

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT AND  
SH. M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 6597/Del/2017  
(Assessment Year : 2011-12)

ITO Ward – 76(1) New Delhi  <b>PAN No. AACCN 3434 E</b> <b>(APPELLANT)</b>	Vs.	Turner General Entertainment Networks India Pvt. Ltd., 5 <sup>th</sup> Floor, Radisson Commercial Plaza, National Highway-8, Mahipalpur – 26, New Delhi- 110 037  <b>(RESPONDENT)</b>
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Assessee by	Shri Manuj Sabharwal, Adv. Ms. Shalini, Adv. Shri Sudip Loth, Adv.
Revenue by	Shri Daya Inder Singh Sidhu, CIT- D.R.

Date of hearing:	06.02.2024
Date of Pronouncement:	29.04.2024

**ORDER**

**PER M. BALAGANESH, ACCOUNTANT MEMBER :**

1. This appeal in ITA No.6597/Del/2017 for A.Y. 2011-12 arises out of the order by Commissioner of Income Tax (Appeals)-41, New Delhi in appeal No. 289/16-17 dated 16.08.2017 (hereinafter referred to as Id CIT(A) in short) against the penalty order u/s 271C of the Income Tax Act, 1961 (hereinafter referred

to as Act) dated 25.02.2016 by the JCIT (hereinafter referred to as ld. AO).

2. The only issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in holding that the penalty levied u/s 271C of the Act is barred by limitation in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business of broadcasting television channel "Imagine TV" and had filed its return of income for the Asst. Year 2011-12 on 30.11.2011 declaring total loss of Rs.262,04,18,432/-. As per clause 27(b) of Tax Audit Report, the Tax Auditor had reported that tax of Rs.5,00,40,103/- was deductible and not deducted at source by the assessee. The ld. AO held this to be an admission of fact that there had been a default on the part of the assessee as it had not deducted TDS. **Therefore, a reference was made by the ld. AO i.e. DCIT, Circle 16(1), Delhi to the ld. JCIT, Range 76, Delhi on 25.09.2014** that the assessee has not deducted TDS of Rs.5,00,40,103/- though it was deductible and consequentially provisions of section 271C of the Act gets attracted. **Accordingly, a show cause notice stood issued by the ld. JCIT on 4.8.2015 to the assessee** as to why penalty u/s 271C of the Act should not be levied on the aforesaid default of not deducting tax at source. **These proceedings ultimately got**

**culminated in the form of passing of penalty order u/s 271C of the Act by the ld. JCIT levying penalty of Rs.5,00,40,103/- vide order dated 25.02.2016.** Now the short point that arises for our consideration is that whether the penalty order passed u/s 271C of the Act by the ld. JCIT on 25.02.2016 would be barred by limitation as per section 275(1)(c) of the Act. For the sake of convenience, the relevant dates are reproduced herein below:-

Completion of assessment u/s 143(3) of the Act	-	26.03.2014
Date of receipt of reference by JCIT (TDS)	-	25.09.2014
Show cause notice issued by JCIT (TDS)	-	04.08.2015
Date of Passing of Penalty Order u/s 271C of the Act by JCIT (TDS)	-	25.2.2016

4. As per provisions of section 275(1)(c) of the Act, we find that there are two distinct periods of limitation for passing of penalty order is provided and one that expires later will apply. One is the end of the financial year in which the quantum proceedings are completed. In the instant case, the quantum proceedings were completed on 26.03.2014 and hence one deadline would be 31.03.2014. The second date would be expiry of 6 months from the month in which penalty proceedings were initiated. The dispute in the instant appeal is to give proper meaning for the expression 'expiry of 6 months from the month in which penalty proceedings were initiated', i.e. to say whether 6 months expiry should be reckoned from the date of which reference was made by ld. AO who passed the quantum assessment order to ld. JCIT

(TDS) or the date on which JCIT (TDS) issued notice to the assessee for the first time. In other words, the limitation period of 6 months should be reckoned from 25.09.2014, being the date of reference made by AO (who framed the quantum assessment order) or the date of issuance of first show cause notice by JCIT(TDS) on 04.08.2015. The stand of the revenue before us is that limitation should be reckoned from the expiry of 6 months from the end of the month in which first show cause notice stood issued by JCIT(TDS). If this is construed, the ld. JCIT(TDS) framing the penalty order u/s 271C of the Act on 25.02.2016 would be well within time as he has time to pass the order till 28.02.2016. On the contrary, the stand of the assessee is that penalty proceedings stood initiated on 25.09.2014 itself as that was the date on which reference was made by the AO to JCIT (TDS). If 6 months period is construed from this date, then the ld. JCIT(TDS) ought to have passed the order on or before 31.03.2015 and since the penalty order was passed on 25.02.2016, it would be barred by limitation. We find that this dispute has been directly addressed by the Hon'ble Jurisdictional High Court in the case of PCIT vs. JKD Capital & Finlease Ltd. reported in 378 ITR 614 (Del.) wherein the limitation period mentioned in provisions of section 275(1)(c) of the Act was subject matter of interpretation in the context of levy of penalty u/s 271E of the Act. The relevant operative portion of the said order is reproduced below:-

**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.** *.....*

**9.** *.....*

**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 Worldwide Township Projects Ltd. (supra) in which the Court concurred with the view expressed in CIT v. Hissaria Bros. [\[2007\] 291 ITR 244/\[2008\] 169 Taxman 262 \(Raj.\)](#) 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).*

**12.** *In that view of the matter, the order of the CIT (A) which has been affirmed by the impugned order of the ITAT does not suffer from any legal infirmity.*

**13.** *No substantial question of law arises for determination.*

5. Respectfully following the aforesaid judicial precedent, it could be safely concluded that the penalty order framed by the ld.

JCIT(TDS) on 25.02.2016 is squarely barred by limitation and hence penalty is required to be deleted.

6. Since the penalty order is held to be barred by limitation, the other grounds raised by the assessee challenging the validity of levy of penalty on merits need not be adjudicated into at this stage as the same would be academic in nature.

7. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 29.04.2024**

**Sd/-  
(SAKTIJIT DEY)  
VICE PRESIDENT**

**Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

Date:- 29.04.2024

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI