

(2013) 07 KAR CK 0356

In the Karnataka High Court

Case No : Sales Tax Appeal No. 1443 of 2010 CH-8

Ganesha and Company

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Agricultural Income Tax Act, 1957 — Section 32(1), 32(5), 34(1), 37

Citation : (2013) 07 KAR CK 0356

Hon'ble Judges : S.L. Subramanya, C.T.M.; Basavaraj S. Sappannavar, D.J.M.

Bench : Division Bench

Advocate : M.V. Ganesh Prasad, Party-in Person, for the Appellant; B. Vasanthkumar, State Representative, for the Respondent

Judgement

S.L. Subramanya, CTM

1. This appeal is filed u/s 34(1) of the Karnataka Agricultural income tax Act, 1957 (for short, "the Act") against the order passed u/s 32(5) of the Act for the assessment year 1989-90 (financial year ending on 31-3-1989) by the Joint Commissioner of Commercial Taxes (Appeals), Malnad Division, Shimoga (for short, "FAA") by which appeal filed u/s 32(1) of the Act was rejected as barred by limitation by Appeal Order No. KAIT.AP. 03/2008-09, dated 11-7-2008. The brief facts relevant to decide the aforesaid matter are these:

Assessment order u/s 19(3) of the Act was passed by the Assistant Commissioner of Commercial Taxes (AIT) (Assessment), Chikmagalur on 31-7-1996. This order was carried in appeal before FAA in Appeal No. KAIT.AP. 03/2008-09. The FAA rejected the appeal as barred by limitation for the reason that the appeal against the aforesaid order of assessment was dismissed and against the order of appeal passed by FAA was not appealed before this Tribunal. Consequently, the order of assessment was held to have become final. Secondly, it was observed that the application for rectification u/s 37 of the Act which should be filed within five years from the date of passing the order of appeal was not filed within the above period of limitation. The appeal was finally held as

barred by limitation.

2. The aforesaid appeal order passed by FAA is disputed as to its validity in the present appeal. The main grievance of the appellant is that the status of the assessee was required to have been considered as registered partnership firm in the name and style of M/s. Ganesh and Company, Chikmagalur instead of Body of individuals in the name and style of M.L. Vasudeva Murthy and Others, Coffee Planter, Lalithabhandara Estate, Chikmagalur. Among other grounds, the present appeal petition is filed challenging the validity of appeal order passed by FAA.

3. The FAA has recorded categorically in the appeal order passed by him that an appeal order was already passed by dismissing the appeal for the assessment year 1989-1990 and it was not appealed before the Karnataka Appellate Tribunal. Hence, he held that orders of AA and FAA have become final. Even for rectification if any u/s 37 of the Act, the limitation provided therein had expired. Consequently, he held the appeal filed by Sri M.V. Ganesh Prasad as barred by limitation. The appellant applied for rectification of the impugned appeal order in the application filed on 25-7-2008 u/s 37 of the Act. The FAA reiterated his findings given in the impugned appeal order and the application for rectification was rejected by endorsement issued on 29-7-2008. Again, one more application for rectification was filed on 30-7-2008 u/s 37 of the Act. He reiterated his findings given in the impugned appeal order and the reasons given in the endorsement issued on 29-7-2008 and rejected this second application for rectification. In both the applications for rectification, it was pleaded to consider the status of firm as registered partnership firm instead of body of individuals as per the assessment order. Both the applications were rejected for the reasons recorded in the impugned appeal order and the endorsements issued.

4. In view of the categorical finding of the FAA in the impugned appeal order that no appeal was filed before Karnataka Appellate Tribunal and secondly there was no case for rectification, it became necessary for us to examine and give our findings as to whether the present appeal is maintainable in accordance with facts and law.

5. We have verified the records of the lower authorities.

6. Sri M.V. Ganesh Prasad, who is stated to be one of the partners in the firm having name and style M/s. Ganesha and Company, Chikmagalur was heard in regard to maintainability of the present appeal. Several opportunities of being heard were allowed to him. Written submissions and arguments submitted by him were duly considered by us. We have also heard the learned State Representative and written submissions filed by him have also been considered by us.

7. For the above reasons, the points that arise for our consideration are as under:

Point No. (1): Whether, in facts and circumstances the appeal is maintainable u/s 34(1) of the Act?

Point No. (2): What order?

8. Our answer to the above points are as under:

Point No. (1): In the negative.

Point No. (2): As per the order for the reasons assigned below:

REASONS

9. Point No. (1).--Section 34(1) of the Act reads as under:

34. (1) Any officer empowered by the State Government in this behalf or any assessee objecting to an order of the Assistant Commissioner of Agricultural Income Tax or an Agricultural Income Tax Officer u/s 23, or an order passed by the Joint Commissioner u/s 22 or Section 32 or Section 32A, may appeal to the Appellate Tribunal within sixty days from the date on which the notice of such order was communicated to the assessee.

As per the aforesaid provision, only an assessee objecting to an order passed by the lower authorities as per any of the provisions mentioned in the aforesaid provision can appeal. Thus, the appellant has to establish himself as an assessee objecting to the order passed under any of the provisions mentioned u/s 34(1) of the Act. In other words, the appellant has to participate by way of assessee or appellant or both as the case may be as per the aforesaid provisions as an aggrieved person from any of the orders mentioned under the above provision of the Act. In case of appeal against the order passed u/s 32(5) of the Act by FAA, the second and subsequent appeal should be presented by the appellant for adjudication by this Tribunal u/s 34(1) of the Act.

10. With the aforesaid legal position, the matter in question has to be examined according to the records of the lower authorities. It is for the reason that the matter of maintainability in the case is question of fact that has to be ascertained from the records of the lower authorities. We have to leave proper findings on this order in regard to the matter in question.

11. As per assessment records: The position of facts is as under:

The AA has passed order of assessment bearing No. 164/89-90 u/s 19(3) of the Act read with Sections 26 and 27 of the Act on 31-1-1996 in the name and style M/s. Ganesha and Company, Lalithaprasadam, Hosmane Extension, Chikmagalur. Total tax was levied at Rs. 1,15,003/-. Gross agricultural income was determined at Rs. 5,39,596/-. Expenditure claimed and allowed was determined as Nil. Firm tax on the gross agricultural income was deducted and balance of allocable income was determined at Rs. 4,24,593/-. The assessee namely M/s. Ganesha and Company, was held as dissolved firm. The assessable income was distributed among the partners of the dissolved firm on proportionate basis according to evidence examined by the AA. The share of income in case of Sri M.L. Vasudeva Murthy and Smt. M.V. Parvatha Vardhana was clubbed and transferred to individual file. In the same manner, the share of income relating to six other

partners of dissolved firm was transferred to respective individual file.

12. The aforesaid order of assessment was carried in appeal before FAA who was the Joint Commissioner of Agricultural Income Tax (Appeals), Mysore Division, Mysore along with the assessment orders for the assessment years of 1990-91 and 1991-92 passed under the Act. He was the jurisdictional Appellate Authority as on the date of passing appeal order u/s 32(2) of the Act. It was found by FAA that the appeal petitions were belatedly filed by 178 days. After providing opportunity according to law and as per the principle of natural justice, the learned FAA rejected the appeal petitions as barred by limitation of time after recording the reasons. The relevant portions of the appeal order (page No. 107/assessment records) passed on 18-12-1996 in the name and style: M/s. Ganesh and Company, Chikmagalur are as under:

Reference to the appeals on the first page of the appeal order is as under:

No. KAIT.AP.CKM. 127/96-97

No. KAIT.AP.CKM. 128/96-97

No. KAIT.AP.CKM. 129/96-97.

Findings of the FAA in the second page of the appeal order:

The contentions of the appellant are examined. There is no proof to suggest that, the appellant has taken immediate action to file the appeal petitions. It is also not forthcoming that, the Auditor at Bangalore has failed to file the appeal petitions in time. Lack of co-ordination or communication between the appellant and the Auditor is not a matter to be entertained by this authority. The Hon''ble High Court of Karnataka in case of M/s. Guruprasad Agencies v. State of Karnataka in STRP Nos. 85 and 86 of 1991, observed that the factors like ignorance of law, financial difficulties, humanitarian considerations can be considered as relevant for condonation of delay. But the negligence and lethargy cannot be considered as cause for the delay. Since the appellant's case does not fit into the former category, the reason offered by him for condonation of delay cannot be construed as circumstances beyond his control, which prevented him from filing the appeal petitions belated by 178 days. The delay is taken cognizance of. It is not condoned.

In the result, the appeal petitions are rejected as barred by limitation of time.

The learned FAA has recorded his findings and on the basis of such findings, he has rejected the appeal petitions as barred by limitation of time. In other words, he has disposed of the appeals on merits in regard to the maintainability and the admission to go forward for disposal on merits. It is seen from the assessment records, the aforesaid appeal order passed u/s 32(2) of the Act on 18-12-1996 has not been appealed u/s 34(1) of the Act before this Tribunal. In other words, the aforesaid appeal order became final as it remained unchallenged before this Tribunal u/s 34(1) of the Act. It is also a fact as per the assessment order, Sri

M.V. Ganesh Prasad, the appellant in the present case, was assessed as partner in the dissolved firm and his share of income at 40% was assessed and transferred to his individual file. There was opportunity for him according to law u/s 34(1) of the Act to carry the above appeal order in further appeal before this Tribunal. He did not carry the above appeal order in further appeal u/s 34(1) of the Act. Having lost the opportunity of further appeal by any of the or all the partners of dissolved firm as per the above assessment order through the appeal order passed by FAA, due to which this order has become final, the matter of assessment in any manner including the dispute on status of the assessee cannot be reopened according to law.

13. In view of the aforesaid reasons, we are of the view that the present appeal preferred by Sri M.V. Ganesh Prasad who has declared himself as a capitalist partner in the firm, M/s. Ganesha and Company, cannot be entertained as it is not maintainable, even when read with the appeal records of FAA and this Tribunal.

14. As per appeal records:

The position of facts is as under:

As per the appeal petition in Form 13 prescribed under Rule 23(a) of the Karnataka Agricultural income tax Rules, 1957 (for short, "Rules") filed before the FAA who is the Joint Commissioner of Commercial Taxes (Appeals), Malnad Division, Shimoga, the appellant has challenged the determination of status of the assessee by pleading to continue the status of the assessee as firm instead of body of individuals as held by the AA. The above contention was only the ground in the appeal petition.

15. The AA has passed one more assessment order u/s 19(3) of the Act bearing No. 824/89-90 for the assessment year 1989-90 (financial year ending 31-3-1989) (page Nos. 5 to 8/appeal records) in the name and style, Sri M.L. Vasudeva Murthy and Others, Coffee Planter, Lalithabhandara Estate, Chikmagalur. The AA has determined the status of the assessee as body of individuals after recording the reasons at page 6 of the assessment order. He has recorded the status of the assessee on the facing sheet of the assessment order as body of individuals. Gross agricultural income was determined at Rs. 11,45,780/-. After considering various expenditures claimed at Rs. 15,71,771.45, the AA has determined total loss at Rs. 74,988.90. It is carried forwarded to the next year of assessment for set off.

16. The aforesaid order of assessment was challenged by disputing the determination of the status of the concern as body of individuals instead of partnership firm before FAA. The learned FAA has passed appeal order in the name and style, M/s. Ganesh and Company, Lalithabhandara Estate, Hosamane Badavane, Chikmagalur bearing No. KAIT.AP. 03/2008-09, dated 11-7-2008 u/s 32(5) of the Act. The reference portion of the appeal order reads as under:

Read: Appeal petition dated 29-4-2008 in Form 13, against the order of assessment dated 31-7-1996, passed by the AA (AIT) (Assessment), Chikmagalur u/s 19(3) for the year 1989-90.

The last para of page No. 2 of the appeal order reads as under:

The appellant in this appeal is stated to be a partner of the firm in the accounting year 1988-89 relevant for assessment year 1989-90. Since the time gap between the date of order and the date of filing the appeal is more than 10 years, whether the appeal could be allowed considering the facts of the case which are not stated in the memorandum of appeal has to be decided first.

The findings while disposing of the appeal are recorded at page No. 3 as under:

The assessment in this case for the assessment year 1989-1990 was passed on 31-7-1996 in the name of Sri M.L. Vasudeva Murthy and others. The copy of the assessment order was served on Sri M.L. Vasudeva Murthy on 3-9-1996. The assessee had preferred an appeal against the order dated 31-7-1996 before the JCCT (Appeals), Malnad Division, Shivamogga. The said authority in its Order No. 110/1996-97 (1989-90), dated 3-9-1997 has dismissed the appeal. It appears that, the appellant has not filed further appeal before the KAT against the above order. Thus the orders of the Assessing Authority and the Appellate Authority have become final. If appellant is of the view that there was a mistake apparent on records, he could have applied for rectification of mistake u/s 37 within five years from the date of passing the order sought to be rectified. In the instant case the assessment order was served on the assessee on 3-9-1996 and he had filed appeal before the First Appellate Authority and said appeal was dismissed and the application cannot be considering as an application for rectification as it has been filed after 5 years from the date of the order passed by the Appellate Authority the appeal filed by Sri M.V. Ganesh Prasad is barred by limitation. Hence, the same is hereby rejected.

17. As per the aforesaid findings in the appeal order, the FAA has held as under:

1. The assessment order impugned was for the assessment year 1989-90 (financial year ending 31-3-1989) which was passed on 31-7-1996 in the name of Sri M.L. Vasudeva Murthy and others.
2. The appeal preferred against the above assessment order bearing No. 110/1996-97 (1989-90) was dismissed by order on 3-9-1997.
3. No further appeal before this Tribunal u/s 34(1) was preferred by the affected assessee as per the above assessment order and the appeal order.
4. Consequently, the orders of AA and FAA have become final.
5. If at all there was a case of rectification of the appeal order passed u/s 32 of the Act, application for rectification u/s 37 should be filed within five years from the date of passing the order sought to be rectified. As it was not filed before five years from the date of appeal order passed on 3-9-1997, question of rectification

under the above provision does not arise.

6. In the final analysis, FAA has held that the appeal filed by Sri M.V. Ganesh Prasad is barred by limitation and accordingly, the same was rejected.

As per the aforesaid appeal order and analysis of the said order, it is clear and evident that there was no appeal u/s 34(1) of the Act against the appeal order passed by FAA on 3-9-1997. Consequently, the appeal petition filed before FAA cannot be considered once more as the validity of the assessment order was already decided by the appeal order passed by FAA on 3-9-1997. In the result, question of considering the appeal filed again on the above matter which was already decided by an appeal order passed by FAA on 3-9-1997 which has attained finality as per law in the absence of further appeal before this Tribunal u/s 34(1) of the Act. Therefore, the learned FAA has rightly held that the appeal filed before him cannot revive the matter in one more appeal before him by challenging the validity of the assessment order which has attained finality in the absence of further appeal u/s 34(1) of the Act before this Tribunal against the appeal order passed by him on 3-9-1997.

For the sake of clarity and as a matter of abundant caution, the FAA has also held that there is no scope for rectification u/s 37 of the Act as limitation period of five years was completed long ago. Therefore, the appeal petition cannot be considered even for the purpose specified u/s 37 of the Act. In other words, from any angle according to law, the appeal petition filed before him cannot be maintained by the appellant and therefore, it was rightly rejected.

18. As appeal order was already passed on 3-9-1997, there was no need for passing one more appeal order u/s 32(5) of the Act. But, the FAA has preferred to dispose of the appeal petition filed before him on 29-4-2008 by an order under the above provision. Instead of passing an order u/s 32(5) of the Act, the FAA could have disposed of the frivolous appeal filed before him by way of endorsement with details recorded by him in the appeal order passed on 11-7-2008. Merely because, an appeal order though not required according to law was passed on 11-7-2008 by FAA, it cannot be construed that the order issued by him u/s 32(5) of the Act is an appeal order which can be appealed u/s 34(1) of the Act. Therefore, we observe that the order passed u/s 32(5) of the Act on 11-7-2008 by the FAA can at best be considered as endorsement intimating the position of fact and law by FAA. In other words, we are constrained to hold that the order passed on 11-7-2008 by FAA is not an appeal order passed u/s 32(5) of the Act and hence it was an endorsement intimating the position of fact and law. Law u/s 32 does not provide for passing one more appeal order on the disputed order on which appeal order was passed already. In the circumstances, we further observe that the order passed by FAA on 11-7-2008 was nothing but an endorsement intimating the position of law and was not an order of appeal which can be challenged u/s 34(1) of the Act. As the previous appeal order passed on 3-9-1997 has already attained finality according to law, in the absence of further appeal u/s 34(1) of the Act against the above

appeal order, there is no appeal order of the FAA available to reagitate the matter either before FAA under any guise of interpretation of fact or law or before us in the appeal u/s 34(1) of the Act. Therefore, the order of FAA passed on 11-7-2008 cannot be appealed in appeal u/s 34(1) of the Act as it is mere endorsement intimating the position of fact and law and further close of the matter of the orders of AA and FAA which have attained finality and are no longer available for re or fresh agitation in appeal before this Tribunal u/s 34(1) of the Act.

19. The appellant did not stop making his efforts to revive the appeal filed before FAA on 29-4-2008. He sought for rectification of mistake of the order of FAA passed on 11-7-2008 u/s 37 of the Act by way of application for the said purpose filed on 25-7-2008. The FAA issued an endorsement (page 60 of assessment records) on 29-7-2008 by recording the following reasons:

The assessment in the case of Lalithabhandara Estate Hosamane, Chikmagalur for the assessment year 1989-90 was concluded on 31-7-1996 considering the status of assessee as "body of individual". The said order was challenged before the Joint Commissioner of Commercial Taxes (Appeals), Malnad Division, Shivamogga in AP.No. 110/96-97. The Appellate Authority in its order dated 3-9-2007 has dismissed the appeal. As per Section 32 of KAIT Act, 1957, if any assessee is aggrieved by an order passed by the Assessing Authority, he shall submit the appeal within 60 days from the date of service of the order. In the case of Lalithbhandaraa Estate Hosamane. Chikmagalur the assessment order was communicated to Sri M.L. Vasudeva Murthy on 3-9-1996. The appeal filed by him was dismissed on 3-9-1997. If there was any mistake apparent in the appeal order, the application should have been filed within five years from the date of the order. Since the appeal order was passed about 10 years back, the application filed for rectification now is barred by time limitation. Hence, the appeal filed by the applicant was rightly rejected in this office order dated 11-7-2008. Since there was no mistake apparent from the order dated 11-7-2008, the application of the applicant for rectification u/s 37 is hereby rejected.

20. The aforesaid endorsement has reiterated the facts and findings recorded in the order passed by FAA on 11-7-2008. This endorsement was intimated the position of fact and law to the appellant. This endorsement intimates the same facts and law as per the order of FAA passed on 11-7-2008 and is nothing but an endorsement after the above endorsement issued on 11-7-2008. Therefore, it cannot be an order appealable in terms of Section 34(1) of the Act before this Tribunal. This endorsement does not revive the frivolous appeal filed on 29-4-2008 in the light of the unchallenged and finally attained appeal order passed on 3-9-2007.

21. The appellant has again filed one more application on 30-7-2008 seeking rectification of the order of FAA passed on 11-7-2008 and endorsement issued on 29-7-2008. The FAA issued endorsement (page 161/appeal records) on

26-9-2008 and he has intimated the following:

The appeal filed by him against the order of the assessment dated 31-7-2006 passed by the AC (AIT) (Asst.), Chikmagalur has been rejected as barred by limitation in this office order dated 11-7-2008. Again he had filed an application on 25-7-2008 for rectification of mistake u/s 37 of the AIT Act. The said application was processed and the same was rejected through this office endorsement dated 29-7-2008. The appellant has made another application on 30-7-2008. It had pursued the application and noticed that, the applicant has objected to the recording that the appellant had no dispute about the computation of total and taxable income. That observation was about the contents of the appeal petition. It is not disputed that he had only challenged the status adopted for assessment by the Assessing Authority. He has not disputed the gross and net income adopted for assessment. It is considered not necessary to go into the details of the other points as the case was barred by limitation. Thus, there is no mistake in the order passed on 11-7-2008, which calls for action u/s 37 of the KAIT Act, 1957. Thus, the same is hereby rejected. The copies of the order dated 11-7-2008 and endorsement dated 29-7-2008 are enclosed to this endorsement for his reference.

In regard to new matter of dispute raised before FAA in the application for rectification, the FAA has rightly intimated that it is not necessary to go into the details of other points as the case was barred by limitation. Rest of the contents of the endorsement is similar to the contents in the endorsement issued by him on 29-7-2008. The aforesaid endorsement has been correctly issued by reiterating the findings he has recorded in the earlier endorsement issued on 29-7-2008 and the order of 11-7-2008 which we have considered as a mere endorsement intimating the position of facts and law. As appeal order passed on 3-9-1997 has attained finality without challenge u/s 34(1) of the Act, this third endorsement cannot also revive the closed matter of appeal.

22. The above facts and position of law clearly prove that the present appeal against the order of FAA filed u/s 34(1) of the Act before this Tribunal cannot be entertained in the light of the fact that the order of appeal of FAA passed on 3-9-1997 has attained finality without challenge u/s 34(1) of the Act. The same reason holds good in case of the earlier appeal order of FAA passed on 18-12-1996. In the circumstances the present appeal cannot be entertained and thereby, we hold that the appeal is not maintainable. Consequent to this reason, we cannot go forward for subsequent admission process of appeal.

23. In view of the elaborate reasons which we have discussed according to the records and law, the Point No. (1) is answered in the negative. Point No. (2).--For the above reasons, we pass the following:

ORDER

The appeal filed is rejected as not maintainable u/s 34(1) of the Act before this Tribunal.