IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER
I.T.A. No. 75 to 77/Ran/2024
(Assessment Year-2008-09 to 2010-11)
(Virtual Hearing)

M/s Bharat Coking Coal Limited, Corporate Accounts & Taxation Department, The G.M., Koyla Bhawan, Koyla Nagar, BCCL Township, Dhanbad. **PAN No. AAACB 7934 M**	Vs.	J.C.I.T. (TDS), Dhanbad.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri M.K. Chowdhary, A.r. with Shri Devesh Poddar, Adv.
Department represented by	Shri Amitabh Kumar Sinha, CIT-DR
Date of hearing	03/04/2025
Date of pronouncement	29/04/2025

O R D E R

PER: BENCH

1. All These appeals by the assessee are directed against the separate orders of the National Faceless Appeal Centre (NFAC), Delhi/learned Commissioner of Income Tax (Appeals), [in short, the ld. CIT(A)] all dated 30/01/2024 for the Assessment Year (AY) 2008-09, 2009-10 and 2010-11 respectively. All these appeals of the assessee are having common facts and grounds, therefore, with the consent of parties, all these appeals of the assessee are clubbed and heard together and being decided by this consolidated order. For appreciation of facts, we take ITA No. 75/Ran/2024 for the A.Y. 2008-09 as a lead case. In this appeal, the assessee has raised following grounds of appeal:

> *"1. For that the initiation of penalty proceedings by issue of Notice Dtd. 28.02.2018 and the order passed u/s 271C Dtd. 01.05.2018 are barred by limitation. In case where no specific limitation period is provided, it is settled that the same*

should be passed within a reasonable period of maximum 2/4 years and as such the impugned proceedings initiated after 9 years is baseless and uncalled for. As such, the order passed U/s 271C imposing penalty and confirmed by Ld. CIT(A) is fit to be set aside.

2. *For that Ld. CIT(A) erred in not appreciating that since disallowance u/s 40(a)(ia) has been made by Assessing Officer, in assessment proceedings, the same amount could not be considered as an amount covered by provisions of section 194A so as to raise TDS demand under section 201 or to impose penalty u/s 271C for default of non-deduction of TDS.*
3. *For that Ld. CIT(A) erred in not appreciating that even no order u/s 201 or any other section of the IT Act has been passed to hold the appellant as "Assessee in default" for non deduction of TDS. As such, the impugned penalty order passed U/s 271C cannot be sustained to the extent that the revenue department has nowhere ever alleged the assessee to be in default for non deduction of TDS.*
4. *For that Ld. CIT(A) was not justified in confirming the penalty of Rs. 8,46,41,700/- imposed u/s 271C alleging that the assessee has failed to deduct TDS on notional interest provided in its books, as required by BIFR authorities, in respect of the parent company Coal India Limited (In short CIL) which was not recognised as income by CIL and subsequently waived. As such the liability has never crystalized. It is a settled position of law that TDS cannot be deducted on notional interest provision in the books of account. As such, in totality there has been no default or loss to the revenue calling for any such penalty against the assessee.*
5. *For that in any view of the case the appellant was under bonafide belief that no TDS is deductible on such interest and as such there was reasonable cause for the alleged failure to deduct TDS within the meaning of section 273B of the Act.*
6. *For that the appellant craves leave to add, amend and take up any other grounds at the time of hearing."*

2. Facts of the case, in brief, are that an information was received by the Assessing Officer from the ACIT, Cicle-1, Dhanbad that during the course of assessment for the Financial Year 2007-08, it was found that M/s Bharat Coking Coal Limited (M/s BCCL) made an entry in their books of account for payment of ₹ 8464.17 lacs as interest to Coal India Limited. The Assessing Officer, therefore, observed that though, the assessee was supposed to deduct TDS on the said payment of interest, the same was not deducted as per provisions of Section 194A of the Income Tax Act, 1961 (in short, the Act). The ACIT, TDS Circle, Dhanbad, therefore, submitted a proposal for initiation of penalty under

Section 271C of the Act to the concerned JCIT for not deducting TDS during the financial year under consideration. Accordingly, a penalty notice under Section 271C of the Act was issued to the assessee company on 28/02/2018 asking the assessee to furnish written submission within seven days of the receipt of the show cause notice as to why the penalty under Section 271C of the Act shall not be levied. In response to that, the assessee filed written submissions on 12/03/2018 and challenged the initiation of penalty under Section 271C of the Act. The Assessing Officer, however, not convinced with the submission of the assessee company, imposed penalty of ₹ 847.417 lacs for the said financial year.

3. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the ld. CIT(A), who decided the appeal vide impugned order dated 30/01/2024 and confirmed the penalty imposed by the Assessing Officer under Section 271C of the Act. The ld. CIT(A) did consider the grounds taken by the assessee that the order appealed against the assessee was barred by limitation as it was passed after nine years from the relevant financial year and also that despite there is no limitation provided in the statute, the period of nine years is not a reasonable period. In support of its claim, the appellant also placed reliance on the decision of various Courts and Tribunals, details of which are given in the body of the impugned appeal order. The ld. CIT(A) finally held that the order under Section 201(1) of the Act was passed on 20/02/2018 and the penalty notice under Section 271C was issued on 28/02/2018 with the prior approval of the JCIT, that is within eight days of the passing order under Section 201(1) of the Act. Thus, it cannot be considered as time barred. The ld. CIT(A) also held

that the case laws cited by the appellant were also distinguishable to the extent that in the instant case, there was no delay in initiation of penalty proceedings or imposition of penalty under Section 271C of the Act. The ld. CIT(A), accordingly, confirmed the order of Assessing Officer who imposed penalty under Section 271C of the Act.

4. Aggrieved by the order of ld. CIT(A), the assessee company has filed appeal before us. During the appellate proceedings before us, the appellant in the statement of fact has stated as under:

"Facts of the case

a) That the appellant is a Public Sector Undertaking and a wholly-owned subsidiary of the parent company M/s Coal India Ltd., a Government of India Enterprise.

b) For that during the year under consideration the appellant had made provision of interest, amounting to Rs. 8464.17 lakhs on the amount payable to Coal India Ltd. treated as Loan, on which TDS was not deducted or deposited.

c) That for the first time a Show Cause Notice dated 28.02.2018 in respect of Penalty u/s 271C was issued by the Ld. AO to the appellant.

d) That the appellant filed its show cause reply vide its reply dated 12.03.20 18 and dated 20.04.2018, contending, interalia, as under:

i. That the penalty has been initiated by issue of notice u/s 271C dated 28.02.2018. Hence, initiation of aforesaid belated penalty proceeding after lapse of 9 years from the end of relevant Financial year is barred by limitation.

ii. That no demand of TDS u/s 201(1) was raised for the year under consideration, because the proceedings were barred by limitation. As such since the proceedings for demanding Tax / TDS in itself are barred by limitation, any action for imposition of penalty is ab-initio void and illegal.

iii. *That the provisions of section 194A for deduction of TDS on interest was not applicable in the facts of the case of the assessee since only a notional/hypothetical entry of aforesaid amount of interest was made. The company was continuously running in loss and was under BIFR for declaration of sick company. M/s OIL, parent company of the appellant, has converted amount due from the appellant as Loan, as financial assistance due to huge piling losses, for continuing its day to day activities.*

iv. *The for showing its true financial position before BIFR authorities, BIFR authorities required to provide provisional interest on it. As such the appellant created separate notional provision of the aforesaid amount of interest in its books of accounts. Subsequently, the interest has been even waived by M/s Coal India Ltd. and in fact no interest was either paid or is payable by the assessee to CIL. As such only for making a hypothetical entry in the books of accounts there was no question of making any TDS u/s194A and hence, the penalty proceedings initiated are liable to be dropped.*

v. *That it was further submitted that the appellant is a government company and a PSU and had always deducted TDS in regular course on the items on which TDS was required to be deducted and have filed TDS statements in due time. Its accounts are being audited by internal auditors, tax auditors and by CAG audit. It was under bonafide belief that no TDS is required to be deducted on the entry of hypothetical interest provided in its books of accounts for the purpose of showing its true financial position before BIFR.*

vi. *There was no malafide intention in not deducting TDS. Non of the auditors never pointed out that the assessee was required to deposit TDS on such interest. Even at the state of 1st regular assessment u/s 143(3), the assessing officer allowed the interest and no addition was made. Thus, it was never pointed out by any authority that the assessee was required to deposit TDS on such interest at the point of time, if it was to be deposited. Thus, the assessee was under bonafide belief that*

no TDS is required to be made on such hypothetical interest. This constitutes a reasonable cause.

vii. *That since the same were duly allowed as expenditure, the assessee offered to tax the same in AY 2014-15 as cessation of liability. But the department reduced the such amount offered to tax by the assessee in AY 2014-15 and in some years made the addition u/s 147 by making disallowance u/s 40(a)(ia). It did not effected tax liability on the company, whether the addition was made by way of disallowance or by way of disallowance u/s 40(a)(ia). At that time there was no intention of the department to start proceeding u/s 201 or u/s 271C. This also shows the bonafide and reasonable action on the part of the assessee.*

e) *That whatsoever, later on after filing of the return for AY 2014-15, adding back the aforesaid provision of interest, as cessation of liability, Ld. AO changed his opinion and reduced the addition of cessation of liability in AY 2014-15 and by taking action u/s 147 has added back the same u/s 40(a)(ia) in earlier years. As regards the total tax liability, whether it was taxed in one year or in different years, it remained the same."*

Further during the course of hearing, the appellant again submitted as under:

"Written Synopsis on behalf of the appellant.

1. *That all these 3 appeals involves a common issue i.e. imposition of penalty U/s 271C by Ld JCIT - TDS Dhanbad, vide order dated 01/05/2018 (parallel orders for each year) and same being confirmed by CIT(A) NFAC vide order dated 30/01/2024 (parallel orders for each year).*
2. *That at the very outset we challenge the very initiation of the penalty proceedings vide notice dated 28/02/2018 (parallel notice for each year) to the extent that the same has been done almost after 8-10 years (as per relevant AY) and thus is beyond the limitation period.*
3. *That it is a settled position of law that if no specific time limitation is mentioned, the action should be done within a reasonable period. Before the lower authorities we have made a detailed submission along with various case laws to contend that if a statue does not prescribe the time limit for*

initiation of a proceedings, it does not mean that such power can be exercised at any time at the wish of the revenue authority and that rather the same should be exercised within a reasonable time which in such cases should be about 4 years. (Case laws quoted at 09 - 12 of the CIT(A) order).

4. *That apart from the above, for ready reference and on identical issue, we are attaching herewith the decision of Hon'ble ITAT Delhi Bench in the case of Hindustan Coca Cola Beverages Co. Pvt. Ltd Vs JCIT in ITA No. 3018/Del/2022 dated 17/01/2023 wherein it has been held as under:-*

> *"6. Learned Counsel of the assessee contended that penalty proceedings in this case has been initiated belatedly and much after reasonable period of 4/6 years. As a matter of fact learned Counsel submitted that penalty proceedings have been initiated 14 years after the assessment year concerned. He submitted that the proceedings are time barred. He further submitted that penalty proceeding is barred by limitation under section 275 of the Act. He further referred to several case laws in this regard....*
>
> *8. Upon careful consideration, we find that assessee deserves to succeed on both counts. Firstly, penalty proceedings have been initiated after 14 years and the same is belated and beyond reasonable limitation period of time and this proposition is supported by the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. NHK Japan Broadcasting 172 Taxman 230 and Bharti Airtel vs. UOI 291 CTR 254. In this regard, we may refer to the decision in NHK Japan Broadcasting (supra) as under:-*
>
> > *"21. We are not inclined to disturb the lime-limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Co-op. Mil (P.) Union Lid 's case (supra) action must be initialed by the competent authority under the Income-tax Act where no limitation is prescribed as in section 201 of the Act within that period of four years.*
> >
> > *22. Learned counsel for the revenue submitted that the Department came to know that the assessee was an assessee in default only in November, 1998 when a survey was conducted and it came to be known only then that when the assessee had not deducted tax at source on the global salary. We are of the opinion that the date of knowledge is not relevant for the purposes of exercising jurisdiction insofar as the provisions of the Income-tax Act are concerned. If it were*

so, the limitation period, as for example prescribed under section 147/148 of the Act would become meaningless f the concept of knowledge is imported into the scheme of the Act."

9. Learned Departmental Representative did not dispute the factual or legal veracity of the submission as above. Hence, respectfully following the above, we hold that the penalty levied in this case deserves to be deleted Hence, we set aside the orders of the authorities below and delete the penalty.

5. That we are also attaching herewith the decision of Hon'ble Delhi High Court in the case of CIT Vs NHK Japan Broadcasting 305 ITR 137, 172 taxman 230 which has been relied upon by the Coordinated Bench of Delhi ITAT in the above case.

As such, in view of the above facts and case laws quoted, we submit that the initiation of penalty proceedings U/s 271C is barred by limitation and thus the orders passed thereby imposing the disputed penalties is fit to be set aside."

5. The ld. CIT-DR for the revenue, on the other hand, relied on the order of ld. CIT(A).

6. We have considered the rival submissions and it is found that on identical issue, the Hon'ble ITAT, Delhi Bench, Delhi in the case of Hindustan Coca Cola Beverages Co. Pvt. Ltd. Vs JCIT in ITA No. 3018/Del/2022 dated 17/01/2023 has already held as under:

"6. Learned Counsel of the assessee contended that penalty proceedings in this case has been initiated belatedly and much after reasonable period of 4/6 years. As a matter of fact learned Counsel submitted that penalty proceedings have been initiated 14 years after the assessment year concerned. He submitted that the proceedings are time barred. He further submitted that penalty proceeding is barred by limitation under section 275 of the Act. He further referred to several case laws in this regard....

8. Upon careful consideration, we find that assessee deserves to succeed on both counts. Firstly, penalty proceedings have been initiated after 14 years and the same is belated and beyond reasonable limitation period of time and this proposition is supported by the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. NHK Japan

Broadcasting 172 Taxman 230 and Bharti Airtel vs. UOI 291 CTR 254. In this regard, we may refer to the decision in NHK Japan Broadcasting (supra) as under:-

"21. We are not inclined to disturb the lime-limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Co-op. Mil (P.) Union Lid 's case (supra) action must be initialed by the competent authority under the Income-tax Act where no limitation is prescribed as in section 201 of the Act within that period of four years.

22. Learned counsel for the revenue submitted that the Department came to know that the assessee was an assessee in default only in November, 1998 when a survey was conducted and it came to be known only then that when the assessee had not deducted tax at source on the global salary. We are of the opinion that the date of knowledge is not relevant for the purposes of exercising jurisdiction insofar as the provisions of the Income-tax Act are concerned. If it were so, the limitation period, as for example prescribed under section 147/148 of the Act would become meaningless f the concept of knowledge is imported into the scheme of the Act."

9. Learned Departmental Representative did not dispute the factual or legal veracity of the submission as above. Hence, respectfully following the above, we hold that the penalty levied in this case deserves to be deleted Hence, we set aside the orders of the authorities below and delete the penalty.

Thus, respectfully following the decision of the Hon'ble ITAT, Delhi Bench, Delhi in the case of Hindustan Coca Cola Beverages Co. Pvt. Ltd. Vs JCIT (supra), we also hold that the penalty levied in this case under Section 271C of the Act deserves to be deleted in view of the decision of the Hon'ble ITAT, Delhi Bench, Delhi in the case of Hindustan Coca Cola Beverages Co. Pvt. Ltd. Vs JCIT (supra) wherein the Hon'ble ITAT Delhi Bench has also drawn strength from the decision of Hon'ble Delhi High Court in the case of CIT Vs. NHK Japan

broadcasting 172 Taxman 230 and Bharti Airtel Vs UOI 291 CTR 254 wherein the Hon'ble High court has held as under:

> *"21. We are not inclined to disturb the lime-limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Co-op. Mil (P.) Union Lid 's case (supra) action must be initialed by the competent authority under the Income-tax Act where no limitation is prescribed as in section 201 of the Act within that period of four years.*
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7. In view of the above facts and circumstances and by respectfully following the above decisions passed by the Hon'ble ITAT Delhi Bench and the Hon'ble Delhi High Court, we delete the penalty imposed by the Assessing Officer and confirmed by the ld. CIT(A). In the result, grounds of appeal raised by the assessee are allowed.

8. In the result, this appeal of the assessee is allowed.

9. Now we shall take ITA No.76 & 77/Ran/2024 for the A.Y. 2009-10 and 2010-11, we find that in these cases, the assessee has raised similar grounds of appeal as raised in ITA No. 75/Ran/2024 for A.Y. 2008-09 except variation of penalty amount. We also find that the facts of these appeals are also similar to the facts of ITA No. 75/Ran/2024 for A.Y. 2008-09, where we have allowed the appeal of assessee by deleting the penalty imposed by the Assessing Officer and confirmed by the ld. CIT(A). Therefore, keeping in view the principle of

consistency on similar set of facts, both these appeals of assessee i.e. ITA No.76 & 77/Ran/2024 for the A.Y. 2009-10 and 2010-11 are also allowed. In the result, grounds raised by the assessee in both these appeals are also allowed.

10. In the result, all these appeals of the assessee are allowed.

Order announced in open court on 29th April, 2025.

Sd/-	Sd/-
(GEORGE MATHAN)	(RATNESH NANDAN SAHAY)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ranchi, Dated: 29/04/2025
**Ranjan*
Copy to:
1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi