



\$~14 of 08.09.2023

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

% **Date of Decision: 11.09.2023**

+ **ITA 19/2021**

PR. COMMISSIONER OF INCOME TAX (CENTRAL -II),
DELHI

..... Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Easha and Ms
Hemlata Rawat, Advocates.

versus

THAPAR HOMES LIMITED

..... Respondent

Through: Mr Nischay Kantoor, Advocate
(Amicus Curiae) and Mr Ved Jain,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal concerns Assessment Year (AY) 2008-09.
2. At the outset, in this matter, a notice was issued to the respondent/ assessee.
3. The respondent/ assessee has not entered appearance, despite service being effected. Therefore, in order to assist the court, we had appointed Mr Nischay Kantoor, Advocate, as an amicus curiae, in the proceedings held on 18.07.2023.



4. We have heard Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/ revenue, and Mr Nischay Kantoor, learned amicus curiae.

5. After hearing learned counsels for the parties, in our view, the following substantial question of law requires consideration by the Court:

(i) Whether the Income Tax Appellate Tribunal [in short, “Tribunal”] misdirected itself on facts and in law, in deleting the penalty imposed under Section 271E of the Income Tax Act, 1961 [in short, “Act”] on the ground that it was beyond the period of limitation, as prescribed under Section 275 (1)(c) of the Act?

6. Since this is a pure question of law, and the facts are not in dispute, with the consent of the counsels for the appellant/revenue, the appeal is taken up for hearing and disposal at this stage itself.

7. For the purpose of adjudicating the appeal, the following brief facts are required to be noticed:

(i) The assessment order concerning the AY in issue, i.e., 2008-09, was passed on 31.12.2010;

(ii) While passing the assessment order, the Assessing Officer (AO) issued notice for initiation of penalty proceedings under Section 271AAA, 271 D, and 271 E.

(iii) A perusal of the assessment order shows that the AO made the following endorsement, insofar as the penalty proceedings were concerned:

“Assessed u/s 153A/143(3) as above. Issued statutory forms. Tax calculation sheet is enclosed after charging interest as applicable. Demand notice u/s 156 issued. Penalty proceedings u/s 271AAA, 271D and 271E are



initiated separately.

This assessment order is issued after obtaining prior approval of the Additional Commissioner of Income Tax, Central Range-2, New Delhi u/s 153D vide Letter No ADDL CIT/CR-2/App u/s 153D/2010-11/726 dated 29.12.2010”

(iv) The Additional Commissioner of Income Tax [in short, “ACIT”], who is equivalent in rank and power to the Joint Commissioner of Income Tax, issued a notice on 13.06.2011 under Section 274 and 271E.

(v) The impugned penalty order was passed by the ACIT on 30.12.2011.

8. Given the aforesaid facts, we need to construe the provision concerning limitation, with regard to the penalty proceedings.

9. The provision concerning limitation is Section 275 (1)(c) of the Act and it reads as follows:

“Section 275. Bar of limitation for imposing penalties.

(1) No order imposing penalty under this chapter should be passed -

xxx

xxx

xxx

(c) In any other case, after the expiry of the financial year in which the proceedings, i[n the course of which action for imposition of penalty has been initiated], are completed, or six months from the end of the month in which action of imposition of penalty is initiated, whichever period expires later.”

9.1 A perusal of the aforesaid provision shows that there are two limbs embedded therein, for the purpose of calculating the end date when the limitation expires, depending on whichever is the later date.

9.2 The first limb points in the direction that the end of the Financial Year in which the quantum proceedings are taken out, in the course of which



action for imposition of penalty is initiated are completed. This would provide the end date when limitation would expire under the first limb.

9.3 According to the second limb, limitation is to be calculated having regard to the end of the month in which the action taken for imposition of penalty is initiated. Thus under this limb, limitation would commence from the end of the month in which the action for imposition of penalty is initiated (except where the two dates coincide). The prescribed period of limitation, i.e., 6 months, will run from the said date.

10. In the given facts and circumstances of the case, if the first limb of Section 275 (1)(c) of the Act is applied, since the assessment order was passed on 31.12.2010, the limitation would expire on 31.03.2011, which is the end of the Financial Year immediately following the date when the proceedings in which the course of action for the imposition of penalty was initiated, are completed.

11. Likewise, the second limb, if applied, the 6 month period would run from the end of the month in which the action for imposition of penalty is initiated.

12. As noted above, since the action for imposition of penalty was taken when the assessment order was passed i.e., 31.12.2010, the second limb suggests that the period would extend by another six (6) months i.e., till 30.06.2011.

13. In this case, the assessment order, as noted above, was passed on 31.12.2010.

14. Mr. Kumar says that the AO was not empowered to pass the penalty order under the provisions referred to hereinabove.



15. The proceedings were initiated under Section 271AAA, and Section 271D as well the impugned penalty order confined itself to Section 271E. A careful perusal of the Section 271E would show that if the loan was deposited, and the specified advance was repaid by an assessee in violation of the provisions contained in Section 269T, then assessee becomes liable to pay penalty. The penalty which can be imposed by the concerned officer would be the sum equal to the amount of loan or deposit for the specified advance so repaid. This provision has been made in sub-section 1 of section 271E. Sub-Section 2 of section 271E provides that the penalty imposable under sub-section 1 of the said section shall be imposed by the Joint Commissioner.

16. It is based on the language of sub-section 2 of section 271E that Mr. Kumar argues that the AO could not have triggered the penalty proceedings and hence, the limitation would commence, as prescribed, only from the date when the JCIT issued the notice.

16.1 Therefore, based on this line of argument, Mr Kumar says that the limitation in this case expired only on 31.12.2011, and since the penalty order was passed on 30.12.2011, it was within the prescribed period of limitation, as being the latter of the two dates, as indicated in Section 275 (1) (c) of the Act.

17. In our view, this argument, if accepted, would lead to absurdity, the reason being that once the appellant/revenue decides to trigger penalty proceedings against the respondent/assessee, it is incumbent upon them to keep an eye on the limitation period prescribed under Section 275 (1)(c) of the Act.



18. If the limitation period is connected to when the concerned officer issues notice, then the appellant/ revenue can extend the period of limitation, way beyond the timeline prescribed in Section 275 (1)(c).

19. We are clearly of the view that the notice issued by the JCIT on 13.06.2011 could not have extended the period of limitation, as prescribed under Section 275 (1)(c) of the Act.

20. In this case, what is required to be brought to the forefront is that the AO had taken prior approval of the ACIT, who is equal in rank to the JCIT, before triggering the penalty proceedings. Thus, although the decision to initiate penalty proceedings is found embedded in the assessment order dated 31.12.2010 and approval to frame the assessment order was given prior to the said date, the notice was issued only on 13.06.2011.

20.1 Even though this may be an additional factor in this particular case, our reasons for holding the limitation period as prescribed under Section 275 (1)(c) of the Act had expired latest by 30.06.2011, is not confined only to this aspect of the matter. The appellant/revenue, as noticed above, cannot extend the period of limitation by deciding at its whim and fancy when the notice has to be issued. The notice under Section 274 should have been issued before the period of limitation, as discussed above.

21. Thus, for the foregoing reasons, the question of law which has been framed is answered against the appellant/ revenue and in favour of the respondent/assessee.

22. The appeal is disposed of, in the aforesaid terms.

23. Before we conclude, we place on record our gratitude to Mr Nischay Kantoor for assisting us in this matter.



24. The Registry will dispatch a copy of the order to the respondent/ assessee *via* all prescribed modes.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 11, 2023/ms

Click here to check corrigendum, if any