

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

VIRTUAL HEARING

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

ITA No.333/Jodh/2019
(ASSESSMENT YEAR- 2009-10)

Smt. Jaya Mogra, 22, Mehtaji Ki Badi, Udaipur	Vs	DCIT, Central Circle-02, Moomal Tower, Saheli Marg, Udaipur
(Appellant)		(Respondent)
PAN NO. AHZPM 2350 B		

Assessee By	Sh. Rakesh Lodha, CA
Revenue By	Sh. Lovish Kumar, CIT-DR
Date of hearing	12/07/2023
Date of Pronouncement	20/09/2023

ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the Commissioner of Income Tax (Appeals)-2, Udaipur dated 28.06.2019 [here in after (Ld. CIT(A))] for assessment year 2009-10.

2. The assessee has marched this appeal on the following grounds:-

- “1. The penalty order u/s 271(1)(c) r.w.s. 275 is barred by limitation.*
- 2. The Ld CIT(A)-2, Udaipur erred in charging the penalty of Rs. 7,29,100/-.”*

3. At the outset of hearing, the Bench observed that there is delay of 20 days in filing of the appeal by the assessee for which the Id. AR of the assessee filed an application for condonation of delay with following prayers:

“It is very humbly submitted that :

1. The penalty u/s 271(1)(c) of the Act was initiated by the Ld Commissioner of Income tax Appeals-2, Udaipur on enhancement order passed by him on dated 18-09-2018.
2. After considering reply the Ld CIT, A-2, Udaipur vide order dated 28-06-2018 directed assessing officer to calculate minimum penalty.
3. The Ld assessing officer has followed direction of Ld CIT, A-2, Udaipur levied penalty of Rs. 729,100/- vide demand notice dated 07-08-2019.
4. Since, I am under impression of time limit of 60 days from demand notice date 07-08-2019, so, preferred this appeal on dated 18-09-2019 considering within stipulated time limit of 60 days from 07-08-2019.
5. Without prejudice to above, if the appeal is required to submit within 60 days from the date of order of CIT, A-2, Udaipur dated 28-06-2019, then it is delayed by 20 days.
6. It is very humbly submitted that this being under bona fide belief drawn from the para 6 of demand notice that time limit is 60 days from 07-08-2019.
7. Under the circumstances, in the interest of principle of natural justice, it is requested to kindly condone the delay and allow the submission of appeal and oblige.”

3.1 On the other hand, the Id. DR objected to the delayed filling of an appeal submitting that the assessee being guided by the expert in the filed and the contention raised are general in nature and thus

being the clear lapse on the part of the assessee the appeal should be dismissed without going into the merits of the case.

3.2 We have heard the contention of the parties and perused the materials available on record. The prayer made by the assessee for condonation of delay of 20 days has merit and we concur with the submission of the assessee. Thus the delay of 20 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause and therefore admitting the appeal we are proceeded to deal with the merits of the case.

4. The fact as culled out from the records is that the assessee is a partner in firm M/s Darpan and having income from tuition and bank deposits/NSC. Search and seizure operation u/s 132 of the I.T. Act, 1961 was carried out on 10.12.2010 at the residence as well as business premises of DeeJay Neelam Marble Group of Udaipur as per warrant of authorization issued by Director General of Income-tax (inv.), Jaipur. The case of the assessee was assigned to ACIT Central

Circle-02, Udaipur vide order no. 15 of 2010-11 dated 28.01.2011 u/s 127 of the I.T. Act, 1961 by the Commissioner of Income Tax, Udaipur. Accordingly, the notices were sent to the assessee and the assessment was completed by making the addition of Rs. 39.70 lacs. The additions of Rs 39.70 lac on account of unexplained credits in bank accounts, which was deleted by Id. CIT(A)-2, Udaipur vide order 18-09-2018 and made enhancement by making addition of Rs 21.45 lacs and initiated penalty proceedings u/s 271(1)(c) of the Act on 18-09-2018. Thereafter, the CIT(A) has imposed the penalty of Rs. 7,29,100/- u/s 271(1)(c) vide order dated 28-06-2019. So, the assessee on being aggrieved preferred this appeal against the order of the CIT(A)-2, Udaipur dated 28-06-2019.

5. Apropos to the levy of the penalty on the enhancement so made the relevant finding of the Id. CIT(A) while ordering the penalty is reiterated here in below :

9. The CIT(A), after considering the assessee's submissions the remand recom furnished by the AO and the assessee's counter comments, found that the source of deposits in the bank account stood explained and accordingly deleted the addition of Rs 39,70,000-made by the AO on account of unexplained investment in land.

10 However, the CIT(A) observed that the land at Bad had not been disclosed by the assessed in the balance sheet for AY 2008-09. The CIT(A) further noted that initially the assessee had claimed that land at Badi was 12 kms away from the Collectorate, alert was claimed to be

beyond 8 kms from the municipal limits, but no evidence in the regard was filed. No proof, in the form of copy of revenue records etc, was filed by the appellant in support of the claim that the land was agricultural land.

11. The CIT(A) further noted that as the appellant expressed her inability to provide copy of purchase deed of the land sold, the date of purchase and cost of acquisition of the land was not ascertainable. The CIT(A) therefore estimated business profit on sale of land at Badi. The estimation was made by the CIT(A) in the following manner-

"the assessee had also sold another land situated in Bhuwana, purchased for Rs. 3.50 lacs and sold for Rs. 15 lacs, i.e. at 4.285 times of the purchase price. The appreciation at Badi cannot be that much. Badi is outside the jurisdiction of Udaipur Municipal Corp. JUIT whereas Bhuwana is very near to the Udaipur city. In my view, it will be reasonable to take the appreciation in this case at 3 times. Estimating that the land sold for Rs. 32.20 lacs was 3 times of the cost, the profit is worked out as under:-

Sale consideration, as per 2 sale deeds of	Rs.16.10lacs
Each	Rs. 32,20,000/-
Estimated cost, 1/3 (in round figures)	<u>Rs. 10,75,000/-</u>
Profit	Rs. 21,45,000/-"

12. During the course of hearing of appeal the A.R of the appellant agreed to the estimation of business profit on sale of land at Badi by the CIT(A) at Rs 21,45,000/-.

13. Accordingly, the CIT(A) directed the AO to make an addition of Rs. 21,45,000/- to income on account of profit from sale of land at Badi. The CIT(A) also initiated penalty proceedings u/s 271(1)(c) for concealment of particulars for income on account of above profit from land at Badi by issue of notice u/s 274 rws 271 of the Act of 18.09.2016

14. The order of the CIT(A) has not been contested by the assessee in appeal and has become final.

15. During the penalty proceedings detailed submissions have been made which are discussed pointwise hereunder.

15.1 The appellant has furnished details of the sale of agriculture land at Village, Badi, Udaipur, which was not shown by her in the return because this land was being an agriculture land and situated at Village Badi, Udaipur i.e. beyond 8 Km from the Udaipur Municipality, under the

circumstances an exempted income on sale of agriculture land was not disclosed by her under bona-fide belief based on professional advice."

This assessee's statement as above is factually incorrect. The assessee has utterly failed to show at any stage that the land was agricultural or situated beyond 8 kms from the municipal limits:

15.2 "That during the course of search the team has not recovered any material on this issue, rather, she herself has come forward and voluntarily furnished the information to the Hon'ble Commissioner of Appeals-2. Udaipur."

The above argument of the assessee is rejected in view of the decision of the Hon'ble High Court of Kerala in the case of E.N. Gopakumar, 75 taxmann.com 215, wherein vide order dt. 03.10.2016, the Hon'ble Court held that the assessment proceedings generated by the issuance of a notice under section 153A(1)(a) can be concluded against the interest of the assessee including making additions even without any incriminating material being available against the assessee in the search under section 132. In the instant case the assessee had not disclosed the transaction of sale of land at Badi for Rs.32,20,000/- in either the return of income or by way of accounts. The transaction came to light only when the AO called for bank accounts u/s 133(6), found a credit of Rs 32,20,000/- and called for an explanation from the assessee regarding the source of the deposit in the aforementioned facts a conclusion of concealment of income is inescapable.

15.3 Since, the penalty was initiated on estimated income of Rs. 21,45,000/- Hon'ble Apex Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. reported in (2010) 11 SCC 762 it is held that where there was no finding that there were any details supplied by the assessee, which were found to be incorrect or erroneous or false, it would not attract penalty under section 271(1)(c) of the Act.

As regards the above argument of the assessee, it is relevant to note that estimate of such income was necessitated because the assessee failed to furnish information regarding purchase price of land and date of purchase. These are facts in the knowledge of the assessee and refusal to furnish the same leads to an adverse inference against her. When the estimation of income was necessitated because of the actions of the assessee, the defence that no penalty could be levied on estimated income cannot come to the rescue of the assessee. Moreover, it has to be emphasized that in the instant case, when the CIT(A) confronted the assessee with the proposed estimate of income from sale of land at Badi at Rs. 21,45,000/-, the assessee accepted such estimate. No basis has been given by the assessee for the belief that the land was agricultural land situated 8 km from the municipal limits.

16. In view of the above discussion, I find that the assessee has concealed particulars of income of Rs. 21,45,000/-. The AO is directed to calculate minimum penalty on tax sought to be evaded on business profit of Rs. 21,45,000/-."

6. Feeling dissatisfied from the order of the Commissioner of Income Tax, levying the penalty u/s. 271(1)(c) r.w.s. 274 of the Act the assessee preferred this appeal challenging the levy of penalty on merits as well as on the legal ground stating that the order passed by the Id. CIT(A) is time barred. Apropos to the grounds so raised the Id. AR appearing on behalf of the assessee has placed their written submission on record and the same is extracted in below;

WRITTEN SUBMISSION :

Ground no. 1

- 1 The Penalty Order u/s 271(1)(c) r.w.s. 275 is barred by limitation.
 - 1.1 *The appellant filed an appeal against addition of Rs 39.70 lacs on account of unexplained bank deposits. This addition was deleted by the Ld CIT(A)-2, vide order dated 18-09-2018 at para 3.5.11 , page no. 13.*
 - 1.2 *The Ld CIT(A) has carried out an enhancement by making an addition of Rs 21.45 lac on account of profit on transfer of land, simultaneously, action for imposition of penalty u/s 271(1)(c) for concealment of particulars of income was initiated by issue of notice u/s 271(1)(c) on dated 18-09-2018.*
 - 1.3 *Since, the appellant has not preferred an appeal against said enhancement order of CIT (A) before the Hon'ble ITAT i.e. First appellate Authority. So, the time limit for imposing the penalty would be applicable as prescribed in section 275(1)(c) is expired on 31-03-2019 i.e. later of two :*
 - a. *Before the expiry of financial year in which
action for imposition of penalty has been initiated :
31-03-2019*
 - b. *within 6 months from the end of the month in which
action for imposition of penalty has been initiated :
31-03-2019*
 - 1.4 *The Section 275(1)(c) reads as under :*

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

in terms of the provision u/s 275 (1) (c), there are two distinct periods of limitation for passing a penalty order, and one that expires later will apply. One is the end of the financial year in which the quantum proceedings are completed in the first instance. The second possible date is expiry of six months from the month in which the penalty proceedings were initiated.

Herein the case later one out of the two aforementioned dates is 31-03-2019, so, in terms of the provisions of section 275(1)(c) of the Act, there is clear provision that no order imposing a penalty under this chapter shall be passed after the expiry of 31-03-2019.

- 1.5 *Contrary to that herein the case the order u/s 271(1)(c) imposing a penalty of Rs 7,29,100/- was passed on 28-06-2019 which falls after the limitation expired on date 31-03-2019.*

Our reliance is placed on principle decided in following judicial pronouncements :

PCIT vs JKD CAPITAL AND FINLEASE LTD. (2015) 378 ITR 0614 (Delhi HC)

CIT v. Worldwide Township Projects Limited (2014) 269 CTR 444 (Delhi HC).

- 1.6 *Under the circumstances, It is proved herein above that impugned penalty order dated 28-06-2019 u/s 271(1)(c) is barred by limitation, so, it is humbly pray the Hon'ble Bench to quash such barred by limitation penalty order and allow this ground of appeal.*

Ground no. 2

2. *The Ld CIT(A)-2, Udaipur erred in charging the penalty of Rs. 729,100/.*

- 2.1 *The Id. CIT(A) has imposed penalty of Rs 729,100/-for concealment of particulars of income of Rs 21,45,000/-. In this case it is submitted that such penalty is been levied on the business income estimated by him.*

- 2.2 *It is settled position of the law that whenever an income is estimated the penalty cannot be levied.*

- 2.3 *Our reliance is placed on the following judicial pronouncements :*

CIT Vs Krishi Tyre Retreading & Rubber Industries (Raj HC) 360 ITR 580

ITO vs Shri Uday Kumar D.Bhatt in ITA No.2072/Ahd./2018 & C.O.No.75/Ahd./2018 for AY 2014-15 order dated 06.08.2021.

Shri Shailendra Jhanwar Vs ITO, ITA 219/Jodh/2019 dt 22-3-23.

CIT vs Reliance Petroproducts Pvt Ltd (2010) 322 ITR 158 (SC).

2.4 *Thus, relying upon the judgments of Apex Court, Jurisdictional High Court and Tribunal, the penalty levied herein the case is based upon estimated income basis is liable to be deleted.*

2.5 *In view of the forgoing judgments and material facts, the appellant humbly prays for deletion of penalty of Rs. 729,100/- and allow this ground of appeal.*

We pray that the appeal may kindly be allowed.

The letter of authority in favour of under signed is enclosed herewith.

Pleader for the humble appellant.”

6.1 The Id. AR of the assessee in support of ground no. 1 submitted that the addition made in the original assessment was deleted. The present disputed appeal is thus, based on the enhancement made by the Id. CIT(A) in the appellate proceeding pursuant to the original order passed and therefore, the present appeal is time barred considering the provision of section 271(1)(c) of the act as the order in this case is passed after the end of the financial year in which the penalty was initially. As regards the ground no. 2 the Id. AR of the assessee relying the judgment referred to in the written submission submitted that since the assessee's income is based on the estimation no penalty can be levied on the estimated income and even on merits the penalty is required to be deleted.

7. The Id DR is heard who has relied on the findings of the lower authorities. The Id. DR strongly opposed the argument of the Id. AR of the assessee saying that the in this case provision of section 275(1)(c) will apply and submitted that even the appeal filed before the Id. CIT(A) is also merges with the assessment order the contentions is not correct and the time limit as indicated in the provision of section 275(1)(a) will apply. So far as the merits of the case the Id. DR emphasized that the assessee has not provided any details related to the transaction and therefore, there was no scope with the Id. CIT(A) but to make the reasonable estimate of income which the assessee has also not disputed and therefore, there is clear violation of provision of section 271(1)(c) is made by the assessee. Thus, Id. DR heavily relied upon the finding recorded in the penalty order and prayed to sustain the same.

8. We have heard the rival contentions, perused the material placed on record and gone through the various judicial precedent cited by both the parties to drive home to their respective contentions. The bench noted the assessee has disputed the addition of Rs. 39,70,000/- made by the Id. AO and the relevant finding on the issue by the Id.

CIT(A) is relevant to understand the issue and therefore, the same is reiterated here in below :

“3.5 From the above fact it is clear beyond doubt that the source of deposit in bank is the sale consideration received through banking channel and not cash and has direct nexus with the sale of land. The fact that the appellant has not shown the same in the books of account and whether it attracts the tax any liability is a separate matter to be decided as per law. But in no way the amounts in question can be held as unexplained investment/deposit. Accordingly, the addition made by the AO of Rs. 39,70,000/- is hereby deleted.”

But the Id. CIT(A), contrary to this also enhanced the assessment by an amount of Rs. 21,45,000/- and the relevant finding of the Id. CIT(A) is also relevant to reproduced. The same is as under :

“3.5.11 Now I pick up the thread left at para 3.5.5 above while deleting the addition of Rs. 39.70 lacs. A question arises as to why the surplus arising from the sale of land at Badi for Rs. 32,20,000/- has not been considered by the appellant. I agree with the suggestion of the AO in the remand report that either capital gain or profit should be taxed. Perusal of balance sheet for A.Y. 2008-09 mentioned above it is seen that the land at Badi is not shown. Claim of the appellant is that it is not a business asset and capital gain has not been shown because the land sold is agricultural and is not a capital asset u/s. 2(14) of the Act. Initially the land at Badi was claimed to be 12 KM away from Collectorate and later it is claimed to be beyond 8KM from Municipal limits but no evidence in this regard has been filed. Further, no proof, in the form of copy of revenue records etc. has been filed by the appellant in support of the claim that the land is agricultural land. Further, the appellant's A/R has shown his inability to provide copy of purchase deed of the land sold. Therefore, the date of purchase and cost of acquisition is not known. Thus there is no way to compute capital gain. In these circumstances there is no alternative but to estimate the business profit. As mentioned above, the appellant has shown profit on sale of two other lands. It appears that the land at Badi has not been shown in the Balance with some ulterior motive. The purchase of the land was never disclosed to the department and the sale of the land would not have seen the light of the day had the AO did not collect information regarding bank accounts of the appellant.

The above aspects were pointed out to A/R vide order sheet noting dated 05.09.2018 and 17.09.2018.

The written submission made by appellant on 17.09.2018 is also scanned as below:-

<p>Rakesh Kumar Lodha B.Com., FCA, DISA (ICAI)</p>	<p>Rakesh Lodha & Co. Chartered Accountants 55, A-Road, Bhupalpura, Udaipur-313001</p>	<p>0294 2422 611(O) 09414166919 (M) lodharakesh@yahoo.co.uk</p>
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The Commissioner of Income Tax (Appeals)-2,
Subcity Centre,
Udaipur

date: 17/09/18

Ref.: I. T. Appeal no. 342/13-14 for the
assessment year 2009-10 in case of Smt Jaya
Mogra, Udaipur.

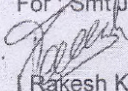
Respected Sir,

Most respectfully, on behalf of the above captioned client, in continuation of earlier replies we further beg to submit as under that:

1. The appellant could not trace out the purchase deeds of the agriculture lands sold for Rs.32.20lacs (Rs.16.10 x 2 deeds), under the situation the cost of purchases couldn't be determined.
2. Further, the appellant has sold land situated at Sapetia for Rs. 600,000/- vide sale deed dated 10-10-2008. For this sale she had paid commission of Rs. 50,000/- paid to Mr Dinkar Mogra and net receipt was Rs. 550,000/- and earned income of Rs. 235,000/- which was declared in profit and loss account.
3. Further, the appellant has mistakenly considered sales consideration of Rs. 11,00,000/- in place of Rs. 15,00,000/- and declared profit of Rs. 7.50 lacs in place of Rs. 11.50 lacs.

In view of the foregoing arguments, facts and circumstances, cogent evidences to support the contention of the appellant, it is humbly requested to kindly delete the additions and allowed the appeal.

Thanking You

For: Smt Jaya Mogra

[Rakesh Kumar Lodha], AR

Under the above back ground to the estimation of the profit on the impugned sale, the only way is by estimating the cost of purchase. The land at Bhuwana purchased for Rs. 3.50 lacs has been sold for Rs. 15 lacs, i.e. at 4.285 times of the purchase price. The appreciation at Badi cannot be that much. Badi is outside the jurisdiction of Udaipur Municipal Corp. /UIT whereas Bhuwana is very near to the Udaipur city. In my view, it will be reasonable to take the appreciation in this case at 3 times. Estimating that the land sold for Rs. 31.20 lacs was 3 times of the cost, the profit is worked out as under:-

Sale consideration, as per 2 sale deeds of Rs.16.10 lacs	
Each	Rs. 32,20,000/-
Estimated cost, 1/3rd (in round figures)	<u>Rs. 10.75.000/-</u>
Profit	Rs. 21,45.000/-

During the course of hearing of appeal the A/R of the appellant has agreed to the above. The AO is, therefore, directed to make addition of Rs. 21.45,000/- for the income on account of above profit from land at Badi as an enhancement by this office besides the amounts discussed above, while giving relief of Rs. 39.70 lacs as discussed in para 3.5.5 above. Moreover, the Notice U/s 271(1)(c) is issued by this office for concealment of particulars for income on account of above profit from land at Badi.”

Thus, it is clear that on the hand the Id. CIT(A) granted the relief but at the same time tax the gain which was not disclosed by the assessee. The bench noted that the assessee remain non co-operative in the assessment proceeding. Even in the appellate proceeding, the Id. CIT(A) noted that the assessee has not given the required deeds to calculate the gain to be taxed of the property sold by the assessee. Based on that facts of the matter the Id. CIT(A) computed the capital gain which the assessee has not disputed and thus so far as the assessment is concerned same is concluded by the order of the Id.

CIT(A) dated 26.03.2013. Thus, in the appellate proceeding the additions of Rs 39.70 lac on account of unexplained credits in bank accounts, was deleted by Id. CIT(A)-2, Udaipur vide order 18-09-2018 and made enhancement by making addition of Rs 21.45 lacs and initiated penalty proceedings u/s 271(1)(c) of the Act on 18-09-2018. Thereafter, the CIT(A) has imposed the penalty of Rs. 7,29,100/- u/s 271(1)(c) vide order dated 28-06-2019. So, the assessee on being aggrieved preferred this appeal against the order of the CIT(A)-2, Udaipur dated 28-06-2019 by taking the ground of limitation stating that the order passed by the Id. CIT(A) ordering the levy of the penalty was barred by limitation in accordance with the provision of section 275(1)(c) of the Act. Therefore, it is relevant to extract the provision of the said section and the same is 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 the⁵⁸⁻⁵⁹[*Joint Commissioner (Appeals) or 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 the⁵⁸⁻⁵⁹[*Joint Commissioner (Appeals) or 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 the⁶⁰[*Joint Commissioner (Appeals) or to the*] Commissioner (Appeals) under [section 246](#) or [section 246A](#), and⁶⁰[*the*

Joint Commissioner (Appeals) or] 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 of⁶⁰[the Joint Commissioner (Appeals) or] 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.

(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal⁶⁰[to the Joint Commissioner (Appeals) or] to the Commissioner (Appeals) under [section 246](#) or [section 246A](#) or an appeal to the Appellate Tribunal under [section 253](#) or an appeal to the High Court under [section 260A](#) or an appeal to the Supreme Court under [section 261](#) or revision under [section 263](#) or [section 264](#) and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of⁶⁰[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the order of revision under [section 263](#) or [section 264](#) is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of⁶⁰[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under [section 263](#) or [section 264](#):

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed—

- (a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;
- (b) after the expiry of six months from the end of the month in which the order of⁶¹[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received

by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the order of revision under [section 263](#) or [section 264](#) is passed:

Provided further that the provisions of sub-section (2) of [section 274](#) shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section.

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989.

Explanation.—In computing the period of limitation for the purposes of this section,—

- (i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to [section 129](#);
- (ii) any period during which the immunity granted under [section 245H](#) remained in force; and
- (iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court, shall be excluded.

Thus, now on the rival contention that based on that set of facts the provision of section 275(1)(c) will apply or 275(1)(a) will apply. The Id. AR of the assessee was directed to supply the judgement to support the contentions so raised by the assessee but the Id. AR of the assessee did not file any judgment on the contention so raised. Thus, on this issue we note that there is judgment of HIGH COURT OF ANDHRA PRADESH in the case of Seetharama Lakshmi Rice & Groundnut Oil Mill Contractors Co. Vs. Income-tax Officer reported at 111 ITR 212 (AP) where in on the similar issue the court observed as under :

Section 275 was substituted by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971. Earlier it was not so elaborate as the present provision; it contained only one provision which is practically the same as the present clause (b) excepting the words "from the end of the financial year". Under the old section two years' period was fixed from the time when the proceedings, in the course of which action for imposition of penalty was initiated, have been completed. It can easily be seen that it was in general terms, possibly covering within its sweep many possibilities. Evidently Parliament, while recasting the section, was anxious to plug very many loop-holes and escape valves for imposition of penalty. That is why in the present section it has endeavoured to make a detailed provision. It is better to extract the section first. It is as follows:

"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 Appellate Assistant Commissioner under section 246 or an appeal to the Appellate Tribunal under sub-section (2) of section 253, after the expiration of a period of—
 - (i) two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or
 - (ii) six months from the end of the month in which the order of the Appellate Assistant Commissioner or, as the case may be, the Appellate Tribunal is received by the Commissioner,
 whichever period expires later;
- (b) in any other case, after the expiration of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed."

It is immediately seen that it divides cases into two categories, one category covering cases where the relevant assessment or other order is the subject-matter of an appeal and all other cases coming under the second category. Clause (a) deals with the first category and clause (b) with the second category. In order to bring a case within the ambit of clause (a) there should have been an appeal to the Appellate Assistant Commissioner under section 246 or an appeal to the Appellate Tribunal under section 253(2). Section 246 covers many cases including orders of assessment, reassessment or recomputation and an order imposing a penalty under section 271 and other provisions. In its turn, section 253 provides for appeals to the Appellate Tribunal against orders passed by the Appellate Assistant Commissioner in regard to the matters mentioned therein. If there has been an appeal against the assessment or other order, the period of limitation for imposing penalty under clause (i) is two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. Since this condition is satisfied and there was an appeal to the Appellate Assistant Commissioner who remanded the matter back to the Income-tax

Officer, it was contended for the department that the present case comes within clause (i). On the other hand, learned counsel for the assessee asserted that the relevant assessment order postulated by clause (a) is the original assessment and not the later assessment order passed by the Income-tax Officer after remand. Since the original assessment order was made on 27th of December, 1969, the imposition of penalty on 23rd of December, 1972, is clearly barred by limitation. He further pointed out that clause (i) has no application because there was no further appeal against the remand order. That is why, he argued, clause (ii) would apply to the case. He placed reliance on *Sarangpur Cotton Manufacturing Co. Ltd. v. Commissioner of Income-tax* [1957] [31 ITR 698](#) (Bom), *K. Gopaldaswami Mudaliar v. Fifth Additional Income-tax Officer* [1963] [49 ITR 322](#) (Mad) and *Shadilal Sugar and General Mills v. Union of India* [1972] [85 ITR 363](#) (All) in support of his contention that it was the first assessment that was postulated by clause (a).

A broad analysis of the section would show that wherever there has been an appeal against the assessment or other order, be it an appeal to the Appellate Assistant Commissioner or to the Appellate Tribunal, as the case may be, and if the matter reached a finality with the order of either authority, the period as fixed by sub-clause (ii) of clause (a) is six months from the end of the month in which the aforesaid final order is received by the Commissioner. The Commissioner being in overall superintendence over these matters and since he can examine the regularity of these proceedings, six months' time was fixed from the end of the month in which the order was received by him. In cases where the proceedings are not completed with the order of the Appellate Assistant Commissioner or the order of the Appellate Tribunal, patently clause (ii) would have no application. Supposing the Appellate Assistant Commissioner or the Appellate Tribunal has remanded the case back to the Income-tax Officer and that officer completes the proceeding, as it has happened in this case, then it would be unreasonable to bring such a case within the scope of sub-clause (ii). No doubt, Sri Dasaratharama Reddy argued that even where the matter was remitted back to the Income-tax Officer, he was expected to complete the proceeding within six months and that is the very purpose for which that period has been fixed. Otherwise, so the learned counsel urged, it would result in giving unlimited time to the Income-tax Officer to complete a proceeding and such a situation could never be the intention of Parliament. There is no reason to suppose that the Income-tax Officers would unnecessarily and unduly delay the disposal of assessments and other cases pending before them. On the other hand, quick disposal of such cases appears to be the intention of the entire Act. Where in the appeal the appellate authority sends back the matter to the Income-tax Officer, then the case squarely walks into the ambit of sub-clause (i). In such a case all the requirements of sub-clause (i) of clause (a) are satisfied. The relevant assessment order has been the subject-matter of an appeal, action for imposition of penalty has been initiated in the course of the assessment proceedings and those proceedings have been completed

by the Income-tax Officer. In such a case, the imposition can be levied within a period of two years from the end of the financial year in which the proceedings are completed. It is important to note that sub-clause (i) uses the words "the proceedings.....are completed". The contrast between these words and the words "assessment or other order" should be particularly noted. Clause (a) and sub-clause (ii) use the word "order" while sub-clause (i) keeps the position in a broad manner by what we feel the deliberate use of the words "the proceedings.....are completed" It is reasonable to gather the intention of Parliament from this that not merely passing an order but the completion of the proceeding as such is the crucial aspect, and the period of limitation under sub-clause (i) starts from the end of the financial year in which these proceedings reached the stage of completion. Thus, sub-clauses (i) and (ii) provided for two classes of cases where there has been an appeal. It is also worthy of note that after the two sub-clauses, the words "whichever period expires later" occur. Evidently, Parliament thought that certain matters may be governed by both the sub-clauses and in such an eventuality the longer period must be taken. The cases where there has been no appeal are governed by clause (b). We are not much concerned in this case with the import of the *Explanation* to the section.

Applying the above analysis to the facts of the present case, there has been an appeal preferred by the assessee against the first assessment, thereby satisfying the requirement of main clause (a). The assessment proceedings, in the course of which action for imposition of penalty has been initiated, were completed only when the Income-tax Officer made a fresh assessment on 25th of July, 1972. By no stretch of imagination could it be said that they were completed by the original assessment order of 1969 or the order of the Appellate Assistant Commissioner remitting the matter back to the Income-tax Officer. The statement of facts disclose that there was no further appeal against the assessment made by the Income-tax Officer after remand. Logically, it should follow that the assessment proceedings were completed on 25th July, 1972, on which day the fresh assessment was made.

In this connection, it would be material to note that the Appellate Assistant Commissioner, while allowing the appeal, completely set aside the original assessment made by the Income-tax Officer and sent back the matter. With the result, the original assessment was no more in existence and a new assessment came into being after remand on 25th of July, 1972. Section 251 confers the power of annulling an assessment while disposing of an appeal. It was this power that the Appellate Assistant Commissioner exercised while setting aside the assessment made by the Income-tax Officer. Clause (a) of section 251 further empowers the Appellate Assistant Commissioner to refer the case to the Income-tax Officer for making fresh assessment and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment. In this case when the

Income-tax Officer made a fresh assessment after remand, the proceeding came to an end and there was no further appeal. We are thus satisfied that this matter is covered by sub-clause (i) and not by sub-clause (ii). Sub-clause (ii) would have applied had the matter ended with the Appellate Assistant Commissioner finally disposing of the case.

Even supposing for argument's sake that the expression "the relevant assessment order" occurring in clause (a) refers to the second and fresh assessment made by the Income-tax Officer after remand, since there was no appeal thereagainst, the case must then walk into the realm of clause (b), in which eventuality also the imposition of penalty would be within the limitation because that was done after the expiration of two years from the end of the financial year in which the proceedings are completed. In such a case, the proceedings are completed with the fresh assessment order. Either way, we are satisfied that there is no bar of limitation for the imposition of penalty.

On being consistent to the view so taken we are of the considered view that looking to the present set of facts and circumstances the provision of section 275(1)(a) will apply and the since in that case the order is to be passed within one year and so the same is passed within one year so see no merits in the arguments advanced by the Id. AR of the assessee and therefore, the ground no. 1 raised by the assessee stands dismissed.

9. As regards the ground no. 2 raised by the assessee the bench noted that the assessee has not filed the details before the Id. AO and even before the Id. CIT(A) the assessee has not provided the complete details so as to compute the capital gain to be taxed and therefore, the Id. CIT(A) has no alternative but to estimate the capital

gain which the assessee has accepted and fairly submitted that the order of the Id. CIT(A) on quantum is not challenged and thus, considering that aspect of the matter we are of the considered view that there is infirmity in the findings of the Id. CIT(A) in ordering the levy of penalty for an amount of Rs. 7,29,100 for concealment of particulars of income of Rs. 21,45,000/-. Based on these observations the ground no. 2 raised by the assessee stands dismissed.

In the result, appeal of the assessee in ITA No.333/Jodh/2019 stands dismissed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
(Dr. S. Seethalakshmi)
Judicial Member

Sd/-
(Rathod Kamlesh Jayantbhai)
Accountant Member

Dated : 20/09/2023

**Ganesh Kumar, PS*

Copy to:

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2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench