

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.110/Bang/2017
(Assessment Year : 2006-07)

M/s. Agro Tech Cold Storage P. Ltd,
Plot No.22, KIADB Stage-II,
Mundargi Indl. Area, Bellary .. Appellant
PAN : AACCA5466F

v.

Deputy Commissioner of Income-tax,
Circle – 1, Bellary .. Respondent

Assessee by : Shri. Ramasubramanyam, CA
Revenue by : Shri. Vikram Suryavamshi, Addl. CIT

Heard on : 20.02.2019
Pronounced on : 28.02.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee against the order of the CIT (A), Gulbarga, dt.31.10.2016, for the assessment year 2006-07.

02. Following grounds are filed by the assessee :

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the penalty u/s. 271 D of the Act to the extent of Rs. 3,50,000/-.
3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not giving proper opportunity to the appellant to prove that the persons who have advanced money for allotment of shares are residing at places where proper banking facilities are not available.
4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in levying penalty u/s. 271D of the Act even though the loans have been accepted as genuine by the learned assessing officer in the assessment u/s. 143(3) of the Act.

03. The Ld. AR had drawn our attention to the additional ground raised before us, which reads as under :

Additional Ground:

5. That the order passed u/s. 271D by the learned Additional Commissioner of Income Tax is barred by limitation since it is passed beyond the period of six months from the end of the month on which the learned assessing officer referred the matter to Additional Commissioner of Income tax.

For the reason mentioned in the application for admission of the additional ground, we admit the additional ground urged before us.

04. The Ld. AR for the assessee had submitted that in the present case, reference was made by the AO for violation of section 269AA for imposition of penalty u/s.271D to the JCIT on 25.03.2009 and finally order was passed by the JCIT on 25.11.2009 u/s.271D.

05. It was the submission of the Ld. AR that the order was passed after the statutory period of six months provided u/s.275(1)(c) of the Act. It was submitted that the Hon'ble Delhi High Court in the

matter of PCIT v. JKD Capital & Finlease Ltd [378 ITR 614] and PCIT v. Mahesh Wood Products P. Ltd [394 ITR 312] had decided the issue in favour of the assessee and held that the initiation of proceedings would initiate, when the reference was made by the AO to the JCIT. Our attention was drawn to para 9 in the matter of Mahesh Wood Products P. Ltd (supra) to the following effect :

9. However, this question came up for consideration in Principal CIT v. JKD Capital and Finlease Ltd. (supra). The date on which the Assessing Officer recommended the initiation of penalty proceedings was taken to be the relevant date as far as section 275(1)(c) was concerned. There was no explanation for the delay of nearly five years in the Additional Commissioner of Income-tax acting on the said recommendation. The court held that the starting point would be the "initiation" of penalty proceedings. Given the scheme of section 275(1)(c), it would be the date on which the Assessing Officer wrote a letter to the Additional Commissioner of Income-tax recommending the issuance of the show-cause notice. While it is true that the Additional Commissioner of Income-tax had the discretion whether or not to issue the show-cause notice, if he did decide to issue a show-cause notice, the limitation would begin to run from the date of letter of the Assessing Officer recommending "initiation" of the penalty proceedings.

On the basis of the above it was submitted that as the order was passed beyond the period of six months therefore the proceedings are required to be quashed and the relief be granted to the assessee.

06. Per contra, the Ld. DR relies upon the order of the lower authorities and sought to convince that there is a distinction between the initiation of proceedings as mentioned u/s.271D r.w.s.275(1)(c). The proceedings can be said to be initiative only when the notice is issued by the authority competent to issue notice in law. Therefore

it was submitted that the notice was issued by the JCIT on 14.05.2009 and the order was issued on 25.11.2009 and the order passed by the Addl. CIT was within the period of limitation.

07. We have heard the rival submissions and perused the record. At the outset, we may mention that from the bare perusal of the finding recorded by the Hon'ble Delhi High Court in para 9 of the judgment in the matter of Mahesh Wood Products P. Ltd (supra) squarely applies to the facts of the present case. However we feel that there is definitely a distinction between the initiation of the proceedings and reference of proceedings by the officer on 25.03.2009. In our view the initiation of penalty u/s.271D would only commence when the officer is empowered to levy penalty applies his mind and thereafter issue the notice. But in the absence of availability of any decision contrary to the judgment of the Hon'ble High Court of Delhi, we are afraid that though the contention of the Revenue seems to be plausible. However, being the sub-ordinate tribunal, we are bound to follow the decision of the Hon'ble Delhi High Court. In fact the Revenue has not brought to our notice any contrary decision and therefore respectfully following the judgment of the Hon'ble Delhi High Court and also the judgment of the Hon'ble Supreme Court in the Vegetable Products [1973] 88 ITR 192 (SC), we have no other option but to allow the appeal of the assessee. Since we are holding that the order passed by the authority is beyond the period of limitation, hence the orders passed by lower authorities were lacking

jurisdiction, being passed beyond statutory period, null and void.
therefore, we are not adjudicating any other ground on merit.

08. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28th the day of February,
2019.

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 28.02.2019

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.