

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'H' : NEW DELHI)**  
**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER**  
**AND**  
**SH.ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2281/Del/2014, A.Y. 2007-08

ACIT Circle-5(1), New Delhi	Vs.	M/s. Kostub Investment Ltd. S-6, Paradise Plaza, Alaknanda Shopping Complex, Alaknanda PAN : AAACK0688D
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C.O. No. 204/Del/2014, A.Y. 2007-08  
(Arising out of ITA No. 2281/Del/2014)

M/s. Kostub Investment Ltd. S-6, Paradise Plaza, Alaknanda Shopping Complex, Alaknanda PAN : AAACK0688D	Vs.	ACIT Circle-5(1), New Delhi
Appellant		Respondent

Assesseeby	Ms. Prem Lata Bansal, Sr. Adv. & Sh. Shivang Bansal, Adv.
Revenue by	Ms. Sapna Bhatia, CIT-DR

Date of hearing:	19.04.2023
Date of Pronouncement:	03.05.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The Revenue has challenged the order dated 30.01.2014 passed in appeal no. 0047/2013-14 of Ld. CIT(A)-8, New Delhi by which the appeal of assessee against penalty order was allowed. Cross objections have been preferred by assessee.

2. The facts in brief are the assessment order was passed u/s 143(3) of Act on 17.12.2009 against which assessee had filed an appeal wherein the Ld. First Appellate Authority had confirmed the addition/ disallowances made by the Ld. AO and also made further enhancement by treating the loss of Rs. 1,94,82,908/- as speculation loss which was originally treated by Ld. AO as normal business loss. In addition to that, ld. first appellate authority also disallowed the sum of Rs. 49,12,978/- out of the establishment expenses on adhoc basis. Thereafter before the Tribunal, the assessee got relief in parts. Ld. AO initiated penalty proceedings and levied penalty upon the additions and disallowances made by him in the assessment order as well as the disallowance made by the First Appellate Authority, by way of enhancement. The Ld. CIT(A) while disposing of the appeal against the impugned penalty has set aside the penalty order for which the Revenue is in appeal raising following grounds :-

1. *“Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting penalty imposable u/s 271(1)(c) on disallowance of loss of Rs. 1,94,82,909/- by treating the same as speculation loss?*
2. *Whether on the facts and circumstances of the case, the order of Ld. CIT(A) is perverse in nature in stating that CIT(A) did not initiate penalty proceedings with respect to these two disallowances made by him whereas, penalty proceedings were duly initiated by CIT(A) while deciding the appeal against quantum order ?*
3. *Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) erred in deleting penalty imposable u/s 271(1)(c) on addition of Rs. 2,05,00,000/- made u/s 68 of the I.T Act being share capital received as the assessee failed to prove the identity, creditworthiness and genuineness of transactions of share capital ?*

4. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
5. *That the grounds of appeal are without prejudiced to each other.*
6. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of the appeal either before or at the time of the hearing of the appeal.”*

3. Cross objections have also been raised on behalf of the assessee as follows :-

1. *“That the order-dated 30.03.2013 passed by the DCIT Circle-5(1), New Delhi for AY 2007-08 imposing the penalty u/s 271(1)(c) of the Income Tax Act is barred by limitation and therefore is void ab-initio.*
2. *That the notice issued by the Assessing Officer u/s 274 r/w section 271(1)(c) initiating the penalty proceeding is bad-in-law as it did not specify as to under which limb of section 271(1)(c), the penalty proceeding had been initiated .e. whether for concealment of particulars of income or for furnishing inaccurate particulars of income.*
3. *That omission of the Assessing Officer to explicitly mention that penalty proceeding are being initiated for furnishing of inaccurate particulars of income or that for concealment of particulars of income makes the penalty order liable for cancellation.*
4. *That the penalty imposed by the DCIT Circle~5(1), New Delhi u/s 271(1)(c) of the Act is bad-in-law when he invoked the provisions of Explanation 1 to section 271(1)(c) for imposing the penalty for furnishing inaccurate particulars of income.”*

4. Heard and perused the record.

5. At the outset, it is pertinent to observe that the assessee had filed the objections at a belated stage, therefore, there is an objection by the Registry, of a delay of 2140 days. On behalf of the assessee in the application u/s 253(5) of the Act, a justification has been brought forward that initially the assessee was not inclined to file objection and wanted to counter the appeal purely on legal grounds but when advised by the Bench, cross objections are raised are and which primarily are legal in nature. The assessee under bonafide belief that legal grounds can be raised verbally had not preferred the cross objections immediately on appearance though had filed the paper book. As the cross objections being questions of law can very well be admitted by this appellate authority in the light of judgement of Hon'ble Supreme Court of India in ***Geotze India Pvt. Ltd. vs. CIT (2006) 284 ITR 323 (SC)***. Accordingly, the delay is condoned and cross objections are taken up for adjudication on merits prior to the appeal as the same have raised pure questions of law.

6. **Ground no. 1 of Cross Objections;** It can be observed that following are the relevant dates and sequence of events which are canvassed by Ld Sr. Counsel for the assessee :

- 1<sup>st</sup> 17.12.2009 Assessment order was passed.***
- 2<sup>nd</sup> 28.02.2011 Quantum appeal was decided by CIT(A).***
- 3<sup>rd</sup> 09.05.2011 Assessing Officer gave appeal effect to the order of Ld. CIT(A).***
- 4<sup>th</sup> 28.10.2011 Ld. CIT(A) rectified the order u/s 154.***
- 5<sup>th</sup> 31.05.2013 ITAT decided the quantum appeal.***
- 6<sup>th</sup> 30.03.2013 The penalty order was passed by assessing officer.***

7. It was submitted by Ld. Sr. Counsel that in the present case in the light of provisions of Section 275(1)(a) of the Act, penalty order could not have been passed after 31.03.2010 i.e. the financial year in which the Assessment order dated 17/12/2009 was passed. Further the Ld. Sr. Counsel stressed on the fact

that as the Ld. AO was informed of the fact that the assessee has preferred appeal, which was pending before Tribunal and Assessing Officer has not waited for the outcome of the order of Tribunal and he chose to proceed with the penalty proceedings, so the provisions of Section 275(1)(a) of the Act, providing for passing penalty order in six months from the end of month in which the order of the CIT(A) is passed, would in any case be applicable. In this context she also submitted that that as appeal giving effect order has been passed by Ld. AO on 09.05.2011, therefore, it can be presumed that the order passed by Ld. CIT(A) was received by the Ld. Assessing Officer before 09.05.2011, so assuming the period of Six months from this date 09.05.2011, the penalty order could not have been passed after 30/11/2011.

8. Ld. DR however submitted that the order is not beyond limitation on basis of fresh notice after rectification order.

9. Appreciating the matter on record and the submission, to draw a reasonable finding provisions of Section 275(1)(a) of the Act, are vital and same are reproduced below :-

*“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 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 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;”*

9.1 Interpreting this Section, Hon’ble Delhi High Court in the case of **Commissioner Of Income Tax vs Mohair Investment And Trading** (2012) 345 ITR 51 Delhi has taken note of the judgment of Hon’ble Madras High Court in **Rayala Corporation P. Ltd.** (2007) 288 ITR 452 (Mad) and held in para 10 and 11 as follows :-

*“10. From a plain reading of the relevant Sections it is clear that the period of six months provided for imposition of penalty under Section 275(1)(a) starts running after the successive appeals from an assessment order has been finally decided by the CIT(A) or the ITAT as the case may be whichever period expires later. 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 the order of the Commissioner after 1st June, 2003. The proviso thus carves out an exception from the main Section inasmuch as in cases where no appeal is filed before the ITAT the Assessing Officer must impose penalty within a period of one year to be reckoned from the date of receipt of the order by the Commissioner. To read this provision as suggested by the Counsel for the Assessee would obliterate the main provision itself. In this behalf it is necessary to remember that a proviso is merely a subsidiary to main Section and must be construed in the light of the Section itself. It has to be construed harmoniously with the main provision. This conclusion is fortified by the decision of the learned Judge in **Rayala Corporation** (supra), where it was held that in case where an appeal is pending before the Tribunal the limitation period for levy of penalty can only be as provided for under Section 275(1)(a), i.e., six months from the end of the month in which the order of the Tribunal is received by the Commissioner.*

*Insofar as the submission with regard to the Section being read in consonance with Section 275(1A) is concerned, we are of the opinion that the latter Section which was introduced later on does not dilute or in any manner render nugatory the main provision, which can only be read to mean that the limitation period for levy of penalty, only in the case of order of the Tribunal, to be as provided under the main Section and not otherwise.*

*11. Thus we are of the view that the proviso to Section 275(1)(a) of the Act does not nullify the availability to the Assessing Officer of the period of limitation of six months from the end of the month when the order of the ITAT is received by the Assessing Officer. In the present case the order of the ITAT was rendered on 11th August, 2008 and the order passed by the Assessing Officer levying penalty was passed on 26th February, 2009, i.e., within a period of six months from the order of the ITAT.”*

10. Now what comes up is that the Ld. AO initiated the penalty proceedings upon issuing the penalty notice u/s 274 r.w.s. 271(1)(c) of the Act dated 17.12.2009. It further comes up from Para 2 of the penalty order that as the assessee company had filed appeal before Ld. CIT(A), so on the request of assessee company, the penalty proceedings were kept in abeyance till disposal of appeal filed before the Ld. CIT(A).

11. Thereafter Para 7 and 8 of the Penalty order show that based on order in quantum appeal, dated 28.02.2011 of Ld. CIT(A), Ld. AO observed that subsequent to the order dated 28.02.2011 again notice u/s 271(1)(c) of the Act was issued on 04.02.2013 and the penalty proceeding was fixed for 11.02.2013, wherein on behalf of the assessee a request was made that the quantum appeal was pending before the Delhi Tribunal and till the decision of same the penalty proceedings be kept in abeyance. But Ld. AO proceeded to adjudicate the penalty proceedings.

12. What is relevant is that in the case in hand though the Ld. CIT(A) has passed rectification order on 28.10.2011, second notice u/s 271(1)(c) of the act was issued on 04.03.2013. That itself is beyond the period of Six months from the rectification order. Further the matter of fact is that the appeal giving effect order was already passed by the Ld. AO on 09.05.2011. Therefore actually from that date the limitation has to be seen. It appears that Ld. AO after issuing the initial notice u/s 271(1)(c) of the Act on 17.12.2009, keeping the proceedings in abeyance, has assumed jurisdiction to pass the order dated 30.03.2013 on the basis of subsequent notice u/s 271(1)(c) of the Act dated 04.02.2013 which was issued after the receipt of CIT(A)'s rectified order. There was no justification to issue a fresh notice u/s 271(1)(c) of the Act on 04.02.2013, as already Ld. AO at the instance of the assessee had kept the penalty proceeding in abeyance. The disposal of appeal by Ld. CIT(A) on 28.02.2011, itself gave Ld. AO an opportunity to revive the penalty proceedings or to have waited further for the order from Tribunal. Thus, for the purpose of exercising jurisdiction to pass the penalty order the Ld. AO was supposed to proceed on receiving the order of Ld. CIT(A) dated 28.02.2011 and when that is taken into account, the order dated 30.03.2013 stands barred by limitation, as for the purpose of Section 275(1)(a) of the Act, the period of 6 months for disposal of appeal had to be reckoned from receipt of order of Ld. CIT(A). **Ground deserves to be sustained.**

13. **Ground no. 2 to 4 of Cross objections;** It can be observed that on behalf of the assessee it is claimed that the notice u/s 271(1)(c) of the Act dated 17.12.2009 or the notice dated 09.05.2011, was not issued identifying the limb under which the same has been issued and thus notices are ambiguous to the fact as to if the charge of concealment of particulars of the income or furnishing inaccurate particulars of such income is made out. Ld. DR could not dispute the fact that these notices were issued on cyclostyle formats. In this regard, there is a consistent view of the Tribunal following the Delhi High Court judgment in

*PCIT v. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Delhi) (HC)* that non-striking of the limb in the notice vitiates the penalty order. In the case in hand on behalf of the Ld. DR an attempt was made to defend the notices submitting that there are allegations of both concealment and of furnishing inaccurate particulars, then in that case it was all the more necessary to identify and convey to the assessee under the notice as to which particular set of allegations he needs to defend.

14. The Bench is inclined to sustain the grounds raised in the **cross objections, consequently, the same are allowed.** As the exercise of jurisdiction of passing the impugned penalty order beyond limitation is not sustained, the consequential order giving rise to appeal and its challenge by the Revenue becomes academic. **Accordingly, the appeal of Revenue is dismissed being infructuous.**

**Order pronounced in the open court on 3<sup>rd</sup> May, 2023.**

Sd/-  
**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

*Date:-03.05.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI