

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER, AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos. 3132, 3133, 3134, 3135 & 3136/Mds/2016
निर्धारण वर्ष /Assessment Years: 1997-98, 1998-99, 1999-00, 2001-02 &
2002-03

Shri P. Ramesh Kumar, 129-C-7,
Salem Road, Namakkal-637 001.

Vs. The Asst. Commissioner of
Income Tax, Central Range,
67-A, Race Course Road,
Coimbatore-18.

[PAN: ADPPR 8882 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.G.Baskar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mrs.Sumathi Venkatraman,
JCIT

सुनवाई की तारीख/Date of Hearing

: 01.06.2017

घोषणा की तारीख /Date of Pronouncement

: 01.06.2017

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA Nos.3132, 3133, 3134, 3135 & 3136/Mds/2016 are the appeals filed by the assessee against the Order of Commissioner of Income Tax (Appeals), Salem, in ITA No.258/2009-10 dated 24.10.2016 for the AY 1997-98, ITA No.259/2009-10 dated 24.10.2016 for the AY 1998-99, ITA No.260/2009-10 dated 24.10.2016 for the AY 1999-2000, ITA

No.261/2009-10 dated 24.10.2016 for the AY 2001-02 & No.262/2009-10 dated 24.10.2016 for the AY 2002-03 respectively.

2. Mrs. Sumathi Venkatraman, JCIT represented on behalf of the Revenue and Shri G. Baskar, Adv. represented on behalf of the assessee.

3. It was submitted by the Ld.AR that during the course of assessment the AO had noticed that the assessee has accepted cash loans in excess of Rs.20,000/- violating the provisions of Sec.269 SS of the Act. It was a submission that the Assessment Order was passed by the Dy. Commissioner of Income Tax, Central Circle, Salem. It was a submission that the show cause notice for levy of penalty u/s.271D was issued by the Dy. Commissioner of Income Tax, Central Circle, Salem on 26.03.2006 for all the assessment years under appeal. It was a submission that consequently under the provisions of Sec.275(i)(c), the limitation for completion of the penalty proceedings was 30.09.2006. It was a submission that however on 26.07.2006 fresh show cause notice was issued by the Addl. Commissioner of Income Tax, Central Range, Coimbatore and the assessee had replied to the same with a letter dated 16.08.2006 and the penalty came to be levied by Addl. Commissioner of Income Tax, Central Range, Coimbatore on 31.01.2007. It was a submission that the Penalty Order passed by the Addl. Commissioner of Income Tax, Central Range, Coimbatore on 31.01.2007 was barred by limitation in so far as the show cause notice had already been issued on

26.03.2006 by the Dy. Commissioner of Income Tax, Central Circle, Salem. It was a submission that as per the provisions of Sec.271D penalty was imposed under sub-section 1 only by the Joint Commissioner and as per the definition clause of 2(28C), Joint Commissioner included the Addl.CIT. It was a submission that the Hon'ble Rajasthan High Court in the case of Hissaria Bros. reported in 291 ITR 244 has held that if the show cause notice is issued by the AO then the period of six months is to be reckoned from such show cause notice. He placed before us the copy of the decision of the Hon'ble Rajasthan High Court in the case of Hissaria Bros. reported in 291 ITR 244. It was a submission that this view was upheld by the Hon'ble Supreme Court reported in 386 ITR 719 wherein the civil appeal filed by the Revenue against the Rajasthan High Court in 291 ITR 244 had been confirmed. It was a further submission that the Hon'ble Calcutta High Court in the case of Narayani & Sons Pvt. Ltd. reported in (2016) 141 DTR 315 (Cal) has categorically held that in Para Nos.12 – 15 as follows:

12. Sec. 274 lays down the procedure for imposition of penalty. Sub-s. (1) of s.274 provides for affording a reasonable opportunity of hearing to the assessee before an order imposing penalty is passed. Though s. 271D vests the jurisdiction of imposing penalty solely in the Jt. CIT, it is silent as regards initiation of the proceedings. The question is, can such initiation of proceedings be made by the AO? The AO is the person, who is likely to come across the cases of concealment or violation of the provisions of law attracting penal provisions. Can the AO, having come across a case of violation of law attracting penal provisions, issue a notice and in case he does so, would that be an act without jurisdiction? This question has been answered by the Kerala High Court in the affirmative. A somewhat similar situation is contemplated or is bound to arise under sub-s. (2) of s.274 which provides as follows:

"(2) No order imposing the penalty under this chapter shall be made—

(a) by the ITO, where the penalty exceeds ten thousand rupees;

(b) by the Asstt. CIT or Dy. CIT, where the penalty exceeds twenty thousand rupees, except with the prior approval of the Jt. CIT".

13. Prior to introduction of Tax Laws (Amendment) Act, 1975, Sub-s. (2) of s. 274 was as follows:

"(2) Notwithstanding anything contained in cl. (iii) of sub-s. (1) of s. 271, if in a case falling under cl. (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the ITO shall refer the case to the IAC who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

14. A plain reading of sub-s. (2) of s. 274, as it was, goes to show that before the said Act of 1975 was introduced, the AO had jurisdiction to impose penalty not exceeding a sum of Rs.1000. A case involving penalty imposable exceeding a sum of Rs.1000 was required to be referred by him to the IAC, who had the jurisdiction to impose penalty exceeding a sum of Rs.1000. Question arose whether in a case involving penalty imposable exceeding a sum of Rs.1000, the AO could initiate the proceedings by issuing a notice. That question was answered by the Supreme Court in the affirmative. Their Lordships in the case of *D.M. Manasvi vs. CIT 1972 CTR (SC) 437: (1972) 86 ITR 557 (SC)*, held as follows:

"We are also not impressed by the argument advanced on behalf of the appellant that the proceedings for the imposition of penalty were initiated not by the ITO but by the IAC when the matter had been referred to him under s. 274(2) of the Act. The proceedings for the imposition of penalty in terms of sub-s. (1) of s. 271 have necessarily to be initiated either by the ITO or by the AAC. The fact that the ITO has to refer the case to the IAC if the minimum imposable penalty exceeds the sum of rupees one thousand in a case falling under cl. (c) of sub-s. (1) of s. 271 would not show that the proceedings in such a case cannot be initiated by the ITO. The ITO in such an event can refer the case to the IAC after initiating the proceedings. It would, indeed, be the satisfaction of the ITO in the course of the assessment proceedings regarding the concealment of income which would constitute the basis and foundation of the proceedings for levy of penalty."

15. Applying the views expressed by the apex Court it can be said that in a case falling under s. 271D the AO is not precluded from initiating the proceedings by issuing a notice.

4. It was a submission that the Penalty Order being barred by limitation, the same was liable to be quashed.

5. In reply, the Ld.DR vehemently supported the order of the AO and Ld.CIT(A). It was a submission that the CBDT has issued a Circular F.No.279/Misc./M-116/2012-ITJ dated 26.04.2016 wherein the departmental view in regard to this issue has been clarified. It was a submission that show cause notice issued by the AO was liable to be discarded and the limitation if any was to be considered from the date of

the issuance of the show cause notice by the ACIT, Central Range, Coimbatore. It was a submission that the levy of penalty be upheld.

6. We have considered the rival submissions. Admittedly, the Hon'ble Rajasthan High Court decision in the case of Hissaria Bros. reported in 291 ITR 244 wherein the Hon'ble High Court of Rajasthan has held that once show cause notice is issued by the AO then the time limit would run from that show cause notice. This view has also be confirmed by the Apex Court in 386 ITR 719. This is also view of the Hon'ble Calcutta High Court in the case of Narayani & Sons Pvt. Ltd. On perusal of the Circular issued by the CBDT shows that, CBDT is relying upon the decision of the Hon'ble Kerala High Court in the case of Grihalakshmi Vision reported in 379 ITR 100. This is a decision dated 08.07.2015. The Hon'ble Apex Court confirmed the decision of the Hon'ble Rajasthan High Court in the case of Hissaria Bros. on 22.08.2016. In these circumstances, the decision relied upon by the Revenue and the Circular issued by the CBDT would no more cover the issue. This being so, respectfully following the decision of the Hon'ble Apex Court in the case of Hissaria Bros. referred to supra and also the Rajasthan High Court in the case of Hissaria Bros. supra and the decision in the case of Narayani & Sons Pvt. Ltd. referred to supra, the Penalty Order passed by the Addl.CIT, Central Range, Coimbatore on 31.01.2007 stands quashed as being barred by limitation.

7. In the result, the appeals filed by the assessee are stands allowed.

Order pronounced in the Open Court on 1st June, 2017, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 1st June, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF