

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before Shri S.S. Godara, Judicial Member
AND
Shri Inturi Rama Rao, Accountant Member

ITA Nos.63 to 66/Hyd/2018		
Assessment Years: 2007-08 to 2010-11		
AMD Res.& Dev. Centre India (P) Ltd (now known as AMD India P Ltd) Bangalore PAN:AABCC3447R	Vs.	Jt. CIT (International Transaction) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri H. Srinivasulu, Advocate	
Revenue by:	Sri T. Sunil Goutam, DR	
Date of hearing:	28/02/2022	
Date of pronouncement:	04/03/2022	

ORDER

Per Bench.

These assessee's four appeals for the A.Ys 2007-08 to 2010-11 arise against the CIT (A)-X, Hyderabad's separate orders, all dated 25.8.2017, passed in case Nos.464, 463, 462 & 461/CIT(A)-10/2015-16 upholding the Assessing Officer's action imposing the corresponding penalties Rs.16,60,450/-, 40,75,670/-, 1,13,68,013/- and 45,80,892/-assessment year wise, respectively, involving proceedings u/s 271C of the Income Tax Act, 1961, in short (the Act).

Heard both the parties. Case files perused.

2. It emerges at the outset that we hardly need to delve much deeper in the relevant factual matrix of the assessee's first and foremost legal ground herein that the learned lower appellate authorities have erred in law and on facts in imposing the impugned penalties beyond the time limit prescribed in section 275 (1)(a) of the Act. There is hardly any dispute that we are dealing with penalty provision in a fiscal statute herein which deserves to be put to strict interpretation only in light of the Hon'ble Apex Court recent landmark judgment in *Commr. Of Customs vs M/S. Dilip Kumar And Company* (2018) 9 SCC 1 (S.C)(FB).

3. We now advert to basic relevant facts qua the instant legal issue. It is an admitted fact that this tribunal coordinate bench common order in assessee's appeals ITA Nos.692 to 695/Hyd/2014 dated 22.10.2014 had partly affirmed the learned lower authorities action holding the assessee to be an assessee in default in section 201(1) and 201(1A); and that it ought to have deducted TDS on the payments in question involving a Canadian group entity as well as the ultimate recipient M/s. Soctrionics India (P) Ltd.

4. Next come the impugned 271C proceedings taken recourse to by the learned lower authorities. A combined perusal of the instant case files suggests that the Assessing Officer had passed his all the penalty orders on 30.10.2015 after this tribunal had decided the assessee's second appeal on 22.10.2014. Mr. Srinivasulu quotes section 275 of the Act prescribing limitation in such a case involving section 253's second appellate proceedings, the time limit for passing a penalty order here is covered only under the latter times of section 275(1)(a) i.e. six months from the end of rescind" (emphasis supplied).

"Section 275 in The Income- Tax Act, 1995
275. Bar of limitation for imposing penalties

(1) No order imposing a penalty under this Chapter shall be passed-
(a)³ 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 of⁴ 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;]

5. Learned DR has drawn strong support from the CIT (A)'s identical detailed discussions declining the assessee's instant legal arguments as under:

"10. Ground No. 1 is with regard to limitation or legality of the order passed u/s. 271C of the LT. Act. Brief facts of the case are that the appellant company made a remittance of Rs.1,59,81,871/- towards engineering services to its parent company M/ s. ATI Canada during the financial year relevant to the Asst. Year 2007-08. No tax was deducted at source u/s. 195 of the LT. Act on this amount. On being questioned about the non-deduction of tax, the appellant replied that since the appellant company did not possess requisite skills to carry out certain portion of project assigned to it by its parent company, the appellant engaged M/ s. GMD Micro Systems (Soctrionics) to render the services. The ATI, Canada entered into a service contract agreement with M/s. GMD Micro Systems (Soctrionics) for rendering specific services and payment is also made by that company in the first instance which is later cross charged to the appellant company on cost basis. The appellant company while reimbursing these amounts to M/s. ATI, Canada did not deduct tax considering that as reimbursement of expenditure without any profit element in order to attract provisions of Section 195 of the LT. Act. However, the Assessing Officer after verification of the details, bills produced, recording statements of Chartered Accountants of the appellant company and the employees of M/ s. GMD Micro Systems (Soctrionics), came to a conclusion that payment to M/s. ATI Canada under the head "engineering services" is taxable as income from other sources in its hands and tax was not deducted at source by the appellant. This

finding of the Assessing Officer was upheld by the CIT(A). On further appeal by the appellant, Hon'ble ITAT, Hyderabad vide order dt. 22.10.2014 examined whether the appellant made the payments which is in the nature of a reimbursement of expenditure on cost basis or not. Hon'ble ITAT, Hyderabad gave a finding that it is not a mere reimbursement of expenditure and there is involvement of profit element. After elaborately discussing the issue it was concluded that the payment made by the appellant company to M/s. ATI, Canada is in the nature of 'fee for included services' on which the tax need to be deducted at source u] s. 195 of the LT. Act. The appellant did not file any further appeal and accepted the finding of the Hon'ble ITAT, Hyderabad. Penalty proceedings u/s. 271C of the LT. Act were initiated by issuing a notice dt. 30.04.2015. During the course of penalty proceedings, the assessee filed explanation and final penalty order u/s. 271C of the LT. Act was passed on 30.10.2015 by imposing a penalty of Rs.16,60,450/ -.

11. Aggrieved by the penalty order, the assessee is in appeal raising various grounds of appeal. With regard to ground of limitation, the appellant filed written submissions wherein it was contended that as per Section 275 (l)(a) of the Act, the order u/s. 271C of the LT. Act ought to have been passed within 6 months from the end of the month in which the order of Hon'ble ITAT has been received by the Commissioner of Income Tax and such period expired on 31.03.2015 and as the order was passed on 30.10.2015, the same is beyond the limitation period as prescribed under the provisions of Section 275(l)(a) of the LT. Act. The assessee relied on various decisions as under and mentioned that the order passed is liable to be quashed. :

**CIT vs. Mohair Investment And Trading Co. P.Ltd.(2011)(ITA No.511/2011) (Delhi HC) [245 CTR 312]*

**CIT, Bikaner v. Hissaria Brothers (22 August 2016[Civil Appeal No.5254 of 2008] (Supreme Court) [386 ITR 719J*

** Rayala Corporation P.Ltd. vs. Union of India (UOI) and Ors. (2007)288 ITR452 (Madras HC)*

*~*ITO vs. Pandit Vijay Kant Sharma (2015)(I.T.A.No.3709/Del/2008)(Delhi ITAT)*

11.1 The submissions of the appellant were forwarded to the Assessing Officer for a factual report. The Assessing Officer vide letter dt. 04.05.2017 submitted that the provisions of Section 275(1)(c) are applicable in this case and the order passed on 30.10.2015 is well within six months time from the date of issue of show cause notice on 30.04.2015 and therefore within time. The factual report was forwarded to the appellant for a rejoinder, if any. The appellant vide letter dt.

23.06.2017 submitted that there was another show cause notice issued on 21.03.2013 and the notice issued on 30.04.2015 is second show cause notice and again relied on the provisions of Section 275(1)(a) and stated that provisions of Section 275(1)(c) are not applicable. These written submissions were again forwarded to the Assessing Officer for a factual report. The Assessing Officer vide letter d t. 21.07.2017 submitted that the order of the CIT(A) was received in the Office of the CIT (IT &TP) on 31.05.2014 and according to Section 275(1)(a), the last date for passing of order is 31.03.2016 and as the order was passed on 30.10.2015 itself, it is well within the time allowed by the statute. The second remand report was forwarded to the appellant for a rejoinder, if any. The appellant again relied on the provisions of Section 275(1)(a) and as the appellant filed an appeal before Hon'ble ITAT, the time limit of 6 months from the end of the month in which the order of Hon'ble ITAT is received in the O/O. CIT and relied on the decisions of Hon'ble High Court of Delhi in the case of CIT vs. Mohair Investment and Trading Co. P. Ltd.[2011J (ITA No. 511/2011) and on the decision of Madras High Court in the case of Rayala Corporation P. Ltd. vs. Union of India (UOI) and Ors. (2007) 288 ITR 452.

11.2 The submissions of the appellant have been considered. The issue to be decided in this case is whether the provisions of Section 275(1)(a) or 275(1)(c) are applicable and if 275(1)(a) are applicable whether the proviso is to be considered or not and whether the order was passed within the limitation period.

The provisions of Section 275(1)(a) are reproduced as under:

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

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] 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 the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the [Principal Chief Commissioner or] Chief Commissioner or [Principal 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 [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, whichever is later;

11.3 Provisions of Section 275(1)(a) are applicable in this case since in the pre-amended provisions of Section 275(1)(a) also there is a mention about the order being subject matter of appeal before the CIT(A). However, a proviso was introduced w.e.f. 01.06.2003 by Finance Act 2003 to extend the time limit to the orders passed on or after 1st day of June, 2003. As per this proviso, the Assessing Officer gets a period of one year from the end of the financial year in which the order of the CIT(A) is received by the Commissioner of Income Tax. Therefore, the reference point is passing of order by the CIT(A) after 1st day of June, 2003. In this case, the order was passed after this date and it was received in the Office of CIT (IT&TP) in the month of May, 2014 and the financial year being 2014-15, the Assessing Officer can pass the order up to 31.03.2016.

11.4 The decisions relied on the by the appellant have also been considered. In the case of Rayala Corporation P.Ltd. vs. Union of India and Ors., [288 ITR 452], it was held that the appeal is pending before the ITAT against the order of the CIT(A). It was held that the Assessing Officer refused to keep the proceedings in abeyance in view of the proviso to Section 275(1)(a) of the LT. Act. However, Hon'ble High Court decided that proviso to Section 275(1)(a) does not nullify the availability to the third respondent of the period of limitation of 6 months from the end of the month when the order of the Hon'ble ITAT, Chennai is received by the third respondent.

**Thus it can be seen that in this case, the order of the Hon'ble ITAT was received much before the limitation period provided under proviso to Section 275(1)(a) of the LT. Act. The longer period is to be taken and the order passed on 30.10.2015 is very much within the time limit provided in sec 275(1)(a) of the I.T. Act as mentioned in the remand report of the Assessing Officer as the outer limit is 31.03.2016.*

11.5 In the case of CIT, Bikaner v. Hissaria Brothers [386 ITR 719], the Hon'ble Supreme Court held that provisions of Section 271D and 271E of the LT. Act were invoked after six months of limitation and therefore such penalty could not have been imposed.

The facts of this case are different in the sense that penalty proceedings were in progress.

11.6 CIT vs. Mohair Investment & Trading Co. Pvt. Ltd. [245 CTR 312J. It was held that from the plain reading of the relevant section, it is clear that the period of six months provided for imposition of penalty u/s. 275(1)(a) starts running after the successive appeals from an assessment order, has been finally decided by the CIT(A) or the Tribunal as the case may be whichever period expires later.

In this case it was held that the proviso to Section 275(1)(a) has only had the effect of extending the period of imposing penalty from six months to one year within the receipt of order of the CIT after 01.06.2003. This decision supports the case of the Assessing Officer.

11. 7 In the case of ACIT vs. Meenu Agarwal (Tribunal)[42 ITR 520], the period of six months expired from the action initiated for levying of penalty ix]«. 271E and the case relate to 271E which is not dependent on the assessment order. Therefore this decision is not applicable to the facts of this case.

11.8 In the case of CIT vs. Chhajer Packaging and Plastics Pvt. Ltd., Hon'ble High Court of Bombay [300ITR 180] held that penalty order u]«. 271D passed after limitation u/s. 275(1)(c) on 13.03.2000 is according to period of limitation prescribed by either limbs of the clause (c) of 275(1). It was held that in case of penalty under section 271 D, the outer limit is six months from the date of initiation of the proceedings u/s. 271D of the I.T. Act.

11.8.1 As per this decision the outer limit of limitation to be computed under Section 275(1)(c) of the I.T. Act. This decision is not applicable to the facts of this case.

11.8.2 The outer most limit as mentioned in the second remand report in this case is 31.03.2016. Since the order is made in the month of October, 2011115, it is well within the limitation date. Therefore, this ground of appeal is dismissed.”

6. We have given our thoughtful consideration to the four legal arguments and filed no reason to express our agreement with the Revenue's stand that its case is covered under the statutory proviso r.w.s. 275 (1)(c) of the Act. This is for the clinching reason that section 275(I)(a) appears to be a special provision dealing with an instance wherein an appeal is filed against the corresponding quantum proceedings before the tribunal u/s 253 whereas an order imposing penalty under this chapter is to be passed within a period of six months from the end

of the month in which the order u/s 254(1) is received by the specified authorities; or the case may be. The Revenue instead pleads to apply the foregoing section 275(1)(a) proviso only as per the CIT(A)'s discussions. That being the case, we sought to know the crucial date on which the tribunal's order stood received by the prescribed authority which comes out to be 24.11.2014. Faced with this situation, we hold that the statutory period of six months as per the latter limb of the prescribed limitation in section 275(1)(a) stood very well expired as on 31.5.2015 whereas the Assessing Officer has passed his order(s) in issue on 30.10.2015 only. We accordingly hold that the impugned penalties are not sustainable in law since barred by limitation in above terms. The same stand deleted in all these four years therefor.

7. All other pleadings on merits are rendered infructuous.

8. These assessee's four appeals are allowed in above terms. A copy of the common orders be placed in respective case files.

Order pronounced in the Open Court on 4th March, 2022.

Sd/-

Sd/-

(INTURI RAMA RAO) ACCOUNTANT MEMBER	(S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 4th March, 2022.

Vinodan/sps

Copy to:

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1	AMD India (P) Ltd, Plot No.102 & 103 Export Promotion Industrial Park, Whitefield, Bangalore 560066
2	Jt. CIT (International Transaction), Aayakar Bhavan, Hyderabad
3	Chief CIT (A)-10, Hyderabad
4	CIT (IT&TP) (SZ) Bengaluru
5	CIT (IT & TP) Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order