

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
विविध आवेदन / MA No. 4/SRT/2024
[Arising in ITA No. 277/SRT/2023]
Assessment Years: (2012-13)
(Virtual Court Hearing)**

Income Tax Officer, Ward-1(2)(4), Surat, Room No.119, 1 st Floor, Aayakar Bhawan, Majura Gate, Surat-395001.	Vs.	Pristine Jewellery Plot No.20, MIDC Behind Khanna House, Road No.6, Andheri East, Mumbai-400096
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: AAIFP 6894 R		
(अपीलार्थी /Applicant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri Umesh Dalal, CA
राजस्व की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
विविध आवेदन /MA instituted on	21.03.2024
सुनवाई की तारीख /Date of Hearing	05/07/2024
उद्घोषणा की तारीख Date of Pronouncement	29/08/2024

Order under section 254(2) of Income tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This Miscellaneous Application (MA) under section 254(2) of the Income Tax Act, 1961 filed by the Revenue for seeking rectification / re-calling the order dated 04.09.2023 passed in ITA No.277/SRT/2023 for assessment year (AY) 2012-13.
2. The Learned Senior Departmental Representative (Ld. Sr-DR) for the Revenue submits that there is mistake apparent in the order dated 04.09.2023, which require rectification. The assessment in case of assessee was completed on 24.12.2019 in accepting returned income.

However, while passing assessment order, it was noted by Assessing Officer (AO) that business turnover of assessee was at Rs. 8.53 Crore being more than threshold limit for obtaining audit report and the assessee was required to obtain audit report under section 44AB of the Income Tax Act. The Assessing officer initiated penalty under section 271B of the Act and levied penalty of Rs.1,50,000/- vide order dated 09.08.2021. The Assessing Officer levied minimum penalty prescribed under section 271B of the Act. On appeal before Ld. CIT(A) the penalty was sustained. On further appeal before Tribunal, the appeal of assessee was allowed by holding that penalty was levied after passing limitation period prescribed under section 275 of the Act. The Ld. Sr-DR for the Revenue submits that time limit for passing penalty order was extended by Central Board of Direct Taxes (in short, 'CBDT') vide its Circular No.74/2021 dated 25.06.2021 up to 30.09.2021. The Assessing Officer passed penalty order on 09.08.2021, thus penalty order was passed within extended time-limit. Thus, there is mistake apparent in the order passed by the Tribunal, which was require rectification for re-calling the same.

3. On the other hand, Ld. Authorized Representative (Ld.AR) for the assessee submits that there is no mistake apparent in the order passed by the Tribunal dated 04.09.2023. The Tribunal passed order on 04.09.2023 after hearing the submission of both the parties. The Ld.AR of the assessee submits that Assessing Officer completed assessment

under section 143(3) r.w.s. 147 of the Act on 24.12.2019, no appeal was filed by assessee against the addition in the quantum assessment. The penalty is not based on the addition in the assessment order, the AO was required to pass penalty order within six months from the end of month, when penalty was initiated, which was up to 30.06.2020. The AO levied penalty vide order dated 09.08.2021. Thus, the penalty order is clearly barred by limitation and it was held so while passing the order by this Tribunal. On the contention of Id. Sr-DR of revenue about the plea of CBDT's notification No.74/2021 dated 25.06.2021, that time limit for passing the order was extended up to 30.09.2021, the Ld. AR of the assessee submits that said notification is in relation to matter which was getting time barred on 30.06.2021 *wherein* time period was extended up to 30.09.2021 *whereas* the time limit in case of assessee for passing order expired on 30.06.2020. Thus, the benefit of Notification No.74/2021 dated 25.06.2021 is not available to the revenue. The Ld. AR of the assessee submits that revenue is seeking review of order which is beyond the scope of application under section 254(2) of the Act. The Ld.AR of the assessee submits that he has filed copy of Notification No.74/2021 dated 25.06.2021. The Ld. AR of the assessee further relied on decision of Hon'ble Delhi High Court in case of Ganesh Dass Khanna vs. ITO and Others. In Civil Write Petition No.11527/2022 & CM Appeal No.34097/2022 dated 10.11.2023 held that Circular of CBDT cannot substitute statutory provisions The Ld.AR of the assessee also relied

upon the decision of Hon'ble jurisdictional High Court in the case of Gujarat Urban Co-Operative Bank Federation vs. Union of India in Special Civil Application No.11209/2002 with Special Civil Application No.1465 of 2003 dated 12.06.2012.

4. We have considered the rival submission of both the parties and have gone through the order dated 04.09.2023 carefully. We have also deliberated on various case laws relied by the Id AR of the assessee. We find that there is no dispute that while passing the assessment order on 24.12.2019. The AO initiated penalty under section 271B while passing the assessment order. The AO levied penalty on 09.08.2021. The sole basis of objection of AO and foundation of the present application is the CBDT notification No.74/2021 dated 25.06.2021, wherein the time-limit for passing penalty was extended up to 30.09.2021.
5. The ratio of decisions relied by Id AR of the assessee are not applicable on the facts of the present applications. In case of Ganesh Dass Khanna vs. ITO (supra), the High Court was considering the issue of limitation period for reopening under section 147, wherein notice under section 148 was issued after 01.04.2021, that and even after the decision of Hon'ble Apex Court in Union of India Vs Ashish Agarwal (2022) 138 taxmann.com 64 (SC). In Gujarat Urban Co-Operative Bank Federation vs. Union of India (supra) the said petitioner challenged the CBDT Circular which was in derogation of exemption allowed under clause (v)

of section 194A(3). The High Courts are vested with extra ordinary jurisdiction in examining such virus in the statues or circulars.

6. Now turning to the specific facts of the case in hand, we find that AO passed assessment order on 24.12.2019 and initiated penalty under section 271B. The penalty under section 271B has no connection with the additions made in the assessment, thus, it is separate and independent. The AO could levy penalty within six months from end of relevant assessment year in which assessment order was passed. Thus, the AO has time to pass penalty order upto 30.06.2020. But, it is well known fact that in the Month of March 2020, there was worldwide severe pandemic of Covid-19 and CBDT issued various Circulars in term section 3 of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, which is commonly known as (TOLA). The CBDT in its various circulars issued from time to time extended the time limit for passing various order upto 30.09.2021. The AO in the present case has passed order under section 271B on 09.08.2021, thus, the order is passed well within the time period allowed by CBDT in Circular No. 74/2021 dated 25.06.2021.
7. We find that while passing order in assesseees, our attention was not brought to such extended period of limitation extended by various CBDT circulars. Thus, we find mistake in the order dated 04.09.2023, which is apparent on record. Hence, order dated 04.09.2023 passed in ITA No. 277/Srt/2023 is recalled. Considering the fact that order of Tribunal is

recalled, hence, the appeal is fixed for hearing afresh on 11.11.2024.

parties be informed through proper notice of hearing.

8. In the result, the MA filed by the revenue is allowed.

Order is pronounced in the open court on 29/08/2024

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

सूरत /Surat दिनांक/ Date: 29/08/2024

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat