

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.34/Jodh/2020
Assessment Year: 2012-13**

ITO-(TDS), Jodhpur. (Appellant)	Vs.	Sh. Rajendra Kumbhat, HUF 6, Kamal Apartment Circuit House Road, Rai Ka Bagh, Jodhpur. [PAN: -AAJHR9752F] (Respondent)
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Appellant by	Ms. Nidhi Nair, JCIT DR
Respondent by	Sh. Sh. R.R. Singhvi, Adv.

Date of Hearing	09.10.2023
Date of Pronouncement	12.10.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the Revenue was filed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Jodhpur, [in brevity the ‘CIT (A)’], order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2012-13. The impugned order was emanated from the order of the Id. Additional Commissioner of Income (TDS), Jodhpur,[in brevity ‘the AO’] order passed u/s 271C of the Act.

2. The Revenue has taken the following ground:

“1. Whether Id. CIT(A) was justified in not considering the facts that the authority competent to impose penalty u/s 271C of the I.T. Act 1961 is Additional/Joint Commissioner of Income Tax having jurisdiction and the fact that the order for penalty was passed within the limitation prescribed under the provision of section 275(1)(c) of the I.T. Act 1961.

2. Whether Id. CIT(A) was justified in not considering the fact that the limitation under the provision of section section 275(1)(c) of the I.T. Act 1961 is reckoned from the date of issue of show cause by the authority competent imposing the penalty under the law.

3. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing.”

3. Brief fact of the case is that the assessment was framed u/s 143(3) of the Act and notice u/s 271C was initiated by the DCIT-Circle -1 Jodhpur on 08.01.2015, in pursuing the assessment order dated 08.01.2015. Further, the penalty notice was initiated by the Id. AO on 01.08.2018 u/s 274/271C of the Act. Finally, the penalty was imposed u/s 271C on dated 28.08.2018 amount to Rs.6000/-. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) dismissed the penalty u/s 271C for contravening provision of section 275(1)(c)

of the Act. Accordingly, the penalty amount of Rs.6000/- was quashed. Being aggrieved revenue filed an appeal before us.

4. The ld. DR vehemently argued and placed that the penalty was initiated by the ld. AO on dated 01.08.2018. The ld. DR was not accepted the notice issued by the ld. ACIT-1 Jodhpur on dated 08.01.2015. The ld. DR further argued that the ld. Additional Commissioner has power to levy of penalty u/s 271C. So, the previous notice should be ignored.

5. The ld. AR vehemently argued and submitted the written submission which are kept in the record. The ld. AR invited our attention in **APB page 3** that the notice was issued by the ACIT, Circle-1 Jodhpur on dated 08.01.2015 related Sections 274/271C for the impugned assessment year. The long time revenue was totally inaction and not levied the penalty. The ld. AR relied on the order of the ld. CIT(A). The relevant paragraph no. 4.3 to 6 are reproduced as below:

“4.3. I have considered the penalty order, remand report of the JCIT(TDS), Jodhpur and submissions of the appellant. There are two issues to be adjudicated upon; firstly, whether the penalty is time barred and secondly. whether the AO was right in imposing the penalty of Rs.6,000/-. To appreciate issue in better perspective, it is imperative to recapitulate the S.275 which is 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 in 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.

In the light of above noted section, it is noted that the AO while passing the order u/s 143(3) dt. 8.1.2015 has stated that the penalty under section 271C initiated separately for non-deduction of TDS'. Whereas, the penalty order is dated 28.8.2018. Appellant has contended that the penalty was time barred.

Basic question to be decided is, as to when the penalty was 'initiated' 'whether at the time when the assessment order was passed by the AO or then the notice for levy of penalty was issued. This question also arose before the Hon'ble High Court of Delhi in the case of PCIT vs Mahesh Wood Products Pvt. Ltd in ITA 786 & 787/2016, order Dt. 5 May, 2017. Para 9 of the order is reproduced herein below:

9. However, this question came up for consideration in PCIT v. JKD Capital & Finlease Ltd.(supra). The date on which the AO

recommended the initiation of penalty proceedings was taken to be the relevant date as far as Section 275(1)(c) was concerned. There was no explanation for the delay of nearly five years in the ACIT acting on the said recommendation. The Court held that the starting point would be the 'initiation' of penalty proceedings. Given the scheme of Section 275(1)(c) it would be the date on which the AO wrote a letter to the ACIT recommending the issuance of the SCN. While it is true that the ACIT had the discretion whether or not to issue the SCN, if he did decide to issue a SCN, the limitation would begin to run from the date of letter of the AO recommending initiation' of the penalty proceedings.

From the above, it is clear that the penalty could not have been imposed on 28.08,2018 in this case thus, the appellant succeeds on this issue of ground of appeal.

5. Since the appellant has succeeded on technical ground; second issue becomes infructuous: accordingly same is treated to have been dismissed hereby.”

6. We heard the rival submission and consider the documents available in the record. The notice u/s 274/271C was duly issued to the assessee by the Id. ACIT, Circle-1, Jodhpur on dated 08.01.2015, the liable for imposition of penalty was duly crossed the limit by violating the provision of section 275(1)(c). The levying the penalty U/s 271C is time barred and beyond the jurisdiction of the Id. AO. After considering the submission of both the parties,

in our considered view that we do not intervene the appeal order. The appeal order is upheld. Accordingly, the penalty U/s 271C amount to Rs. 6,000/- is quashed.

7. In the result, the appeal of the Revenue bearing **ITA No. 34/Jodh/2020** is dismissed.

Order pronounced in the open court on 12.10.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

(On Tour)

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order