

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,  
NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA ACCOUNTANT MEMBER

ITA No. 6178/DEL/2012  
[Assessment Year: 2007-08]

Sparrowhawk International Channels Vs.  
India Pvt. Ltd., 602 Antriksh Bhawan  
New Delhi

The D.C.I.T  
Circle - 9(1)  
New Delhi

PAN : AAACH 6943 E

[Appellant]

[Respondent]

Date of Hearing : 28.06.2018  
Date of Pronouncement : 29.06.2018

Assessee by : Shri Sunil Bakshi, CA

Revenue by : Shri K. Tiwari, Sr. DR

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the assessee has challenged the correctness of the order of the CIT(A) - XII, New Delhi dated 30.10.2012 pertaining to A.Y 2007-08.

2. The solitary grievance of the assessee is that the Id. CIT(A) has erred in confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] which has been levied by an order which is barred by limitation in accordance with the provisions of section 275 of the Act.

3. The roots for levy of penalty lie in the assessment order dated 29.10.2009 framed u/s 143(3) of the Act by which the returned loss of Rs. 54.89 lakhs was assessed at a loss of Rs. 18.21 lakhs.

4. While framing the assessment, the Assessing Officer made an addition of Rs. 19.58 lakhs on account of ROC fees paid for increase in share capital, addition of Rs. 2.50 lakhs paid to Indian Broadcasting Foundation and Rs. 14.60 lakhs being advertisement expenses held to be excessive.

5. In so far as addition of Rs. 19.58 lakhs is concerned, the assessee accepted the same and did not prefer any appeal before the Id. CIT(A). Addition of Rs. 2.50 lakhs and Rs. 14.60 lakhs were contested before the first appellate authority. Penalty proceedings u/s 271(1)(c) of the Act were separately initiated and the Assessing Officer levied penalty

of Rs. 6.59 lakhs on the additions made in the assessment as mentioned elsewhere. Penalty order is dated 29.07.2011.

6. The assessee strongly contended before the first appellate authority that penalty order is barred by limitation in the light of provisions of section 275 of the Act.

7. The ld. CIT(A) was not convinced with the contention of assessee and after considering the provisions of section 275 of the Act, the ld. CIT(A) confirmed the levy of penalty.

8. Aggrieved by this, the assessee is before us. The ld. counsel for the assessee once again vehemently stated that the penalty order passed by the Assessing Officer is barred by limitation. It is the say of the ld. Counsel that the provisions of section 275 of the Act provides that where the relevant assessment is subject matter of appeal before the ld. CIT(A), no order imposing penalty can be passed after expiry of the financial year in which the proceedings for imposition of penalty has been initiated or six month from the end of the month in which the order of the ld. CIT(A), as the case may be, whichever period expires

later. The ld. counsel for the assessee further drew our attention to the proviso of section 275 of the Act and pointed out that in the light of the said proviso, the penalty order dated 29.07.2011 is barred by limitation.

9. Per contra, the ld. DR strongly stated that in the proviso itself, it is provided that an order imposing penalty can be passed within one year from the end of the financial year in which the order of the ld. CIT(A) is received, Therefore, penalty order is not barred by limitation.

10. We have given thoughtful consideration to the orders of the authorities below qua the issue. Assessment framed u/s 143(3) of the Act is vide order dated 29.12.2009. The undisputed fact is that addition of Rs. 19.58 lakhs on account of ROC fee was never contested before the first appellate authority. Therefore, to this extent, the assessment attained finality. As mentioned elsewhere, assessment order is dated 29.12.2009 and date of penalty order is 29.07.2011. Provisions of section 275 read as under:

"Bar of limitation for imposing penalties

275(1)<sup>2</sup> ] No order imposing a penalty under this Chapter shall be passed-

(a)<sup>3</sup> in a case where the relevant assessment or other order is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or an appeal to the Appellate Tribunal under section 253, 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 the order of<sup>4</sup> the Deputy Commissioner (Appeals) or] the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;

**Provided** that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of

which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Chief Commissioner or Commissioner, whichever is later;"

11. A perusal of the aforesaid provisions shows that it refers to order of the Id. CIT(A) when the relevant assessment is the subject matter of the appeal before him. As mentioned elsewhere, addition of Rs. 19.58 lakhs was never the subject matter of the appeal before the Id. CIT(A). Therefore, the period of limitation for passing the penalty order will not be counted within the four corners of the proviso.

12. In our understanding of the law, the penalty order framed u/s 271(1)(c) of the Act dated 29.07.2011 is barred by limitation as the date of assessment order is 29.12.2009 because the appeal which is pending before the Id. CIT(A) as prescribed u/s 275(1)(a) of the Act should not only be relevant, but should also be connected with regard to the initiation of penalty proceedings. We accordingly set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the Act.

13. In the result, the appeal of the assessee in ITA No. 6178/DEL/2012 is allowed.

**The order is pronounced in the open court on 29.06.2018.**

Sd/-

**[H.S. SIDHU]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 29<sup>th</sup> June, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
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