

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI LALIT KUMAR, JUDICIAL MEMBER**

**ITA No. 5853, 5854, 5855, 5857, 5858, 5859, /Del/2013
AYs: 2006-07, 2007-08, 2009-10**

DCIT, Central Circle 03
New Delhi

vs. M/s Raj Katha Products P.Ltd.
2042, Katra Tobacco
Khari Baoli
New Delhi 110 006

(Appellant)

(Respondent)

Appellant by : Sh. Kartar Singh, CIT, D.R.

Respondent by : Sh. Suresh Kr. Gupta, C.A.

ORDER

PER BENCH

All these appeals are filed by the Revenue directed against separate but identical orders of the Ld. Commissioner of Income Tax (Appeals)-I, New Delhi pertaining to the Assessment Year s(A.Y.) 2006-07, 2007-08 and 2009-10.

As the issues arising in all these appeals are common, for the sake of convenience they are heard together and disposed of by way of this common order.

1.1. The assessee raised the issue of limitation by invoking "Rule 27" of ITAT Rules. As the Ld.CIT(A) had considered this ground of the assessee and decided the issue against the assessee, we hold that the assessee is entitled to raise this ground on the issue of limitation under Rule 27 of ITAT Rules.

2. We have heard Shri Kartar Singh, the Ld.CIT,D.R. on behalf of the Revenue and Shri Suresh Kumar Gupta, the Ld.Counsel for the assessee. .

2.1. After hearing rival contentions and on a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

3. We find that at para 4.3 to 4.5 of the order of the Ld.CIT(A) it was held as follows.

“4.3 Section 275 imposes certain limitation on passing of penalty orders. The relevant dates in the case are as under:-

<i>Date of search</i>	<i>30.06.2009</i>
<i>Date of order u/s 153A</i>	<i>30.12.2011</i>
<i>Date of reference by AO to Addl.CIT</i>	<i>30.05.2012</i>
<i>Date of notice u/s 271D / 271E to appellant</i>	<i>22.08.2012</i>
<i>Date of order by the Addl.CIT</i>	<i>30.11.2012</i>

4.4 The case of the appellant is that the limitation contained in section 275(1)(c) is applicable to its case, as interpreted by the courts / tribunals cited in its submissions, and the order passed u/s 271D / 271E is barred by limitation prescribed therein. Section 275(l)(c) provides that no order imposing a penalty under the chapter shall be passed (i) after the expiry of the Financial Year (FY) in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or (ii) six months from the end of the month in which action for imposition of penalty is initiated, which ever period expires later. In the present case, the first period of limitation expired at the end of FY 2011-12, i.e. on 31.03.2012, as the assessment order was passed on 30.12.2011 and there appears to be no further appeal against the said order. The subsequent period in the case, however, expired at the end of six months on 28.02.2013, as the action for imposition of penalty, i.e. issue of notice u/s 271 D / 271 E by the Addl.CIT, was taken on 22.08.2012. As the order was passed on 30.11.2012, it was within the period of limitation prescribed u/s 275(1)(c).

4.5 In view of the above, this ground of appeal raised by the appellant is contrary to the law in the matter and is, accordingly, dismissed.”

3.1. The Hon'ble Delhi High Court in the case of Principal CIT-5 vs. Jkd Capital & Finelase Ltd. judgement dated 13th October,2015 at paras 8 and 9 it was held as follows.

“8. We are unable to agree with the above submission of learned Standing counsel for the Revenue. [Section 275](#) (1) (c) reads as under:

275. (1) No order imposing a penalty under this Chapter shall be passed

(a)....

(b).....

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

9. In terms of the above provision, there are two distinct periods of limitation for passing a penalty order, and one that expires later will apply. One is the end of the financial year in which the quantum proceedings are completed in the first instance. In the present case, at the level of the AO, the quantum proceedings was completed on 28th December 2007. Going by this date, the penalty order could not have been passed later than 31st March 2008. The second possible date is expiry of six months from the month in which the penalty proceedings were initiated. With the AO having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is 30th June 2008. The later of the two dates is 30th June 2008.”

3.2. Further at para 11 it was held as follows.

“11. In fact, when the AO recommended the initiation of penalty proceedings the AO appeared to be conscious of the fact that he did not have the power to issue notice as far as the penalty proceedings under [Section 271-E](#) was concerned. He, therefore, referred the matter concerning penalty proceedings under [Section 271-E](#) to the Additional CIT. For some reason, the Additional CIT did not issue a show cause notice to the Assessee under [Section 271-E](#) (1) till 20th March 2012. There is no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice under [Section 271-E](#) of the Act. The Additional CIT ought to have been conscious of the limitation under [Section 275](#) (1) (c), i.e., that no order of penalty could have been passed under [Section 271-E](#) after

the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice under Section 271- E beyond 30th June 2008, the Additional CIT defeated the very object of Section 275 (1) (c)."

4. Applying the propositions laid down in this case law by the Jurisdictional High Court to the facts of the present case, we hold that all the impugned orders levying penalty are barred by Limitation. The penalty order should have been passed not later than 30th June, 2012. As the impugned order is passed beyond this date, all the appeals are barred by Limitation. Hence all the Revenue appeals are dismissed.

5. In the result all the appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 08th March, 2016.

Sd/-

(LALIT KUMAR)
JUDICIAL MEMBER

Sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 08th March, 2016

- Manga

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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By Order,

ASSISTANT REGISTRAR