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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 577/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr. Kunal Sharma, Senior Standing
Counsel for Revenue.

versus

RISHIKESH BUILDCON PVT. LTD. Respondent
Through: Mr. Rajiv Saxena, Ms. Sumayla
Saxena and Mr. Shyam Sunder,
Advocates.

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+ ITA 580/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr. Kunal Sharma, Senior Standing
Counsel for Revenue.

versus

RISHIKESH PROPERTIES PVT. LTD. Respondent
Through: Mr. Rajiv Saxena, Ms. Sumayla
Saxena and Mr. Shyam Sunder,
Advocates.

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+ ITA 583/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr. Sanjay Kumar, Senior Standing
Counsel for Revenue.

versus

RUPA PROMOTERS PVT. LTD., Respondent
Through: Mr. Rajiv Saxena, Ms. Sumayla
Saxena and Mr. Shyam Sunder,
Advocates.

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Reserved on : 18th October, 2022
Date of Decision: 17th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. By way of the present appeals, Revenue has assailed the common judgment and order of the Income Tax Appellate Tribunal ('ITAT') dated 24th October, 2017, in ITA Nos. 3178/Del/2010, 3150/Del/2010 and 3171/Del/2010 for the Assessment Year ('AY') 2006-07. This Court while admitting these appeals on 15th May, 2018, framed the following common question of law: -

"Did the Income Tax Appellate Tribunal fall into error with respect to its interpretation of Section 275(1)(c) of the Income Tax Act in the circumstances of the case?"

2. The learned senior standing counsel for the Revenue has made the following submissions: -

2.1. He states that in the present appeals, the Assessing Officer ('AO') passed the assessment order(s) on 17th December, 2008 and 18th December, 2008 and recorded that the penalty proceedings be initiated; and a reference was made by the AO to the prescribed authority on 18th March, 2009. The prescribed authority had, thereafter, issued separate Show Cause Notice ('SCN') to the Respondent(s), Assessee(s), on 24th March, 2009, and consequently, the penalty order(s) were passed on 29th September, 2009.

2.2. He states that the aforesaid facts evidence that the penalty order(s) were passed within six months from the end of the month in which the reference was made by the AO to the prescribed authority i.e., 18th March, 2009.

2.3. He states that in the facts of the present appeals, the penalty order(s) were passed within six months from the end of the month in which the penalty proceedings were initiated by the prescribed authority by issuance of SCNs dated 24th March, 2009.

2.4. He states that the ITAT erred in holding that the limitation under Section 275(1)(c) of the Income Tax Act, 1961 ('the Act'), commenced from the date initiation of proceedings by the AO (December 2008) even though, admittedly, the AO is not competent to levy penalty under Section 271D of the Act. Therefore, he contends that the order of the ITAT holding that the penalty order was passed after the expiry of the time limit laid down under Section 275(1)(c) of the Act is erroneous.

2.5. He states that the ITAT has failed to appreciate the factual matrix in the judgment of this Court in ***Principal Commissioner of Income-Tax (Central)-2 v. Mahesh Wood Products Pvt. Ltd., 2017 SCC OnLine Del 8214***, wherein a reference was made by the AO to the prescribed authority on 23rd July, 2012 and the SCN was issued on 28th August, 2012. Therefore, as per the date of reference, the limitation was to expire on 31st January, 2013 and as per the SCN, the limitation would've expired on 28th February, 2013. The penalty order was passed on 26th February, 2013. This Court in the facts of the said case, held the same to be barred by limitation by reckoning the date of initiation of penalty to be the date of making reference by the AO to the prescribed authority. However, in the present case, the reference to the

prescribed authority and issuance of SCN, both were carried out in the month of March, 2009, and therefore the limitation would've expired on 30th September, 2009. He states in the present case the penalty orders were passed on 29th September, 2009, thus, within the limitation period.

2.6. He lastly, states that the ITAT erred in holding that the AO had initiated the penalty proceedings in the assessment order itself and therefore, the limitation period is to be reckoned from the end of the month of December, 2008, since the action for imposition of penalty was initiated vide the assessment order(s) itself. He states that the ITAT failed to appreciate that since the AO is not the prescribed authority under Section 271D of the Act, the AO's satisfaction with respect to initiation of penalty proceedings is not relevant and the role of the AO was limited to bringing the fact of the violation of Section 269SS of the Act, to the knowledge of the prescribed authority. He states therefore, the limitation cannot be reckoned from the end of the month of the assessment order(s) and the same can only start from the end of the month on which the prescribed authority assumes jurisdiction by taking cognizance of the reference made to it by the AO. He, thus, contends that the date of reckoning limitation would be the date of issuance of the show cause notice i.e., 24th March, 2009. He states that the provision of Section 271D of the Act does not have any nexus with the assessment proceedings.

3. In reply, the learned counsel for the Respondent(s), Assessee(s), states that the facts arising for consideration in the present appeals are undisputed to the extent that the penalty proceedings were initiated by the AO in his assessment order(s) passed in December, 2008. Thus, the penalty order(s) passed on 29th September, 2009, were barred by limitation.

3.1. He states that the ITAT followed the judgment of this Court in the case of ***Principal Commissioner of Income-Tax v. JKD Capital and Finlease Ltd., 2015 SCC OnLine Del 14476*** to conclude that the penalty proceedings were initiated in the assessment order(s) itself and therefore, taking the same to be the relevant date of initiation, the limitation period was to be calculated from the end of the month of December, 2008, itself and not from the date on which the SCNs were issued i.e., 24th March, 2009.

3.2. He states that the legal principles for determining the date of initiation and limitation for completing the penalty proceedings under Section 275(1)(c) of the Act, have been well settled by this Court in its judgment of ***JKD Capital and Finlease Ltd.*** (supra) and ***Mahesh Wood Products Pvt. Ltd.*** (supra). The ITAT has correctly followed the law laid down in the said judgments and applied the same to the facts of the case in the present appeals. The ITAT has not interpreted Section 275(1)(c) of the Act, as contended by the Revenue, but correctly followed the interpretation of the said provision as propounded by this Court. He thus states that the question of law framed by this Court on 15th May, 2018, is not a substantial question of law as the interpretation of Section 275(1)(c) of the Act, is covered by the judgments of the predecessor bench of this Court.

3.3. In this regard he relies upon the judgment of the Supreme Court in the case of ***Sir Chunilal V. Mehta and Sons, Ltd. v. The Century Spinning and Manufacturing Co., Ltd., AIR 1962 SC 1314***, to contend that if the question was practically covered by the decision of the highest Court or if the general principles to be applied in determining the questions of law are well settled and the only question was of applying the settled principles to the facts of the

case it would not be a substantial question of law. He, therefore, states that there is no substantial question of law to be determined in the present appeals.

4. We have heard the learned counsel for the parties. The brief facts in these appeals are as under: -

4.1. **ITA No. 577/2018** –The said Respondent, Assessee, is engaged in the business of carrying out land development work and had filed its Return of Income ('ROI') on 31st March, 2007, declaring a loss of Rs. 56,022/-. The Assessee's case was selected for scrutiny through CASS and Notice(s) were issued under Section 143(2) and 142(1) of the Act, on 20th February, 2008, and 10th March, 2008, respectively. During the Assessment proceedings, the AO observed that the Assessee had received cash aggregating to Rs. 5,43,66,000/- from three companies. The AO in light of the aforesaid facts, passed the assessment order dated 17th December, 2008, holding that the Assessee has violated the provisions of Section 269SS of the Act, as it had received cash in excess of Rs. 20,000/- and consequently, proceeded to initiate penalty proceedings, *inter alia*, under Section 271D of the Act.

4.2. **ITA 580/2018** –The said Respondent, Assessee herein is also engaged in the business of carrying out land development work and had filed its ROI on 31st March, 2007, declaring a loss of Rs. 58,957/-. The Assessee's case was selected for scrutiny through CASS and Notice was issued under Section 143(2) of the Act, on 20th February, 2008. During the Assessment proceedings, the AO observed that the Assessee had received cash aggregating to Rs. 6,35,15,000/- from three companies. The AO in light of the aforesaid facts, passed the assessment order dated 18th December, 2008, holding that the Assessee has violated the provisions of Section 269SS of the

Act, as it had received cash in excess of Rs. 20,000/- and consequently, proceeded to initiate penalty proceedings, *inter alia*, under Section 271D of the Act.

4.3. **ITA 583/2018** –The said Respondent, Assessee, herein is also engaged in the business of carrying out land development work and had filed its ROI on 31st March, 2007, declaring a loss of Rs. 66,279/-. The Assessee's case was selected for scrutiny through CASS and Notice was issued under Section 143(2) of the Act, on 20th February, 2008. During the Assessment proceedings, the AO observed that the Assessee had received cash aggregating to Rs. 5,02,03,000/- from three companies. The AO in light of the aforesaid facts, passed the assessment order dated 17th December, 2008, holding that the Assessee has violated the provisions of Section 269SS of the Act, as it had received cash in excess of Rs. 20,000/- and consequently, proceeded to initiate penalty proceedings, *inter alia*, under Section 271D of the Act.

5. The aforesaid assessment order(s) dated 17th December, 2008 and 18th December, 2008, were challenged by the Assessee(s) in appeal, wherein the Commissioner of Income Tax (Appeals) [‘CIT(A)’] vide his separate order(s), all dated 31st March, 2010, deleted the penalty imposed by the AO, on merits.

6. The Revenue challenged the order(s) of CIT(A) before the ITAT. In the proceedings conducted before the ITAT, the authorized representative of the Assessee(s) raised a legal ground with respect to limitation and prayed that the ITAT should first determine the said legal ground. The impugned order records that the Revenue agreed to the said request of the Assessee(s) and therefore, the legal issue of limitation was determined in the first instance.

The ITAT after taking note of the admitted facts concluded that since the penalty proceedings were initiated in the assessment order(s) itself, therefore, the limitation period will begin to run from end of the month of December, 2008 and not from March, 2009, that is the date on which the SCNs under Section 271D of the Act were issued. The ITAT in concluding as above, followed the judgment of this Court in ***JKD Capital and Finlease Ltd.*** (supra) and ***Mahesh Wood Products Pvt. Ltd.*** (supra).

7. The relevant admitted facts for determining the controversy in the present appeals are:

- a. The quantum proceedings with respect to the three Assessee(s) were completed in December, 2008 and the penalty proceedings against the Assessee(s), *inter alia* under Section 271D of the Act for violating the provision of Section 269SS of the Act, had been initiated by the AO at the time of the completion of the said assessment.
- b. The SCNs under Section 271D of the Act were issued by prescribed authority on 24th March, 2009.
- c. The penalty order(s) were passed on 29th September, 2009.

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 Pvt. 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.

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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 and 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 of 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.

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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.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 17, 2022

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