

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
DR. BRR KUMAR, ACCOUNTANT MEMBER**

ITA Nos.5420/Del/2019 : Assessment Year: 2006-07  
ITA Nos.5421/Del/2019 : Assessment Year: 2007-08  
ITA Nos.5422/Del/2019 : Assessment Year: 2008-09

CFM Materials PL (earlier known as GE, Aviation Materials LP), 6 <sup>th</sup> Floor, Building No. 7A, Standard Chartered Building DLF Cyber City, Phase 3, Gurgaon (Hr.) PIN: 122002	<b>Vs.</b>	DCIT Circle 1(3)(1), New Delhi
<b>PAN : AAHFG8921D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	S/Shri Sachit Jolly & Ms. Disha Jham, Adv.
Department by	Shri Bhagwati Charan, SR. DR

ITA Nos.5429/Del/2019 : Assessment Year: 2001-02  
ITA Nos.5423/Del/2019 : Assessment Year: 2007-08

GE Engine Services Malaysia, Building No. 7A, 6 <sup>th</sup> Floor, DLF Cyber City, Phase 3, Gurgaon (Hr.) PIN: 122002	<b>Vs.</b>	DCIT Circle 1(3)(1), New Delhi
<b>PAN : AADCG1773E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	S/Shri Sachit Jolly & Ms. Disha Jham, Adv.
Department by	Ms. Sapna Bhatia, CIT - DR

Date of hearing	30.06.2022
Date of pronouncement	29.07.2022

### **ORDER**

#### **PER SAKTIJIT DEY, JUDICIAL MEMBER:**

Captioned appeals have been filed by two different assessees, challenging separate orders of learned Commissioner of Income-Tax (Appeals)-42, New Delhi, confirming penalty imposed under Section 271(1) (c) of the Income-Tax Act,1961. Appeals bearing ITA Nos. 5420, 5421 & 5422/Del/2019 relating to assessment years 2006-07 to 2008-09, respectively, belong to one assessee. Whereas, ITA Nos.5423 & 5429/Del/2019 pertaining to assessment years 2007-08 and 2001-02 respectively, relate to another assessee.

2. Since, the facts and issues involve in these appeals are more or less common, they have been clubbed together and taken up for disposal in a consolidated order for the sake of convenience. In all these appeals, the assessee has raised a preliminary ground challenging the validity of the orders passed by the assessing officer

imposing penalty under Section 271(1) (c) of the Act on the ground, they are barred by limitation. Before we proceed to deal with the aforesaid legal grounds raised by assessee, it is necessary to deal with the basic facts.

3. Briefly stated, both the assesseees are non-resident entities. Assessments in case of assesseees for the assessment years under dispute were completed under Section 143(3) of the Act. While completing the assessments, the assessing officer held that both the assesseees have Permanent Establishment (PE) in India, hence, income attributable to the PE has to be brought to tax in India.

4. Having held so, the assessing officer proceeded to compute profit on the amounts received by the assesseees with regard to work executed in India @ 3.5%. Against the assessment orders so passed, the assesseees filed appeals before learned first appellate authority and being unsuccessful, went in further appeal before the Tribunal. While deciding assesseees' appeals, the Tribunal, though, upheld the existence of PE, however, the attribution of income to PE was reduced from 3.5% to 2.6% of sales. On the basis of additions sustained by the Tribunal, the assessing officer initiated proceedings for imposition of

proceedings under Section 271(1)(c) of the Act and ultimately passed orders under the said provision imposing penalty as under:

In case of Ist named assessee:

- i) Assessment Year 2006-07 : Rs.6,27,890
- ii) Assessment Year 2007-08 : Rs.5,73,900
- iii) Assessment Year 2008-09 : Rs.5,01,780

In case of 2<sup>nd</sup> named assessee:

- i) Assessment Year 2001-07 : Rs.5,76,470
- ii) Assessment Year 2007-08 : Rs.7,24,330

5. Though, the assessee challenged the orders passed by the assessing officer imposing penalty under Section 271(1)(c) of the Act by filing appeals before learned Commissioner (Appeals), however, learned Commissioner (Appeals) upheld the imposition of penalty.

6. Before us, learned counsel for the assessee submitted that the quantum appeals were disposed of by the Tribunal on 27.01.2017. He submitted, the orders of the Tribunal were served on the Commissioner of Income-Tax (Judicial) (CIT) on 17.04.2017. Whereas, the penalty orders were passed by the assessing officer on 26.04.2018.

7. Drawing our attention to sub-section (1) of section 275 of the Act, learned counsel submitted that the assessing officer has to pass

the penalty order within a period of six months from the end of the month in which the order of the Tribunal was received by the CIT. He submitted, it is a fact on record that order of the Tribunal was received by the CIT on 17.04.2017. In this context, he drew our attention to information received from the Registry under the Right to Information Act, 2005, indicating that the order of the Tribunal was received on 17.04.2017. He submitted, the assessing officer has passed orders on 22.05.2017 giving effect to the orders passed by the Tribunal. Thus, it is established beyond doubt that the assessing officer was in possession of the order of the Tribunal prior to 22.05.2017. Whereas, the orders imposing penalty were passed on 26.04.2018, much beyond the period of limitation prescribed under Section 275(1) of the Act. Thus, he submitted, on the face of it, the orders are non est and void ab-initio. He submitted, while considering appeals of some other group entities involving identical facts and arising out of the very same quantum order of the Tribunal disposing of batch of appeals, the Hon'ble High Court has held that the penalty orders are barred by limitation prescribed under Section 275(1) of the Act. Thus, he submitted, the orders imposing penalty have to be quashed.

8. Opposing the contentions of learned counsel for the assessee, learned Departmental Representative submitted, there is no authentic evidence that the quantum order passed by the Tribunal was served on the authority concerned on the date cited by the assessee. He submitted, assessee might have furnished the copy of the order passed by the Tribunal before the assessing officer and based on which the assessing officer must have passed orders giving effect to the orders of the Tribunal. However, she submitted, that does not fulfill the basic condition of section 275(1) of the Act that the order of the Tribunal was received by the CIT on 17.04.2017, as claimed by assessee. Thus, in sum and substance, she disputed the contention of the assessee that the order of the Tribunal was received by the Revenue on 17.04.2017, hence, the penalty order having not been passed within stipulated period prescribed under Section 275(1) of the Act are barred by limitation.

9. We have given a thoughtful consideration to the rival submissions and perused the material available on record. As per the material placed on record, there is no dispute that against the additions made by the assessing officer, assessee availed appellate remedy and

ultimately appeals were decided by the Tribunal granting partial relief to the assessee. It is also a fact that based on the additions sustained by the Tribunal, the assessing officer has initiated proceedings for imposition of penalty under Section 271(1)(c) of the Act and has ultimately passed orders imposing penalty under the said provision. It is not disputed that the penalty orders were passed on 26.04.2018.

10. On a careful reading of section 275(1) of the Act, it becomes clear that in a case where the assessment order is the subject matter of appeal either before the first appellate authority or before the Tribunal, the assessing officer cannot pass an order imposing penalty under Section 271(1)(c) of the Act after expiry of six months from the end of the month in which the order of the appellate authority is received by Principal Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. So the crucial date is the date of receipt of the order passed by the Tribunal by the CIT, as per section 275(1) of the Act.

11. On a perusal of the communication dated 17.05.2018 received by the assessee from the Registry of the Tribunal under RTI Act, 2005, a copy of which is placed on record, it is clearly borne out that

the order passed by the Tribunal disposing of quantum appeals were received by the CIT(Judicial), New Delhi on 17.04.2017. Thus, this information received under the RTI Act, 2005 does not leave any doubt that order passed by the Tribunal was duly received by the department on 17.04.2017. At this stage, we must observe, learned Departmental Representative has raised an issue regarding the authority of CIT(Judicial), New Delhi to receive order of the Tribunal.

12. In our view, such contention of learned Departmental Representative is unsustainable. This is so because, in the information received under the RTI Act, 2005, it is evident, the CIT(Judicial), New Delhi while receiving many orders, at the same time, returned back some of the orders of the Tribunal, since, they are of outside Delhi Charge. This pre-supposes that CIT(Judicial), New Delhi was delegated and authorized to receive the orders of the Tribunal relating to Delhi charge. Thus, in our considered opinion, the order of the Tribunal was received by the CIT on 17.04.2017 in terms with section 275(1) of the Act. It is also a fact that assessing officer has passed orders, giving effect to the order of the Tribunal on 22.05.2017. This fact further establishes that the order passed by the Tribunal was in

possession of the Revenue, at least, as on 22.05.2017. Whereas, the assessing officer has passed the penalty order on 26.04.2018, much beyond the period of limitation prescribed under Section 275(1) of the Act. Thus, on the face of it, the penalty orders are grossly barred by limitation.

13. It is relevant to observe, while deciding writ petitions filed by some other group entities challenged the penalty imposed under Section 271(1)(c) of the Act involving identical facts, the Hon'ble High Court in W.P.C.(C) 5577/18 and batch of other writ petitions has quashed the penalty orders having found that they are barred by limitation prescribed under Section 275(1) of the Act. For better appreciation, the order of the Hon'ble jurisdictional High Court is reproduced hereunder in extenso:

*“22. As regards the plea that the penalty orders are beyond the period of six months from the end of the month in which the order was received by the CIT (A) in terms of [Section 275 \(1\) \(a\)](#) of the Act, it is contended that the limitation expired only on 30th May, 2018 since according to the Respondents, the order of the ITAT was received by the „jurisdictional“ CIT i.e. CIT International Taxation-1 only on 1st November, 2017.*

*23. It is pointed out by the Respondents that reliance by the Petitioners on the decision of the Full Bench of this Court*

in *Commissioner of Income Tax v. Odeon Builders Private Limited* (supra) is misplaced since that decision was in the context of limitation for filing an appeal under Section 260A (2) (a) of the Act i.e. filing an appeal in this Court against the order of the ITAT. However, in the present case the dispute regarding limitation was referable to Section 275 of the Act and was in a different context viz., levy of penalty. It is submitted that a penalty order can be passed by the jurisdictional AO which in this case is the CIT, International Taxation [CIT (IT)]. Therefore, it is contended that such till time the CIT (IT) receives the copy of the order of the ITAT, the period of limitation for initiating penalty proceedings does not commence. More or less the same plea has been taken by the Respondents in each of the other petitions.

24. This Court has heard the submissions of Mr. Sachit Jolly, learned counsel for the Petitioners, Mr. Sagar Suri, learned standing counsel for Income Tax Department and Ms. Laxmi Gurung, learned senior standing counsel for the Revenue.

25. A consideration of the above submissions has to begin with an examination of Section 275(1) of the Act which reads as under:

"Bar of limitation for imposing penalties.

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

(a) 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;*

*(b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;*

*(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."*

26. *It is seen that more or less the same expression "Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner" as used in [Section 260A](#) of the Act finds place in [Section 275\(1\)](#) (a). The limitation begins to run on the expiry of six months from the end of the month in which the order of the ITAT is received by any of the above officers.*

27. *There are two periods of limitation within which the penalty proceedings have to be completed. One is the expiry of the financial year in which the proceedings in the course of which the action for imposition of penalty has been initiated are completed. The second is the expiry of six months from the end of the month in which the order of the ITAT is received by the above officers. Whichever period expires later becomes the limitation period for issuing an order of penalty. The title of [Section 275](#) reads: "limitation for imposing penalties". [Section 275](#) (1) opens with the line: "no order imposing penalty under this chapter shall be passed" thus, indicating the mandatory nature of the provision.*

28. It is in the above context that it becomes crucial to determine when exactly the order of the ITAT in the present case was received by the CIT. In Commissioner of Income Tax v. Odeon Builders Private Limited (FB) (supra), this Court specifically addressed the issue of the „jurisdictional“ Commissioner“ having to receive the order of the ITAT for the period of limitation to commence. This Court disagreed with the Revenue“s contention in that regard. It was specifically held in Para 50 as under:

*"It is, therefore, not possible to accept the submission that till a particular jurisdictional Commissioner of Income-tax or Principal Commissioner of Income-tax has not received the order of the Income-tax Appellate Tribunal, the period of limitation for filing an appeal against that order does not commence."*

29. The answers to the following questions by the Full Bench are relevant in the present context as well:

*"51. ....*

*Q: (i) What is the correct interpretation to be placed on the expression "received by the Assessee or the Principal Chief Commissioner or the Chief Commissioner or Principal Commissioner" in Section 260A (2) (a) of the Act? Does it mean 'received' by any of the named officers including the Commissioner of Income-tax (Judicial)?*

*Ans: The word "received" occurring in Section 260A (2) (a) would mean received by any of the named officers of the Department, including Commissioner of Income-tax (Judicial). The provision at present names four particular officers i.e. the Principal Commissioner, Commissioner, Principal Chief Commissioner, and the Chief Commissioner of Income Tax. These are the only designations of the officers who could receive a copy of the order. In the absence of a qualifying prefix "concerned", the receipt of a copy of the order of the ITAT by any of those officers in the Department including the Commissioner of Income-tax (Judicial) will trigger the period of limitation.*

*Q: (ii) Does limitation begin to run for the purposes of Section 260A (2) (a) only when a certified copy of the order of the ITAT is received by the 'concerned' Commissioner of Income- tax within whose jurisdiction the case of the Assessee falls notwithstanding that it may have been received by any other Commissioner of Income-tax, including the Commissioner of Income-tax (Judicial) prior thereto? Is it open to the Court to read the word 'concerned' into Section 260A (2) (a) of the Act as a prefix to any of the officers of the Department named therein?*

*Ans: In Section 260A (2) of the Act, the words Commissioner of Income-tax, Pr Commissioner of Income-tax or Chief Commissioner of Income-tax are not prefixed or qualified by the word 'concerned'. There is no warrant for the Court to read into the provision such a qualifying word. The Court rejects the contention of the Revenue that limitation for the purposes of Section 260A (2) (a) begins to run only when a certified copy of the order of the ITAT is received by the 'concerned' Commissioner of Income-tax within whose jurisdiction the case of the assessee falls notwithstanding that it may have been received by any other Commissioner of Income-tax, including the Commissioner of Income-tax (Judicial) prior thereto."*

*30. It is seen in the present case that an SCN was issued to the Assessee on 16th February, 2017 itself by the AO under [Section 271](#) (1) (c) of the Act and this could not have happened if the AO was not already aware of the order of the ITAT. The appeal effect order passed on 22nd May, 2017 could not have been issued without a copy of the order of the ITAT. Therefore, in any event, the six-month period of limitation in terms of [Section 275](#) (1) (a) of the Act would begin to run from 22nd May, 2017.*

*31. On the other hand, it is sought to be contended by the Revenue that the jurisdictional CIT i.e. the CIT (IT) received the copy of the order only on 1st November, 2017 and therefore, the period of limitation for the purposes of [Section 275](#) (1) (a) of the Act did not begin till then. In support of this submission, reference is made to*

*a communication dated 1 st November, 2017 addressed by the ITO, Judicial-II, to the CIT (IT) simply enclosing a copy of the order of the ITAT dated 27 th January, 2017. The letter states that the ITO Judicial II received the order only on 31st October 2017. It bears the date stamp of 1st November, 2017 of the office of the CIT (IT) to show that it was received by the CIT (IT) on that date.*

*32. The claim that the ITO, Judicial-II received the copy of the order dated 27th January 2017 of the ITAT only on 31st October, 2017 contradicts the fact that an appeal effect was given to the ITAT order by an order dated 22nd May, 2017 itself which clearly meant that the ITAT order was already available on that date. Further in the replies received by the Petitioner in response to the application filed by it under the RTI, the CPIO has clearly stated that "the said order of Hon"ble ITAT was dispatched by the Registry of the ITAT on 11th April, 2017 and received by the office of the CIT (Judicial) on 17th April, 2017." The proof of service has also been enclosed to that letter. These facts have not been denied by the Respondents. This Court is, therefore, unable to accept the plea of the ITO, Judicial-II that copy of the order of the ITAT was received only on 31 st October, 2017 and could, therefore, be sent to the CIT (IT) only on 1st November, 2017.*

*33. If an officer of the Department is allowed to choose a date on which a copy of the order which has to be given effect to or acted upon is sent to the officer concerned, it will defeat the very purpose for which the legislature has stipulated definite time limits in various provisions of the Act for the authorities to perform their statutory tasks in a time bound manner. In other words, the mandatory period of limitation under [Section 275](#) (1) (a) of the Act cannot be sought to be defeated by delaying the dispatch of the relevant order of the ITAT to the concerned „jurisdictional“ CIT. What is relevant is when the CIT (Judicial) representing the Department before the ITAT received the order, which in any event is generally made available in the public domain soon after the order is pronounced. This is purport of the decision of the Full Bench of this Court in [Commissioner of Income Tax v. Odeon](#)*

*Builders Private Limited (FB) (supra), the ratio decidendi of which will apply to the case on hand as well since the language of Section 260 A (1) and Section 275 (1) (a) of the Act is identical.*

*34. The result of the above discussion is that the impugned orders of penalty dated 26th April 2018 were issued far beyond the six-month period of limitation in terms of Section 275 (1) (a) of the Act and were, therefore, invalid. On the date that the said orders were issued, i.e. 26th April, 2018 they were without jurisdiction”.*

14. The aforesaid decision of the Hon'ble jurisdictional High Court undoubtedly, applies to the facts of the present appeals.

15. Thus, upon due consideration of facts and material placed before us and keeping in view the decision of the Hon'ble jurisdictional High Court, as discussed above, we have no hesitation in holding that the orders passed by the assessing officer imposing penalty under Section 271(1)(c) of the Act are beyond the period of limitation prescribed under Section 275(1) of the Act. That being the factual and legal position, orders passed imposing penalty under Section 271(1)(c) of the Act deserves to be quashed. Accordingly, we do so.

16. Resultantly, penalty imposed under Section 271(1) (c) of the Act, in all these appeals is deleted and impugned orders of learned Commissioner (Appeals) are set aside.

17. In the result, appeals are allowed.

**Order pronounced in the open court on 29<sup>th</sup> July, 2022.**

**Sd/-**  
**( DR. BRR KUMAR )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 29<sup>th</sup> July, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (Order drafted through Dragon software):	22.07.2022
2.	Date on which the draft of order is placed before the Dictating Member:	26.07.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	27.07.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	27.07.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	29.07.2022
7.	Date on which the final order is uploaded on the website of ITAT:	29.07.2022
8.	Date on which the file goes to the Bench Clerk	29.07.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	