessee was revised at Rs.2,77,930/- and the consequential demand payable thereon was finally determined at Rs.1,63,153/-.

3.2 Accordingly, competent authority issued notice dated 04.08.2006 directing the assessee to pay an amount of Rs.1,63,153/- after adjusting the amount of taxes paid Rs.86,862/- and Rs.5,000/- in respect of the amounts paid towards penalties levied under Section 271(1)(c) and 271(1)(b) of the Act respectively inclusive of the interest payable under Section 220(2) of the Act as on that date. Thereupon, the assessee submitted petition on 17.08.2006 for granting refund due on account of the penalty paid. The Income Tax Officer after considering the representation submitted by the

assessee has passed the order holding that the assessee has not paid the tax of Rs.1,63,153/- within the stipulated time allowed under Section 156 of the Act i.e., within 30 days from the date of service of demand notice and assessment order and charged interest invoking the provisions of Section 220(2) of the Act through order dated 15.09.2006. Thereupon, the assessee filed application on 03.11.2006 before the Income Tax Officer for rectification of the order dated 15.09.2006. The Income Tax Officer rejected the said application through his order dated 14.02.2007.

3.3 Aggrieved by the said order, the assessee filed appeal before the Commissioner of Income Tax (Appeals)-V, Hyderabad and the Commissioner dismissed the appeal confirming the order of the Income Tax Officer by order dated 13.12.2007. Thereupon, the assessee filed further appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") and the Tribunal dismissed the appeal and confirmed the order of the Commissioner by its order dated 26.09.2008 holding that the provisions of Section 154 of the Act are not applicable and the Assessing Officer has

rightly invoked the provisions of Section 220(2) of the Act. Thus, the assessee filed the present appeal.

4. Learned counsel for the assessee submitted that the Assessing Officer levied interest under Section 220(2) of the Act after expiry of four years from the date of assessment and as per Section 154 of the Act, the Assessing Officer cannot levy interest after four years. It is submitted that the assessee has specifically raised the ground of limitation before the Commissioner of Income Tax (Appeals)-V, Hyderabad and the Tribunal. Both the authorities without properly considering the same, simply confirmed the order of the Assessing Officer and the same is contrary to law. In support of his contention, learned counsel for the assessee relied upon the judgments in **i) Nawab Mir Barkat Ali Khan Bahadur v. Assistant Controller of Estate Duty<sup>1</sup>; ii) Commissioner of Income-Tax v. U.B. Electronic Instruments Limited<sup>2</sup>; iii) Commissioner of Income-Tax (TDS) v. Anagram Wellington Assets Management Company Limited<sup>3</sup>; iv) Director of Income-Tax (International Taxation) and**

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<sup>1</sup> (1996) 222 ITR 672 (AP)

<sup>2</sup> [2015] 371 ITR 314 (T&AP)

<sup>3</sup> [2016] 389 ITR 654 (Guj)

**another v. Executive Engineer, Bangalore Water Supply and Sewerage Board v. Income-Tax Officer (International Taxation)<sup>4</sup>; v) Clix Capital Services Private Limited (formerly known as GE Money Financial Services Private Limited) v. Joint Commissioner of Income-Tax<sup>5</sup>; and vi) Manik Chand Burman v. Income-Tax Officer<sup>6</sup>.**

5.1 *Per contra*, learned Senior Standing Counsel submitted that Section 154 of the Act is applicable for only rectification of assessment order and the same is not applicable to do with levy of interest under Section 220(2) of the Act and the Assessing Officer levied interest through order dated 15.09.2006 invoking the provisions of Section 220(2) of the Act. It is further submitted that the assessee filed application under section 154 of the Act before the Assessing Officer for rectification of the said order. The said application was rightly rejected by the Income Tax Officer on 14.02.2007. It is further submitted that the Commissioner of Appeals after considering the grounds raised by the assessee has rightly dismissed the appeal on 13.12.2007 and the said order was

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<sup>4</sup> [2020] 428 ITR 294 (Kar)

<sup>5</sup> [2023] 459 ITR 470 (Del)

<sup>6</sup> [1998] 229 ITR 90 (All)

confirmed by the Tribunal and there are no grounds to interfere with the order passed by the Tribunal.

5.2 It is contended that the provisions of Section 154 of the Act is only applicable for rectification of the error or mistake and there is no mistake in the order and the Assessing Officer exercising the powers conferred under the provisions Section 220(2) of the Act rightly charged interest for the delayed payment of tax by the assessee, as the assessee has not paid the tax for a period of more than six years. The Assessing Officer has rightly charged the interest invoking the provisions of Section 220(2) of the Act and there is no limitation prescribed under the Act for charging interest. In support of his contention, he relied upon the decisions in **i) Bombay Gas Company Limited vs. Gopal Bhiva<sup>7</sup>; ii) M/s.Hindustan Times Ltd. vs. Union of India and others<sup>8</sup> and iii) Dr.Reddys Laboratories Limited, Hyderabad v. The Deputy Commissioner of Income Tax I, International Taxation, Aayakar Bhavan, Basheerbagh,**

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<sup>7</sup> 1963 Law Suit (SC) 143

<sup>8</sup> AIR 1998 Supreme Court 688

**Hyderabad & another (W.P.No.1513 of 2019 of this Court).**

6. We have considered the submissions made on both sides and have perused the record. The assessing officer by an order dated 15.09.2006 under Section 220(2) of the Act held that the assessee is liable to pay a sum of Rs.1,63,153 as interest as he had not paid the amount of tax within the stipulated time. The said order was passed in respect of assessment year 1993-94. The assessee instead of challenging the order dated 15.09.2006 passed by the assessing officer filed an application under Section 154 of the Act seeking rectification of the order dated 15.09.2006 passed by the assessing officer. The aforesaid application was rejected by the assessing officer on 14.02.2007.

7. Thereupon, the assessee filed appeal before the Commissioner of Income Tax (Appeals)-V, Hyderabad and the Commissioner of Income Tax (Appeals)-V, Hyderabad dismissed the appeal holding that the Assessing Officer has rightly charged interest exercising the powers conferred



under the provisions of Section 220(2) of the Act and the same was confirmed by the Tribunal.

8. It is relevant to extract the provisions of Section 220(2) of the Act, which reads as follows:

“(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at [one per cent] for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid.”

Thus, the above said provision clearly reveals that the assessee is liable for payment of interest if the tax amount demanded under Section 156 of the Act within the stipulated time. In the case on hand, the assessee has not paid the demanded amount of Rs.1,63,153/- towards tax due and payable to the Department within the stipulated period and the Income Tax Officer rightly exercised the powers conferred under Section 220(2) of the Act.

9. Section 154 of the Act deals with rectification of mistake. The aforesaid provision is applicable only in case of arithmetical or clerical error. In the case on hand, there is no arithmetical ~~error~~ error apparent in the order passed by the

Assessing Officer under Section 220(2) of the Act. The Tribunal while dismissing the appeal specifically held that there is no error or mistake in the order passed by the Assessing Officer under Section 220(2) of the Act. Hence the provisions of Section 154 of the Act are not applicable.

10. Insofar as decisions relied upon by the learned counsel for the assessee in **Nawab Mir Barkat Ali Khan Bahadur** (supra), **U.B. Electronic Instruments Limited** (supra), **Anagram Wellington Assets Management Company Limited** (supra), **Executive Engineer, Bangalore Water Supply and Sewerage Board** (supra), **Clix Capital Services Private Limited** (supra) and **Manik Chand Burman** (supra) are concerned, the same are an authority for the proposition that in case the statute does not provide a period of limitation, the power has to be exercised within a reasonable time limit. The question whether or not the power has been exercised within a reasonable time, has to be decided in the facts and circumstances of each case. Therefore, the aforesaid decisions are of no assistance to the assessee.

11. The Tribunal while considering the provisions of Sections 220(2) and 154 of the Act and also the law, dismissed the appeal and confirmed the order of the Commissioner as well as the orders of the Assessing Officer by giving cogent reasons. Hence the contention of the learned counsel for the appellant that the Tribunal as well as Commissioner without considering the grounds raised by the assessee in respect of charging of interest invoking the provisions of Section 220(2) of the Act beyond period of limitation of four years dismissed the appeal, is not tenable on the ground that the Tribunal as well as Commissioner after due verification of the records and also the provisions of the Act and law passed the order.

12. The principles laid down in the above said judgment is squarely applicable to the facts and circumstances of the case on hand on the ground that the assessee in spite of the demand notice issued under Section 154 of the Act demanding an amount of Rs.1,63,153/-, which is payable to the Department, has not paid the said amount within the stipulated time i.e., a period of 30 days. As per the provisions of Section 220(2) of the Act, the assessee is liable to pay

interest, especially as there is no specific time for fixation of time limit for charging interest. The power to levy the interest, in the facts and circumstances of the case, has been exercised within a reasonable time.

13. In view of the preceding analysis, the substantial question of law is answered against the assessee and in favour of revenue.

14. In the result, we do not find any merit in this appeal. Accordingly, the same fails and is hereby dismissed. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

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A.V.S.S.C.S.M. SARMA  
JOINT REGISTRAR

SECTION OFFICER

To

1. The Income Tax Appellate Tribunal, Hyderabad Benches "A", SMC, Hyderabad.
2. The Commissioner of Income Tax (Appeals) – V, Hyderabad.
3. The Income Tax Officer, Ward-5(3), Hyderabad.
4. One CC to Mr. K.L.Rathi, Advocate [OPUC]
5. One CC to SRI. J.V.PRASAD, SC FOR INCOME TAX [OPUC]
6. Two CD Copies

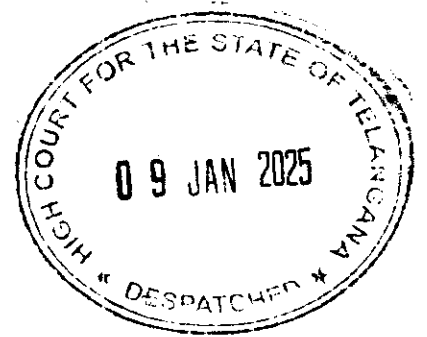
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HIGH COURT

DATED: 23/12/2024

JUDGMENT  
ITTA.No.27 of 2009



DISMISSING THE I.T.T.A

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