

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

**BEFORE SH. SAKTIJIT DEY, JUDICIAL MEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.9806/Del/2019
Assessment Year: 2012-13

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| Rajnish J. Karki L-1/13, Hauz Khas Enclave, New Delhi PAN No. AJEPK8684C (APPELLANT) | Vs | ITO Ward-32(5) New Delhi (RESPONDENT) |
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|---------------|---------------------------|
| Appellant by | Ms. Aditi Gupta, Advocate |
| Respondent by | Sh. Vivek Vardhan, Sr DR |

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|------------------------|------------|
| Date of hearing: | 15/06/2023 |
| Date of Pronouncement: | 30/06/2023 |

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-11, New Delhi dated 13.11.2019 pertaining to A.Y.2012-13.

2. The grievance of the assessee read as under :-

1. (a) *That the learned CIT(A) has erred in law in not considering that the order passed under section 271(1) (c) of the Act is barred by the limitation under section 275 of the Act.*

(b) *That in this connection, the learned CIT(A) has erred on facts in not considering the correct date of receipt of the order of the Hon'ble ITAT (in respect of the quantum appeal) by the Principal Commissioner of Income Tax, from which the period of*

limitation shall be reckoned for the purpose of passing penalty order and hence, the said order is void-ab-initio.

2. That the learned CIT(A) has erred in misinterpreting the provisions of Section 271(l)(c) of the Act inasmuch as there was neither any concealment of income nor furnishing of any incorrect particulars of income, so as to levy penalty under Section 271(l)(c) of the Act. Merely because a claim made by the appellant was not acceptable to the revenue authorities, does not tantamount to levy of penalty more so when the appellant had substantiated its claim of expenses and had duly disclosed all facts and had offered a bonafide explanation in this regard.

3. That the appellant craves leave to add, amend and/ or alter the grounds at a later stage.

3. Without going into the merits of the case, the Counsel vehemently stated that the impugned order dated 31.07.2018 framed u/s. 271(1) (c) of the Act is barred by limitation.

4. Per contra the DR strongly supported the findings of the AO and contended that the penalty order was passed well within the period of limitation and hence not barred by limitation.

5. We have given a thoughtful consideration to the orders of the authorities below. The factual matrix can be understood from the following chart :-

| Particulars | Date |
|---|------------------------|
| Assessment order under section 143(3) | 09-03-2015 |
| CIT(A) order | 01-03-2017 |
| 1st Penalty notice issued | 11-05-2017 |
| Reply to penalty notice filed | 23-05-2017 |
| ITAT order (quantum appeal) | 08-11-2017 |
| Receipt of ITAT order by CIT (Judicial) | 05-12-2017 |
| Receipt of ITAT order by CIT -21 (non-jurisdictional) | 07-12-2017 |
| Receipt of ITAT order by CIT - 11 (jurisdictional) | 04-01-2018 |
| Receipt of ITAT order by Assessing Officer | 15-01-2018 |
| Penalty order passed by Assessing Officer | 31-07-2018 |
| CIT(A) order (pursuant to penalty imposed by AO) | 13-11-2019 |
| <u>SUMMARY OF ABOVE (RELEVANT DATES)</u> | |
| Receipt of ITAT order by CIT (Judicial) | 05-12-2017 |
| Due date of passing penalty order as per section 275 | 30-06-2018 |
| Actual date of penalty order passed by Ld. AO | 31-07-2018 time barred |

6. From the above date chart it can be seen that the office of the CIT(Judicial) received the order of the Tribunal on 05.12.2017 and the AO was to pass the penalty order on or before the end of six months from the end of month in which the order of the Tribunal has been received by the office of CIT(Judicial). This means that the AO should have pass the penalty order on or before 30.06.2018 and since the penalty order is passed on 31.07.2018 the same is barred by limitation.

7. An identical issue was decided by the Hon'ble Jurisdictional High Court of Delhi in the case of Odeon Builders Pvt. Ltd. 393 ITR 27 which decision has been affirmed by the Hon'ble Supreme Court by dismissal of the revenue's SLP. This was again considered by the Hon'ble Supreme Court in the case of Indian Sugar Exim Corporation Ltd. 272 taxmann 185 wherein the Hon'ble Supreme Court dismissed the SLP against High Courts ruling that for purposes of penalty order u/s. 271 (1) (c) r.w.s. 275 (1)(a) limitation begins to run from date of order from appellate Tribunal was served upon Commissioner (Judicial). The relevant findings read as under :-

This is an appeal by the Revenue against the order dated 16th April, 2018 passed by the Income-tax Appellate Tribunal (ITAT) in ITA No. 3860/Del/2017 & SA No. 85/Del/2018 for the Assessment Year (AY) 2009-2010 whereby the ITAT deleted the penalty imposed on the Respondent Assessee under section 271(l)(c) of the Income-tax Act, 1961 ('Act') on the basis that it was done after the expiry of the limitation period under section 275(1)(a) of the Act.

2. The facts in brief are that the Assessee filed its return on 30th September, 2009 for AY 2009-2010. The assessment order was passed by the Assessing Officer (AO) under section 143(3) of the Act on 1st December, 2011. A penalty order was passed for interest on late payment of TDS on 27th November, 2015.

3. In terms of the information obtained by the Assessee under the Right to Information Act (RTI Act), it appeared that in the quantum matter the ITAT's order dated 25th March, 2013 in ITA Nos. 2859/Del/2013 and 2042/Del/2013 had been served on the CIT (Judicial), CR building, New Delhi on 9th April, 2015. The RTI information also disclosed that the order of the ITAT was also simultaneously served on the same date on the CIT (DR). The limitation

period, therefore, began running from that date itself.

4. A Full Bench of this Court in *CIT v. Odeon Builders (P.) Ltd.* f20171 80 taxmann.com 180/247 Taxman 184/393 ITR 27 categorically held that in the context of Section 260A of the Act, the limitation period for filing an appeal against an order of the ITAT would begin to run immediately upon a copy of the order being received by the CIT (Judicial). This Court rejected the contention of the Revenue that till the 'concerned jurisdictional CIT' received the order of the ITAT sought to be appealed against, limitation would not begin to run. In other words, the expression 'CIT' in Section 260 A (1) of the Act was interpreted by this Court as meaning any CIT and not just the 'concerned' CIT.

5. The decision of this Court in *Odeon Builders (P.) Ltd.* {supra} was affirmed by the Supreme Court by dismissal of the Revenue's [SLP (C) Diary No. 11792/2018, dated 1-5-2018] *CIT v. Odeon Builders (P.) Ltd.*

6. Subsequent to the decision in *Odeon Builders (P.) Ltd.* {supra} the issue whether the computation of limitation for initiation of penalty proceedings under section 158BFA(3)(c) of the Act would also follow the same logic was considered by this Court in [IT Appeal No. 822 of 2017, dated 20-9-2017] Pr. *CIT v. Kamaljeet Khosla.* There the ITAT had followed the decision of this Court in *Odeon Builders (P.) Ltd.* and held the penalty order in those cases to be beyond the period of 6 months after the order of the ITAT was first received by the CIT (Judicial). The order of the ITAT in the aforementioned case was affirmed by this Court by its order dismissing the Revenue's. Paras 5, 6 and 7 of the said order are relevant for the case on hand and read as follows:

"5. It is submitted by the learned counsel for the Revenue that the decision of this Court in *Odeon Builders Pvt. Ltd.* {supra} was in the context of an appeal under section 260A of the Act and, therefore, will not ipso facto apply to Section 158 BFA(3)(c) although the expression used in both provisions is the same. Secondly, he submits that in the present case at the time the AO initiated the penalty proceedings, the decision in *Odeon Builders Pvt. Ltd.* {supra} had not been pronounced and, therefore, the said decision of this Court should be held to be prospective, that is, applicable only to those cases where the proceedings under section 158 BFA (3) were initiated thereafter.

7. As far as the first submission is concerned, the Court finds that the expression "received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner" appearing in Section 158BFA(3)(c) is identical to the expression in section 260A (1) of the Act which was interpreted by this Court in *Odeon Builders Pvt. Ltd.* {supra} as any CIT and not necessarily the 'concerned' CIT. In other words, for the purpose of section 158BFA(3)(c) of the Act, if the order of the ITAT was received by the CIT (Judicial), the limitation of 6 months within which the penalty order had to be passed would begin to run from that date regardless of the fact that the order of the ITAT was received by the concerned CIT only thereafter.

While it will not result in matters that have attained finality being reopened, it will apply to cases that are pending at various levels in the hierarchy of authorities."

7. In the present case as well, the ITAT has followed this Court's decision in *Odeon Builders (P.) Ltd.* and held that even for the purposes of the penalty order under section 271(1)(c) read with Section 275(1)(a) the limitation begins to run from the date of the order of the ITAT was served upon the CIT (Judicial).

8. Learned counsel for the Revenue sought to distinguish the said decision in *Odeon Builders (P.) Ltd.* on the ground that it was in context of the Revenue filing an appeal under section 260A of the Act. However, he was unable to dispute that the wording of section 275(1)(a) as far as 'Commissioner of Income Tax' and other officers was identical to the wording in both section 158BFA(3)(c) and section 260A of the Act.

9. Consequently, the Court finds no error in the ITAT having followed the decision of this Court in *Odeon Builders (P.) Ltd.* to hold the penalty order in the present case to be barred by limitation.

8. On the given factual matrix of the dates mentioned elsewhere, in the light of judicial decision discussed here in above we have no hesitation to hold that the impugned penalty order is barred by limitation. Since we have quashed the penalty order we do not find it necessary to dwell into the merits of the case. The appeal of the assessee is allowed.

9. Decision announced in the open court on 30.06.2023.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .06.2023

Neha

Copy forwarded to:

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

Asst. Registrar
 ITAT, New Delhi