

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

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.8069/Del/2019
(ASSESSMENT YEAR 2009-10)**

**ITA No.8070/Del/2019
(ASSESSMENT YEAR 2010-11)**

Sunil Dandriyal 88-B, Doon Palm City Dehradun-248 001 PAN-ALTPD 8489N	Vs.	JCIT Central Range Meerut
(Appellant)		(Respondent)

Assessee by	Sh. Salil Kapoor, Advocate
Department by	Sh. Anuj Garg, Sr. DR
Date of Hearing	21/11/2023
Date of Pronouncement	24/11/2023

ORDER

PER M. BALAGANESH, AM:

Both the appeals filed by Assessee arises out of the common orders of the Learned Commissioner of Income Tax (Appeals)-IV, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.CIT(A)-IV/KNP/10246 & 10247/DCIT-CC/DDN/2018-19 dated 31/07/2019 against the penalty orders passed by Joint Commissioner of Income Tax, Central Range, Meerut (hereinafter

referred to as the 'Ld. AO') u/s 271D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 29/11/2017 for Assessment Years 2009-10 & 2010-11.

2. As identical issue is involved in both the appeals challenging the levy of penalty u/s 271D of the Act, they are taken up together and disposed of by this common order for the sake of convenience.

3. We have heard the rival submissions and perused the materials available on record. The assessee had received Rs.10,00,000/- and Rs.1,17,50,000/- in cash in Asst. Years 2009-10 and 2010-11 respectively from Sh. Sanjay Bansal. The Ld. AO completed quantum assessment proceedings for AY 2009-10 u/s 153A r.w.sec.143(3) of the Act on 30/03/2015. The Ld. CIT(A) while disposing of the appeal for AY 2011-12 in his order dated 28/02/2018 had directed the Ld. AO to recommend the JCIT for initiation of the proceedings of penalty u/s 271D r.w.sec 269SS of the Act in respect of cash receipt of loans from Mr. Sanjay Bansal in AY 2009-10 and 2010-11 by the assessee. Accordingly, the Ld. AO made a reference to Ld. JCIT for initiation of the penalty proceedings on 25/03/2017. The Ld. JCIT passed the penalty order u/s 271D of the Act levying penalty in the sums of Rs.10,00,000/-

and Rs.1,17,50,000/- for AY 2009-10 and 2010-11 respectively for violation of provisions of section 269SS of the Act. Now, the short for question that arises for our consideration is as to whether the said penalty order passed by the Ld. JCIT on 29/11/2017 is within the time prescribed under the statute. For this purpose, it would be relevant to reproduce the provisions of section 275(1) of the Act:-

275. ¹⁵[(1)] *No order imposing a penalty under this Chapter shall be passed—*

¹⁶[(a) *in a case where the relevant assessment or other order is the subject-matter of an appeal to the ¹⁷[***] Commissioner (Appeals) under section 246 ¹⁸[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 completed¹⁹, or six months from the end of the month in which the order of the ²⁰[***] Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later :*

²¹**[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;*

(b) *in a case where the relevant assessment or other order is the subject-matter of revision under section 263 ²¹[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.]*

4. The assessee's case herein falls u/s 275(1)(c) of the Act wherein penalty order should be passed on or before 30/09/2017 ie. 6 months from the end of the month in which penalty proceedings were initiated by the Ld. AO by recommending to Ld.

JCIT. We find that the lower authorities had proceeded on the basis that the time limit had to be reckoned from the date of issuance of first notice by Ld. JCIT which was done on 11/08/2017. We find that the law is very clear that penalty proceedings u/s 271D and 271E of the Act are to be initiated by the Ld. AO by recommending the same to Ld. JCIT and, thereafter, the Ld. JCIT shall issue show cause notice to the assessee and pass penalty orders thereon u/s 271D and 271E of the Act. Hence, the due date had to be reckoned only from the date of triggering of the proceedings from the side of the Ld. AO to Ld. JCIT. Admittedly, the Ld. AO had made reference to Ld. JCIT on 25/03/2017 for initiating penalty proceedings in the instant appeals. Six months from the end of the month in which the action for imposition of penalty is initiated expired on 30/09/2017. Accordingly, the penalty order framed on 29/11/2017 would become barred by limitation as per provisions of section 275(1)(c) of the Act.

5. Our aforesaid view is further fortified by the decision of Hon'ble Jurisdictional High Court in the case of *PCIT vs. Rishikesh Buildcon (P) Ltd. reported in 451 ITR 108 (Delhi)*, wherein the following facts were prevalent:-

- (a) Quantum Proceedings were completed in December 2008
- (b) Penalty Proceedings u/s 271D of the act were initiated by the Ld. AO in December 2008
- (c) Show cause notice was issued by the Ld. JCIT u/s 271D of the Act on 24/03/2009.
- (d) Penalty order u/s 271D of the Act was passed by the Ld. JCIT on 29/09/2009.

5.1. The Hon'ble Jurisdictional High Court held that due date for passing the penalty order would be 30/06/2009 and held that the penalty order passed on 29/09/2009 is barred by limitation by observing as under:

8. The contention of the learned senior standing counsel for the Revenue that the date of the issuance of the SCNs would be the relevant starting point i.e., 24th March, 2009, was specifically noted and rejected by this Court in the Mahesh Wood Products (P.) Ltd. (supra). The relevant portion of the said judgment reads as follows:—

"7. Mr. Sanjay Kumar, learned counsel for the Revenue has sought to place reliance on the decision of this Court in Commissioner of Income-tax (TDS) v. IKEA Trading Hong Kong Ltd., [2011] 333 ITR 565 (Del) to urge that it is the date of issuance of the Show Cause Notice ('SCN') that would be the relevant starting point. Accordingly he submits that the date of issuance of the SCN by the ACIT being 28 August, 2012, limitation would expire on 28 February, 2013. Therefore, the penalty orders having been passed on 26 February, 2013 would not be barred by limitation. He also sought to distinguish the decision of this Court in PCIT-5 v. JKD Capital & Finlease Ltd. (supra) by stating that in the said case, the gap between the intimation sent by the AO recommending initiation of penalty proceedings and the action taken by the ACIT was nearly five years, whereas in the present case, it was slightly over one month.

**

**

**

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."

(Emphasis Supplied)

9. *The legal principle for determining the date of initiation of penalty proceedings has been settled by the predecessor bench of this Court in its decision of JKD Capital & Finlease Ltd. (supra) which reads as under: -*

"2... While finalising the assessment order dated December 28, 2007 the Assessing Officer ("the AO") in the concluding paragraph issued a direction to initiate proceedings against the assessee under sections 271(1)(c) and 271E of the Act. Admittedly, under section 271E(2) of the Act, any penalty under section 271E(1) can only be imposed by the Joint Commissioner of Income-tax ("the Joint CIT"). Consequently, the Assessing Officer referred the matter to the Additional Commissioner of Income-tax.

3. A perusal of the order dated March 20, 2012, of the Additional Commissioner of Income-tax shows that a show-cause notice initiating penalty proceedings under section 271E was issued to the assessee on March 12, 2012, requiring it to explain as to why penalty should not be levied on it under section 271E on account of violation or the provisions of section 269T of the Act. With the assessee having failed to furnish the required information, the Additional Commissioner of Income-tax proceeded to confirm the penalty in the sum of Rs. 17,90,000.

**

**

**

6. Mr. Kamal Sawhney, learned senior standing counsel appearing for the Revenue, submitted that the Assessing Officer has no power to initiate the penalty proceedings under section 271E of the Act and it was only the Joint Commissioner of Income-tax who could have done so. Therefore, for the purpose of limitation under section 275(1) (c), the relevant date should be the date on which notice in relation to the penalty proceedings were issued. In the present case, as the Additional Commissioner of Income-tax issued notice to the assessee on March 12, 2012, the order of the Additional Commissioner of Income-tax passed on March 20, 2012, was within limitation.

7. *We are unable to agree with the above submission of learned standing counsel for the Revenue. 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."

8. In terms of the above provision, 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. In the present case, at the level of the Assessing Officer, the quantum proceedings was completed on December 28, 2007. Going by this date, the penalty order could not have been passed later than March 31, 2008. The second possible date is the expiry of six months from the month in which the penalty proceedings were initiated. With the Assessing Officer having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is June 30, 2008. The later of the two dates is June 30, 2008.'

(Emphasis Supplied)

10. *The contentions urged by the learned counsel for the Revenue in the present appeals are therefore reiteration of pleas which have been categorically rejected by the predecessor bench of this Court in the aforesaid judgments.*

11. *In the present appeals, a perusal of the assessment order(s) shows that the penalty proceedings were initiated by the AO in the assessment order(s) itself. Illustratively, the direction contained in the assessment order dated 17th December, 2008, pertaining to ITA No. 577/2018, Rishikesh Buildcon Pvt. Ltd. may be referred to, which reads as under:-*

"... Initiate penalty proceedings u/s, 271(1)(c) for concealment of income & 271(1)(b) for non-compliance of statutory notices, & 271 D for violating the provisions of Section 269 SS as discussed above."

12. *The predecessor bench of this Court in the aforesaid judgments has held that where the AO has initiated the penalty proceedings in his/her assessment order, the said date is to be taken as the relevant date as far as the section 275(1)(c) of the Act is concerned. In these cases, the quantum proceedings were completed by the AO on 17th/18th December, 2008, and the AO initiated the penalty proceedings in December, 2008, thus, the last date by which the penalty order could have been passed is 30th June, 2009. The six months from the end of the month from which action of imposition of penalty was initiated would expire on 30th June, 2009. However, in this case, admittedly, the penalty order(s) were passed on 29th September, 2009, and therefore, the ITAT rightly concluded that the order(s) were barred by limitation.*

13. *Consequently, we answer the question of law against the Revenue and in favour of the Assessee by holding that, in the facts and circumstances of the present appeals, the ITAT was correct in law in deleting the penalty imposed by the Additional Commissioner of Income Tax, under section 271D of the Act, on the ground that the penalty order(s) dated*

29th September, 2009, was passed beyond the time period prescribed by Section 275(1)(c) of the Act, the same having been passed after the lapse of six months from the end of the month in which the penalty proceedings were initiated by the AO.

14. Accordingly, the present appeals are dismissed.

6. In view of the above observations and respectfully following the judicial precedent relied upon herein above, we have no hesitation to conclude that the penalty orders framed on 29/11/2017 for both the assessment years are barred by limitation and, hence, liable to be quashed. Since the entire penalty order is quashed on limitation, no opinion is hereby given on merits. Accordingly, grounds raised by the assessee are allowed.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 24th November, 2023.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 24/11/2023

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI