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

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\+ **ITA 780/2015**

PR. COMMISSIONER OF INCOME TAX -5 ..... Appellant
Through: Mr. Kamal Sawhney, Senior standing counsel with Mr. Raghvendra K. Singh, Junior standing counsel.

versus

JKD CAPITAL & FINLEASE LTD ..... Respondent
Through: Ms. Poonam Ahuja with Mr. Rohit Kumar Gupta, Advocates.

CORAM:
DR. JUSTICE S.MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

O R D E R

% 13.10.2015

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the impugned order dated 27th March 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5443/Del/13 for the Assessment Year ('AY') 2005-06.

2. By the impugned order the ITAT affirmed the order of the Commissioner of Income Tax ['CIT (A)'] quashing the penalty imposed on the Assessee, JKD Capital and Finlease Limited, under Section 271-E of the Act by an order dated 20th March 2012 of the Additional Commissioner of Income Tax ['Additional CIT'].

3. While finalising the assessment order dated 28th December 2007 the Assessing Officer ['AO'] in the concluding paragraph issued a direction to initiate proceedings against the Assessee under Sections 271 (1) (c) and 271-E of the Act. Admittedly, under Section 271-E (2) of the Act, any penalty under Section 271-E (1) can only be imposed by the Joint Commissioner of Income Tax ['Joint CIT']. Consequently, the AO referred the matter to the Additional CIT.

4. A perusal of the order dated 20th March 2012 of the Additional CIT shows that a show-cause notice initiating penalty proceedings under Section 271-E was issued to the Assessee on 12th March 2012 requiring it to explain as to why penalty should not be levied on it under Section 271-E on account of violation or the provisions of Section 269T of the Act. With the Assessee having failed to furnish the required information, the Additional CIT proceeded to confirm the penalty in the sum of Rs. 17,90,000.

5. The Assessee challenged the above order before the CIT (A). In the order dated 22nd July 2013, the CIT (A) deleted the above penalty *inter alia* on the ground that, in terms of Section 275 (1) (c) of the Act, the penalty order could have only been passed on or before 30th June 2008 and therefore, the penalty order passed on 20th March 2012 was barred by limitation.

6. The ITAT has, in the impugned order dated 27th March 2015, affirmed the above order of the CIT (A) by referring to the decision of this Court in ***CIT v. Worldwide Township Projects Limited (2014) 269 CTR 444***. The ITAT has observed that the date on which the CIT (A) had passed the order in the

quantum proceedings had no relevance as it did not have any bearing on the issue of penalty.

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).

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.

14. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 13, 2015
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