

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: G : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.3493/Del/2024
Assessment Year: 2016-17

Saluja Construction Company Ltd., Vs Addl. CIT,
3, Munirka Marg, Range-77,
New Delhi – 110 038. Delhi.

PAN: DELS02044A

(Appellant)

(Respondent)

Assessee by : Shri Bhupinder Jit Kumar, Advocate;
Shri Raina Majumdar, Advocate;
Shri Nikhil Sharma, Advocate &
Shri Tushar Kalra, Advocate
Revenue by : Shri Mahesh Kumar, CIT-DR
Date of Hearing : 02.07.2025
Date of Pronouncement : 18.07.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 30.05.2024 of the Ld. Commissioner of Income-tax (Appeals), NFAC, Delhi for AY 2016-17.

2. At the time of hearing, the ld. AR has primarily stressed on the ground that the impugned order imposing penalty has been passed beyond the period of limitation and for convenience grounds No.3 and 6 are reproduced below:-

“3. That on the facts and circumstances of the case, the impugned order dated 30.05.2024 passed by the Ld.CIT(A) confirming the imposition of penalty under section 271C of the Act upon the Appellant for F.Y. 2016-17 is erroneous and bad in law, because it has been passed without appreciating that the penalty order passed under section 271C is barred by limitation prescribed under the provisions of section 275 of the Act.

6. That on the facts and circumstances of the case, the impugned order dated 30.05.2024 passed by the Ld.CIT(A) confirming the imposition of penalty under section 271C of the Act upon the Appellant for F.Y. 2016-17 unjustified and bad in law, because the penalty order is not in accordance with the provisions of section 271C of the Act.

3. The ld. AR has submitted that the period of limitation has to be construed from the date of reference and relying the order u/s 201(1)/201(1A) of the Income-tax Act, 1961 dated 25.11.2022 available at pages 7 to 11 of the paper book, it was submitted that by this order the AO had made a reference for initiation of penalty u/s 271C of the Act. It was submitted that thereafter, the period of limitation has started to run and the penalty order dated 19.10.2023 is beyond the period of six months.

4. It is encountered by the ld. DR by relying the decision of the coordinate Bench in ***Oxigen Services India Pvt. Ltd. vs. JCIT, ITA No.4902/Del/2018, order dated 31.07.2023***, wherein in para 5, the coordinate Bench has held as follows:-

“5. In this case, the show-cause notice u/s 274 has been issued by the Joint Commissioner of Income Tax, the Competent Authority to levy penalty on 26.11.2015 and the order has been passed 19.04.2016.”

5. However, it appears that this issue is no more *res integra* by way of the decision of the Hon’ble Delhi High Court in the case of ***PCIT vs. JKD Capital***

& Finlease Ltd. (2017) 81 taxmann.com 80 (Delhi), wherein the Hon'ble High

Court in paras 7 to 11 has held as follows:-

“7. Mr. Kamal Sawhney, learned Senior standing counsel appearing for the Revenue submitted that the AO has no power to initiate the penalty proceedings under Section 271-E of the Act and it was only the Joint CIT 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 CIT issued notice to the Assessee on 12th March 2012, the order of the Additional CIT passed on 20th March, 2012 was within limitation.

8. 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 (a)....

(b).....

(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.

9. 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 AO, the quantum proceedings was completed on 28th December 2007. Going by this date, the penalty order could not have been passed later than 31st March 2008. The second possible date is expiry of six months from the month in which the penalty proceedings were initiated. With the AO having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is 30th June 2008. The later of the two dates is 30th June 2008.

10. Considering that the subject matter of the quantum proceedings was the non-compliance with Section 269 T of the Act, there was no need for the appeal against the said order in the quantum proceedings to be disposed of before the penalty proceedings could be initiated. In other words, the initiation of penalty proceedings did not hinge on the completion of the

appellate quantum proceedings. This position has been made explicit in the decision in CIT v. Worldwide Township Projects Limited (supra) in which the Court concurred with the view expressed in Commissioner of Income-Tax v. Hissaria Bros. (2007) 291 ITR 244(Raj) in the following terms:

"The expression other relevant thing used in s. 275(1)(a) and cl. (b) of Sub-s. (1) of S. 275 is significantly missing from cl. (c) of s. 275(1) to make out this distinction very clear. We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under ss. 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under ss. 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, cl. (a) of sub-s. (1) of s. 275 cannot be attracted to such proceedings. If that were not so cl. (c) of s. 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if cl. (a) was to be invoked, no necessity of cl. (c) would arise." (emphasis supplied)

11. In fact, when the AO recommended the initiation of penalty proceedings the AO appeared to be conscious of the fact that he did not have the power to issue notice as far as the penalty proceedings under Section 271-E was concerned. He, therefore, referred the matter concerning penalty proceedings under Section 271-E to the Additional CIT. For some reason, the Additional CIT did not issue a show cause notice to the Assessee under Section 271-E (1) till 20th March 2012. There is no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice under Section 271-E of the Act. The Additional CIT ought to have been conscious of the limitation under Section 275 (1) (c), i.e., that no order of penalty could have been passed under Section 271-E after the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice under Section 271- E beyond 30th June 2008, the Additional CIT defeated the very object of Section 275 (1) (c)."

6. Further, in *PCIT vs. Mahesh Wood Products P. Ltd. (2017) 82 taxmann.com 39 (Delhi)*, relying on the decision in *JKD Capital & Finlease Ltd. (supra)*, the Hon'ble High Court in para 9 has held as follows:-

“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.”

7. In the light of the aforesaid, we are of the considered view that there is no substance in the contention of the ld. DR. The grounds raised challenging the assessment to be time barred are sustained. The appeal is allowed. The impugned penalty order is quashed.

Order pronounced in the open court on 18.07.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 18th July, 2025.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi