IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 14TH DAY OF JUNE 2024 / 24TH JYAISHTA, 1946

WA NO. 1611 OF 2023
AGAINST THE JUDGMENT DATED 3.8.2023 IN WP(C) NO.7779 OF 2016 OF HIGH COURT OF KERALA

APPELLANT/WRIT PETITIONER:

EQUITY INTELLIGENCE INDIA PVT. LTD
5TH FLOOR, AREEKAL MANSION, MANORAMA JUNCTION, PANAMPILLY NAGAR, COCHIN, REP BY ITS MANAGING DIRECTOR, MR PORINJU VELIYATH, PIN – 682036

BY ADV P.K.RAVISANKAR

RESPONDENTS/RESPONDENTS:

1. **PRINCIPAL COMMISSIONER OF INCOME TAX**
   CENTRAL REVENUE BUILDING, I S PRESS ROAD, KOCHI, PIN – 682018

2. **THE ASSISTANT COMMISSIONER OF INCOME TAX**
   CIRCLE 1(1), ERNAKULAM, PIN – 682018

BY ADVS.
STANDING COUNSEL SRI.JOSE JOSEPH (B/O)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This Writ Appeal is preferred by the petitioner in WP(C).No.7779 of 2016, aggrieved by the judgment dated 03.08.2023 of a learned Single Judge in the Writ Petition.

2. The brief facts necessary for the disposal of the Writ Appeal are as follows:

The appellant had approached the writ court through the Writ Petition aforementioned, impugning Exts.P10 and P11 orders of the Commissioner of Income Tax that rejected the Revision Petitions moved by the appellant for revising the assessments for the years 2007-2008 and 2009-2010 under the Income Tax Act. The appellant is a SEBI (Securities and Exchange Board of India) registered Portfolio Manager engaged in the business of rendering portfolio management services to its clients. It is also an assessee under the Income Tax Act, which has been filing returns and has been subjected to assessment for various assessment years. During the assessment years 2004-2005 and 2005-2006, the appellant returned a net profit on the sale of shares and declared the profit as capital gains for the purposes of payment of

income tax. The said returns were accepted by the Department and, in the absence of any scrutiny assessments, the said assessments under Section 143(1) of the Income Tax Act attained finality. For the assessment year 2006-2007 also, the appellant returned the net profit on the sale of shares as capital gains. However, although the department originally accepted the said return, it was subsequently reopened, along with the assessment for the year 2008-2009, and the assessments were completed by treating the profits as business income for the purposes of the Income Tax Act. In the meanwhile, for the assessment years 2007-2008 and 2009-2010, the appellant had suffered a loss on transactions of sale of shares, and accordingly had declared a capital loss in the returns. The said returns were accepted by the Department under Section 143(1) of the Act. In view of the inconsistent stand taken by the department, the assessment for the years 2006-2007 and 2008-2009, that assessed the profits of the appellant as profits of business for the purposes of income tax, were challenged by the appellant up to the High Court, but did not meet with any success since by Ext.P8 judgment this Court confirmed the orders of the Income Tax Authorities. We are told that a further appeal preferred by the appellant before the Supreme Court is pending consideration before the said Court.

3. While so, on receiving the First Appellate Authority's order for the assessment years 2006-2007 and 2008-2009, that confirmed the assessment against the appellant by treating the profit on sale of shares as business income, the appellant filed Exts.P6 and P7 Revision Petitions in relation to the two assessment years, namely, 2007-2008 and 2009-2010, when it had actually suffered a loss, for treating the said losses as business losses that could be carried forward by the appellant in future years. It was the contention of the appellant that inasmuch as the Department had treated the profits from the sale of shares as business income for the assessment years 2006-2007 and 2008-2009, it was only logical and in the interest of uniformity in taxation, that the Department treated the losses on the sale of shares as business losses for the purposes of the Income Tax Act. Exts.P6 and P7 Revision Petitions, however, were dismissed by the revision authority by Exts.P10 and P11 orders primarily on the ground of delay. The revision authority also found that the intimation under Section 143(1) could not be treated as an order that was amenable to revision under Section 264 of the Income Tax Act. In the Writ Petition aforementioned the appellant had impugned Exts.P10 and P11 orders of the revision authority, *inter alia,* on the contention that the Department could not be permitted to vaccilate between two heads of income for the purposes of taxing income of the same nature for different assessment years. The contention, in other words, was that in order to ensure uniformity in

taxation and fairness to an assessee, it was incumbent upon the Income Tax Department to treat the income of the same nature similarly for taxation during the various assessment years in question.

4. The learned Single Judge, who considered the matter found that the revision authority could not be faulted for rejecting the revision applications on the ground of delay more so when there was no explanation by the appellant for the delay in preferring the revision application against the intimation orders that were served on the appellant much earlier. The Writ Petition was, therefore, dismissed by the learned Single Judge.

5. In the appeal before us, it is the contention of Sri. Ravi Sankar P.K, the learned counsel for the appellant, that Exts.P6 and P7 Revision Petitions filed by the appellant before the revision authority were with a view to ensure uniformity in the matter of taxation as far as the appellant was concerned. He would point out that it would be grossly unfair to an assessee if the Department was permitted to vacillate between two heads of income for the purposes of taxation in different assessment years depending entirely on whether the assessee in question had returned a profit or a loss. It is his contention that the delay that was occasioned in impugning the intimation for the

assessment years 2007-2008 and 2009-2010 was solely on account of the fact that they were pursuing the appeal proceedings against the orders of the assessing authority for the assessment years 2006-2007 and 2008-2009 where similar income was treated as business income for the purposes of taxation.

6. Per contra, it is the submission of Sri.Jose Joseph, the learned Standing counsel for the Income Tax Department that, if uniformity in the matter of taxation is insisted upon, then there would be no justification whatsoever for denying the revenue an opportunity to revise the assessments for the years 2004-2005 and 2005-2006 during which years the appellant assessee had declared the profit on the sale of shares as capital gains and the same was accepted by the Department. He points out that the assessments for those years could not be reopened only because of the limitation prescribed under the statute. He further contends that since the Department is prevented from re-opening those assessments only on account of a statutorily prescribed period of limitation**,** the appellant assessee cannot be conferred with an undue advantage by permitting it to revisit the assessments for the assessment years 2007-2008 and 2009-2010.

7. On a consideration of the rival submissions, while we were

initially inclined to accept the submissions of the learned counsel for the appellant, that the aspect of uniformity and fairness in taxation should outweigh the delay occasioned in preferring the revision petitions, we find ourselves unable to ignore the submissions of the learned Standing counsel for the Income Tax Department that it was the same aspect of delay/limitation that prevented the Department also from re-assessing the income of the appellant for the assessment years 2004-2005 and 2005-2006, respectively. We find that during the said years the appellant had declared the profit on the sale of shares as capital gains and had obtained the benefit of a lower rate of tax on the said income, and the revenue was unable to reassess the said income as business income solely on account of the limitation provisions under the statute. As far as the appellant assessee is concerned, he too did not choose to file the Revision Petitions immediately after coming to know of the assessment order for the assessment years 2006-2007 and 2008-2009, when the revenue had changed its stand and insisted on the assessment of the profits on sale of shares as business income. Had the appellant filed the revision petitions immediately on noting the changed stand of the revenue, perhaps the view taken by us in this appeal might have been different. We find, however, that the appellant assessee chose to wait till the order of the Appellate Authority that confirmed the stand of the Assessing Officer with regard to the changed treatment of the income for the purposes of taxation, and only then chose to

approach the revision authority through Exts.P6 and P7 Revision Petitions. The delay in approaching the revision authority cannot, therefore, be condoned as rightly held by the revision authority as also by the learned Single Judge in the judgment impugned in this appeal. To condone the delay and permit the appellant to re-visit the concluded assessment for the assessment years 2006-07 and 2008-09 would tantamount to conferring an unfair advantage to the appellant whilst denying such an advantage to the revenue. Thus, for the reasons stated in the judgment of the learned Single Judge, as supplemented by the reasons in this judgment, the Writ Appeal fails and is accordingly dismissed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

mns