

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C', NEW DELHI)**
BEFORE SHRI G. C. GUPTA, HON'BLE VICE PRESIDENT
AND SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.3709 /Del/2008

Assessment year : 2001-02

ITO, Budaun

Vs.

Pandit Vijay Kant Sharma
(Karta HUF),
2/42, Suresh Sharma Nagar,
Bareilly.

GIR / PAN:AAEHP3706Q

(Appellant)

(Respondent)

Appellant by : Shri T Vasanthan, Sr. DR

Respondent by : Shri Sanat Kapoor, Adv.

Date of hearing : 22.05.2015

Date of pronouncement : 10.06.2015

ORDER

PER T.S. KAPOOR, AM:

This is an appeal filed by Revenue against the order of Ld. CIT(A) dated 28.09.2008. The appeal filed by Revenue relates to deletion of penalty imposed by A.O. u/s 271(1)(c) of the Act.

2. The appeal was originally heard and order by the Tribunal was passed on 29.05.2009 wherein the appeal of Revenue was allowed. However, on the basis of a miscellaneous application filed by assessee, the tribunal order dated 29.05.2009 was recalled vide order dated 24.06.2011 and the matter was listed for hearing afresh and, therefore, in view of above, the matter is before us. The grounds of appeal taken by Revenue are as under:

"1- Whether under the facts that circumstances of the case Commissioner of Income Tax (Appeal) was justified in canceling the penalty u/s 271 (1)(c) of the IT Act-1961 which was rightly levied by the AO.

2- Whether the Commissioner of Income Tax (Appeal) was justified in canceling the penalty specifically when the ITAT in quantum appeal confirmed the amount added by the then AO and the assessee during the course of penalty proceedings again could not furnish any new material except facts already brought to the notice of IT AT already considered at their respective level deciding the issue for quantum addition made in favour of revenue.

3- That the order of AO may be restored and that of the Commissioner of Income Tax (Appeal), Bareilly may be set-aside.”

3. AT the outset, Ld. D.R. submitted that in original tribunal order, the Tribunal had considered all the facts and circumstances and had reversed the order of Ld. CIT(A). It was submitted that the said order was recalled on the basis of fresh evidence which the Hon'ble Tribunal had held to be material existing on record and, therefore, the Tribunal had recalled the matter and it was held that matter along with new facts should be heard. It was submitted that Ld. counsel for the assessee in the M.A. had taken a plea that the penalty order was to be passed within 6 months from the date of quantum order passed by Tribunal on the basis of proviso to section 275(1)(a) whereas, main section 275(1)(a) is applicable where the limitation period is one year.

4. Ld. A.R. on the other hand submitted that Hon'ble Tribunal at page 22-23 has held that in cases where the matter is carried to the tribunal the time limit is 6 months from the date of tribunal order is received by Commissioner and where the matter is not taken beyond CIT(A), the period of limitation of one year applies. He submitted that he was in agreement with the findings of Tribunal that penalty order in the present case could have been passed within a period of 6 months only. He further submitted that on the basis of an application filed by assessee under RTI, a copy of

which was placed at paper book page 1, it is apparent that copy of order of Tribunal in I.T.A. No. 3391/Del/.... relating to quantum proceedings was forwarded by Commissioner Income tax Moradabad to ITO Badaun vide letter dated 11.05.2007. Therefore, it is apparent that the order must have been received by Commissioner before 11.05.2007 and therefore, the penalty order should have been passed in Nov. 2007 whereas the penalty order was passed on 10.01.2008 which is beyond the period of 6 months. Therefore, Ld. A.R. argued that if we accept the findings of tribunal, the penalty proceedings itself, was beyond the limitation period.

5. We have heard rival parties and have gone through the material placed on record. We find that on the basis of RTI reply dated 30.09.2010, it is admitted fact that the order in I.T.A. No. 3391/Del/.... Relating to quantum proceeding was received by Commissioner Moradabad before 11.05.2007. Ld. A.R. has argued that the penalty order was to be passed within 6 months from the end of month in which the order was received by Commissioner Income tax. On a combined reading of Section 275(1)(a) along with its proviso it becomes clear that main section 275(1)(a) talks of a period of six months from the date on which the order is received by commissioner and main section also talks of orders passed by commissioner appeals as well as by tribunal talk whereas the proviso which is applicable from 01.06.2003 talks about orders passed by Commissioner Appeals only and here, the period of limitation for passing penalty order is one year from the date Commissioner receives Tribunal order. For the sake of convenience, section 275(1)(a) along with proviso is reproduced below:

“Section 275(1)(a): in a case where the relevant assessment order or other order is the subject matter of an appeal to the Commissioner (Appeals) under section 246 (or section 246A) or an appeal to the appellate Tribunal under section 253, 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 the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later:

Provided that in a case where the relevant assessment or other order is the subject matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the (Principal Chief Commissioner or) Chief Commissioner or (Principal Commissioner or) Commissioner, whichever is later;”

6. We find that in the present case quantum proceedings travelled up to Hon'ble ITAT and therefore, main section 275(1)(a) will be applicable wherein the period of limitation has been mentioned as six months from the end of financial year in which order is received by Commissioner. The proviso to section 275(1)(a) will not be applicable. Proviso talks about orders passed by Commissioner (Appeals) only. Admittedly, the quantum order in the present case was received on or before 11.05.2007 as noted in reply to RTI application and therefore, penalty order should have been passed on or before 30th Nov., 2007 whereas, the penalty order has been passed on 10.01.2008 which is beyond the limitation period of six months. In view of above, the argument of Ld. A.R. carries force as the penalty order has not been passed within six months from the end of month in which order was received by Commissioner.

7. In view of the above, the penalty order passed by A.O. is bad in law and is therefore, quashed. Since we have quashed the penalty order itself,

the appeal filed by Revenue has become infructuous and therefore is dismissed.

8. Order pronounced in the open court on 10th June, 2015.

Sd./-

(G. C. GUPTA)
VICE PRESIDENT
Date: 10th June, 2015
Sp

Sd./-

(T.S. KAPOOR)
ACCOUNTANT MEMBER

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

| S.No. | Details | Date | Initials | Designation |
|-------|--|---------|----------|-------------|
| 1 | Draft dictated on | 5/6 | | Sr. PS/PS |
| 2 | Draft placed before author | 8,9,9, | | Sr. PS/PS |
| 3 | Draft proposed & placed before the Second Member | | | JM/AM |
| 4 | Draft discussed/approved by Second Member | | | AM/AM |
| 5 | Approved Draft comes to the Sr. PS/PS | 10/6/15 | | Sr. PS/PS |
| 6 | Kept for pronouncement | 10/6 | | Sr. PS/PS |
| 7 | File sent to Bench Clerk | 10/6 | | Sr. PS/PS |
| 8 | Date on which the file goes to Head Clerk | | | |
| 9 | Date on which file goes to A.R. | | | |
| 10 | Date of Dispatch of order | | | |