Appeal couldn't be barred by limitation in absence of evidence that ITAT's order was served on revenue authority

Summary – The High Court og Uttarakhand in a recent case of Hyundai Heavy Industries Co. Ltd., (the Assessee) held that where there was no evidence on record that order passed by Tribunal was infact served on Director (International Taxation), which was mandatory requirement of section 260A(2)(a), appeal filed by revenue could not be dismissed being barred by limitation

Facts

- The case of the appellant *i.e*. Director (International Taxation) was that it had filed appeal against the Tribunal's order on 13-7-2011. As the copy of the impugned order was received in the office of the appellant only on 16-3-2011, an appeal under section 260A was to be filed within a period of 120 days from the date of receipt of a copy of the order. Therefore, the appellant submitted that the appeal had been filed within time.
- The respondent/asseessee on the other hand submitted that in response to a query under the Right to Information Act, the Tribunal had given information to the effect that the order of the Tribunal dated 29-5-2009, which was impugned order in this case, was in fact dispatched by the Tribunal to the office of the Deputy Commissioner on 9-9-2009. It was submitted by respondent, that it was the said authority, which was arrayed before the Tribunal, the order was communicated to him, it was received by him; and if the receipt by the said officer was treated as a receipt within the meaning of sub-section (2)(a) of section 260A, the instant appeal was barred by limitation.

Held

- Section 2(16), which defines the word 'Commissioner', includes a Director of Income Tax also as a Commissioner. In the context of section 260A, therefore, the Director would be treated as a Commissioner. He would, therefore, be one of the persons, who could maintain an appeal under section 260A within a period of 120 days from the date of receipt by him of the order passed by the Tribunal.
- As far as the contention of the assessee that, under the information furnished under the Right to Information Act, it must be taken that the Commissioner received the copy of the order, as it is seen dispatched by the Tribunal on 9-9-2009 is concerned, the said contention cannot be accepted. It is true that answer to the query under the Right to Information Act is made available. The specific case of the appellant is that, though it may have been shown as dispatched, the registers would bear the appellant in his contention that no such document was actually received. The appellant has volunteered with the offer that the Court may order any inquiry, go through any record which they

are also prepared to produce and it will confirm the case of the appellant that, on 9-9-2009, it was dispatched and, therefore, it was received, is not correct.

- Further, the contradictory stand was taken by the respondent/assessee; on the one hand, it is stated that it is dispatched on 9-9-2009, thereafter, it is stated that it was served on same date *i.e.*, 9-9-2009 is practically impossible. In this context, it is relevant to notice that the respondent/assessee has not, apparently, made any efforts to ascertain whether the impugned order, which was alleged to have been dispatched on 9-9-2009, had actually been served, which could have been done by way of making queries with the post-office. Therefore, the case of the appellant that the impugned order was not received could not be rejected.
- As regards the knowledge of the order, which is attributed to the appellant by virtue of various proceedings, it may be beside the point, as section 254(3) contemplates a duty with the Tribunal to communicate the order. Section 260A creates a right of appeal and provides that appeal is to be preferred within a period of 120 days. The appeal is to be lodged within 120 days of the receipt of the order. Reading these provisions together, it is clear that what is contemplated by the law giver is that an appeal must be lodged within a period of 120 days from the date of receipt of the order and receipt is to be understood as meaning that there is a duty also on the Tribunal to communicate the order to the person, who is entitled to lodge the appeal.
- In this case, the person, who is to file the appeal, is the Director and it is the definite case of the appellant that the order was communicated and received by the office only on 16-3-2011. The appeal is filed within 120 days from the date of receipt, namely, 16-3-2011. Therefore, having regard to the statutory provisions in question, the knowledge attributed to the appellant earlier than 16-3-2011, by virtue of its being party to various proceedings or even proceedings under section 263 being commenced with the Commissioner, may not help the respondent/assessee to contend that the appeal is beyond time. As it would not be an actual accrual of cause of action to file an appeal as provided under law, unless received.
- As regards the circulars relied on by the assessee, one may straightaway notice that they are dated 24-5-2011 and 11-8-2011. Though assessee did point out that Circular dated 24-5-2011 was issued before the appeal is filed, it cannot assist the respondent/assessee having regard to the fact that it was issued only on 24-5-2011, as the Court is proceeding on the basis that the impugned order was received on 16-3-2011, since the appeal has been filed within the time provided counting the date of receipt as 16-3-2011. No doubt, it is the duty of the department, if it wishes to lodge an appeal, to take steps in terms of what is announced as part of the litigation policy. This is rather important that controversies relating to revenue are given a quietus within a reasonable time-frame, be it from the stand point of the department or from the perspective of the assessee.
- Regarding the reliance placed on what is described as a circular dated 11-8-2011 relating to the obligation to intimate the Tribunal about the change of jurisdiction, two aspects are there. In the first place, what the said communication contemplates is, if there is a change of jurisdiction during the pendency of the appeal, there is a duty to bring it to the notice of the Tribunal. It is not clearly

established as to whether the so-called change of jurisdiction is something, which was brought about during the pendency of the appeal. Secondly, it is also not clear as to whether what is described as a circular is one, which is issued under any statutory provision obliging the authority to follow it or making it mandatory.

- It is also relevant to bear in mind, in the context of the framework of the Act in question, that unlike other law, the law giver does not contemplate the aggrieved party making an application and obtaining the certified copy as a condition for preferring an appeal. The order is to be mandatorily communicated by the Tribunal to the persons entitled. Since there is a specific mode, which is provided under the Act, the appellant may not be unjustified in contending that the appeal is within time from the date of receipt of the order by the appellant.
- In such circumstances, the contentions of the assessee are repelled and it is held that the appeal is within time.