

**Merind Ltd. Vs. Inspecting Assistant**

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**SooperKanoon Citation :** [sooperkanoon.com/64368](http://sooperkanoon.com/64368)

**Court :** Income Tax Appellate Tribunal ITAT Mumbai

**Decided On :** Sep-07-1990

**Reported in :** (1990)35ITD553(Mum.)

**Judge :** S Kapur, M Ajinkya

**Appellant :** Merind Ltd.

**Respondent :** inspecting Assistant

**Judgement :**

1. These are appeals for the assessment years 1981-82 and 1982-83 filed by the assessee against the consolidated order of the CIT (Appeals) dated 31-3-1986. Several grounds are raised in these appeals which are dealt with seriatim. We will first deal with the assessment year 1981-82.

2. The first ground raised for this year is that on the facts and in the circumstances of the case the assessment made for the assessment year 1981-82 is barred by limitation and hence invalid in law as the period commencing from the date on which the ITO forwarded the draft assessment order to the assessee and ending with the date on which the assessee received directions from the IAC has exceeded the specified period of 180 days. Certain facts in this regard may first be stated.

The assessee is a limited company deriving income from manufacture and sale of pharmaceutical products. For the assessment year 1981-82, the ITO forwarded

the draft assessment order to the IAC on 10-2-1984.

The IAC's directions under Section 144B were received by the ITO on 26-9-1984 and the order of assessment was passed by the ITO on the same date. It is now the case of the appellant that since the period between the date of forwarding the draft assessment order and the date when the directions of the IAC under Section 144B were received by the ITO exceeds 180 days, the assessment is bad in law. In support of this argument, the counsel for the assessee referred to Clause (iv) of Explanation 1 to Section 153 which read as under:- (iv) the period (not exceeding one hundred and eighty days) commencing from the date on which the Income-tax Officer forwards the draft order under Sub-section (1) of Section 144B to the assessee and ending with the date on which the Income-tax Officer receives the directions from the Inspecting Assistant Commissioner under Sub-section (4) of that Section, or, in a case where no objection to the draft order are received from the assessee, a period of three days, or.

According to Shri Mistry, this Clause indicated that the IAC had to give his directions under Section 144B within 180 days from the date on which he received the draft assessment order from the assessing officer. If the IAC took more than 180 days in giving his directions on the draft assessment order, such order, according to Shri Mistry, would be bad in law. In the present case, this was the position and, therefore, the assessment was ab initio void.

3. We cannot persuade ourselves to accept this argument which, to our mind, is farfetched and not supported by the language and intent of the relevant provisions. The Section which provides for time limit for completion of assessment is Section 153. The Section as it stood for the relevant assessment years provided that no order of assessment shall be under Section 143 or Section 144 and at any time after the expiry of two years from the end of the assessment year in which the income was first assessable when such assessment year is an assessment year commencing on or after 1-10-1969. Thus, in the normal case, the assessment has to be completed within two years from the end of the assessment year from which the income is first assessable. Explanation 1 provides certain exceptions to this rule. It provides, inter alia, that while counting the periods of limitation for the

purpose of Section 153, certain periods will be excluded, e.g., the period during which the assessment proceedings are stayed by an order or injunction of the Court. Similarly, Clause (iv) of Explanation 1 provides that the period not exceeding 180 days commencing from the date on which the assessing officer forwards the draft order under Sub-section (1) of Section 144B to the assessee and ending with the date on which the assessing officer receives the directions from the IAC under Sub-section (4) of that Section will be excluded from the normal period of limitation of two years. Thus, the effect of this Clause is that the normal period of limitation which, in the present case would expire on 31-3-1984, would be extended by a period of 180 days, i.e., up to 30-9-1984, and, in the present case, the assessment order, having been passed on 26-9-1984, is a perfectly valid order. It may be noted here that Clause (iv), on which so much reliance has been placed by the assessee's counsel, has to be considered as a part of Section 153 which prescribes time limit for passing assessment order; it does not govern the time limit within which directions can be given by the IAC under Section 144B. In fact, Section 144B, as it then stood, does not contemplate any order. It only contemplates directions on the draft assessment order to be given to the assessing officer by the IAC. Therefore, there can never be any time limit placed on the IAC for giving such directions. Clause (iv) of Explanation 1 to Section 153 is an enabling Clause which is intended to provide for a situation where an assessing officer may not be able to get directions from the IAC on the draft assessment order to enable him to pass the final order of assessment within the normal period of two years from the end of the assessment year. This Clause only extends the normal period of two years by a further period of 180 days within which time the assessing officer is expected to refer the draft assessment order to the IAC and get his directions thereon and pass the final order of assessment. This Section does not place any hindrance or constraint on the IAC's powers of issuing directions under Section 144B. Being a Clause in the Explanation below Section 153, the contents of this Clause have, of necessity, to be considered in the context of the period of limitation that is prescribed and that is binding on the assessing officer. If any limitation was to be placed on the IAC under Section 144B, such limitation would have been prescribed in that Section itself. Since this has not been done, we cannot accept Shri Mistry's argument that Clause (iv) of the

Explanation 1 to Section 153 prescribes a period of limitation of 180 days within which the IAC is expected to issue his directions under Section 144B. We find support for this finding in a decision of the Bombay Bench of the Tribunal in ITO v. Reno Chemicals, Pharmaceuticals & Cosmetics (P.) Ltd. [1984] 10 ITD 849. In that case, the IAC had taken more than 180 days for giving directions on the draft order and on that ground the CIT(A) had held that the assessment was time-barred. In this case the Tribunal held that the period of limitation under Section 153 would be extended by 180 days under Explanation I(iv) and the contention that the extension of time was to be counted from the date draft order was forwarded and not the date by which the assessment should be completed was not well-founded. This was also the view taken by another Bench of the Tribunal in Heritage Estates (P.) Ltd. v. ITO [1985] 11 ITD 519 (Bom.).The Tribunal, in that case, held that under Clause (iv) of the Explanation, the ceiling of 180 days has been fixed for exclusion, obviously because, in such a case, time is taken not by an outside agency but by the ITO and the IAC, who are officers of the department. The time to be excluded under Explanation 1 (iv) is actually the time taken in these proceedings subject to the ceiling of 180 days and this time up to 180 days is available to the ITO for completing the assessment over and above the period of limitation of two years. For these reasons, the first ground of appeal is rejected.

3A.The second ground is that the CIT (Appeals) erred in allowing depreciation only at 10% in respect of one weighing machine installed during the year of account as against the appellant's claim of 15%. It was argued by Shri Mistry that since the weighing machine is an item of plant & machinery which comes into contact with corrosive chemicals, depreciation(c) 15% along with extra shift allowance is admissible as per Appendix I, PartI(III)B(7). No evidence in support of this claim has been produced before us by Shri Mistry. We do not, therefore, find any reason to interfere with the decision of the CIT(A) in this regard, which is confirmed and this ground is also rejected.

4. to 25. [These paras are not reproduced here as they involved minor issues.]

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