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IN THE HIGHCOURT OF DELHI AT NEW DELHI

Judgment reserved on: 12 September 2024
Judgment pronounced on: 12 November 2024

+ ITA 272/2019
COMMISSIONER OF INCOME TAX (TDS)-1

Appellant

Through: Mr. Puneet Rai, Sr. Standing Counsel with Mr. Ashvini Kumar, Standing Counsel and Mr. Rishabh Nangia, Standing Counsel and Mr. Nikhil Jain, Advocates

versus

M/S ADMA SOLUTIONS PVT. LTD.(FORMERI.Y KNOWN AS M/S INFOVISION INFORMATION SERVICES PVT.LTD.)

Respondent

Through: Mr. Salil Kapoor and Mr. Sumit Lalchandani, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The instant appeal, at the instance of the Revenue, impugns order dated 28.05.2018 passed by the Income Tax Appellate Tribunal ["**ITAT**"], whereby, the ITAT ruled in favour of the respondent/Assessee and dismissed the appeal preferred against the order passed by Commissioner of Income Tax (Appeals) ["**CITA**"]. The appeal has been admitted on the following substantial questions of

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law:-

> "A. Did the Income Tax Appellate Tribunal ["ITAT"] fall into error in holding that the entity assessed was no longer in existence having regard to the circumstance that M/s. Infovision Information Services Pvt. Ltd. merely underwent a name change and had responded to the Revenue's notices, having regard to Section 292B of the Income Tax Act, 1961 ["Act"]?
> B. Whether the order imposing penalty upon the respondent assessee was barred by limitation?"

FACTUAL BACKGROUND:

2. The undisputed facts are that assessee M/s. Adma Solutions Pvt. Ltd. (formerly known as M/s. Infovision Information Services Pvt. Ltd.) is a corporation engaged in the business of rendering Call Centre Services and derives income from such business.

3. A survey operation under Section 133A of the Income Tax Act, 1961 ["**the Act**"] was conducted by the TDS Wing of the Income Tax Department at the business premises of the assessee company to verify whether TDS has been correctly deducted under the various heads of TDS provisions and its timely deposit into Government account in the years under consideration, wherein, certain non-compliances of TDS provisions were detected.

4. Assessee changed its name from "M/s. Infovision Information Services Pvt. Ltd." to "M/s. Adma Solutions Pvt. Ltd." and the registered office was also shifted to a different place.

5. On 30.03.2011, the Assessing Officer ["**AO**"] passed an order under Section 201(1) read with Section 201(1A) of the Act, holding the assessee to be in default for not paying the relevant TDS and penalty proceedings were referred to the Additional CIT, Range-50 for levy of penalty under Section 272A(2)(c) and 272A(2)(k) of the Act.

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6. A Show Cause Notice dated 31.01.2013/01.02.2013 was issued by the erstwhile JCIT, Range-50, which was received on 14.02.2013 by the Manager, Finance of the assessee company.

7. Penalty Order dated 29.07.2013 was passed by the JCIT, Range-50 under Section 271C, 272A(2)(c) & 272A(2)(k) of the Act, thereby, penalizing the assesseee for non-deduction of TDS and for failure to deliver or cause to be delivered a copy of the statement within time prescribed in sub Section 3 of Section 200 or the proviso to sub Section 3 of Section 206 of the Act.

8. Aggrieved by the penalty order, the assessee preferred an appeal before the CITA. The appeal was allowed and the penalty so levied was deleted.

9. Being dissatisfied, the Revenue preferred an appeal before the ITAT, but the same was also dismissed.

10. The order passed by the ITAT has been assailed by filing the present appeal.

SUBMISSIONS, ANALYSIS & FINDINGS ON QUESTION OF LAW – A

11. Undisputably, Show Cause Notice dated 31.01.2013 as also the Order of Penalty dated 29.07.2013 were passed in the name of "M/s. Infovision Information Services Pvt. Ltd.", while the assessee had changed its name to "M/s. Adma Solutions Pvt. Ltd." In view of the same, CITA took the view that impugned order of penalty was passed in the name of an entity which had ceased to exist much prior to the initiation of penalty proceedings by CITA and therefore the order is bad in law being illegal, arid and therefore void ab-initio.

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12. In appeal, ITAT accepted the view taken by CITA and observed as under:-

> "Since company known as Infovision Information Services Pvt. Ltd was not in existence on which the show-cause notice was issued and the assessee company has never been informed, if any such penalty proceedings are initiated against it, the penalty levied by AO is not sustainable. Even otherwise, when status of the assessee after change of name and address of its registered office stood inextricably mixed up with the identity of Infovision Information Services Pvt. Ltd and no notice has been served upon the assessee, the defect is incurable."

13. Learned counsel for the appellant has submitted that ITAT has failed to consider Section 292-B of the Act, which provides that no notice or assessment or any proceedings can be deemed to be invalid merely for the reason of any mistake, defect or omission in such notice, assessment or other proceedings.

14. Learned counsel places reliance upon the decision of the Coordinate Bench of this Court in **CIT Vs. Jagat Novel Exhibitors P. Ltd. [2013] 356 ITR 559 (Del)**, wherein, the Court came to the conclusion that mis-description of a party in a reassessment notice could not render the entire proceedings to be null and void and it would be a curable defect as envisaged under Section 292-B of the Act. He has also placed reliance on the decision of this Court in **Sky Light Hospitality LLP v. Assistant Commissioner of Income-Tax [2018] 405 ITR 296 (Del)**, wherein, the Supreme Court held that the wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Act.

15. Learned counsel for the assessee/respondent at the very outset has fairly conceded that the finding returned by the ITAT on this issue was not correct, inasmuch as, only the name of the company had

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changed and not its constitution and therefore the entity remains the same.

16. In view of the principles of law laid down in the decisions cited above, and particularly, in the light of the fact that there was no change of entity, there being only change of name of the company, Show Cause Notice issued and the Penalty Order passed in the name of M/s. Infovision Information Services Pvt. Ltd. is not such a defect which cannot be cured and is therefore not fatal. We, accordingly, set aside the finding returned by the ITAT to the aforesaid extent and answer the question of law in favour of the appellant.

SUBMISSIONS, ANALYSIS & FINDINGS ON QUESTION OF LAW – B

17. ITAT while relying upon **KareemulHajazi v. State of NCT of Delhi in CRL. No. 940/2010** dated 07.01.2011 held that the period of six months prescribed u/s 275(I)(c) of the Act ought to be treated as a reasonable period for issuance of show cause notice and therefore the show-cause notice was found to have been issued with inordinate delay and penalty was held to be not sustainable.

18. Learned counsel for the appellant has argued that Section 275(1)(c) nowhere lays down the limitation for issuance of SCN, rather, it only contains the limitation on passing of an order beyond the period of six months from the initiation of penalty proceedings or the end of the financial year in which such proceedings were initiated or whichever is later. He contends that the date of reckoning limitation would be the date of issuance of SCN. According to the learned counsel, SCN in this case was issued on 31.01.2013 and Order of

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Penalty was passed on 29.07.2013 and therefore the order passed was within a period of six months from the date of initiation of penalty proceedings and thus within the prescribed period of limitation. It is further submitted that reliance placed by the ITAT upon the decision of KareemulHajazi (*supra*) is grossly misplaced since the same was passed in completely different context pertaining to victim's appeal under Proviso to Section 372 Cr. PC.

19. Learned counsel for the respondent has submitted that SCN was issued almost five years after the end of subject AY in issue. It is submitted that once the Revenue takes in principal, a decision to initiate penalty proceedings as mandated under Section 274 of the Act, it could not have been delayed interminably, as has been done by the Revenue in this case. It is further submitted that the Courts have read in the concept of "reasonable period" for commencing proceedings when there is no such justification given in the statute. He has also drawn the attention of this Court to Section 275(1)(c) of the Act and has submitted that if the stand of the Revenue that the period of completion of proceedings under Section 271-C of the Act will only commence when the SCN under Section 274 of the Act issued to be accepted, it will lead to a situation where the proceedings could be delayed endlessly causing grave prejudice to the assessee.

20. Learned counsel of the Revenue, in rebuttal, submits that since the legislature has not provided a trigger point for completion of proceedings under Section 271-C, the date of commencement can only be that date when the SCN is issued under Section 274 of the Act.

21. Having heard the learned counsels for the parties, we find that at

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the heart of the matter, is the interpretation that is required to be given to the provisions contained under Section 275(1)(c) of the Act. For the sake of convenience, the said provision is extracted hereafter:

> ***Section 275 Bar of limitation for imposing penalties.***
> (1) No order imposing a penalty under this Chapter shall be passed-
> (a) XXX XXX XXX
> (b) XXX XXX XXX
> (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 ... "

22. It is apparent that while legislature provides time frame for conclusion of penalty proceedings once initiated, there is no indication as to when the period of six months ought to commence. However, it does not mean that the Department is empowered to take action at its own will without caring for the reasonableness of the time under which actions are to be taken, even though, the law does not prescribe any time limit for such actions. In the case of **State of Punjab v. Bhatinda District Co-op Mil (P) Union Ltd. (2007) 11 SCC 363**, the question that arose before the Supreme Court was regarding initiation of proceedings by exercise of jurisdiction by the statutory authority. The Apex Court held that the exercise of jurisdiction must be within a reasonable period of time and considering the provisions of the Punjab General Sales Tax Act, 1948, it was held that a reasonable period of time for initiating proceedings would be five years.

23. While considering as to what would constitute 'reasonable period' in the similar facts and circumstances, the Division Bench of this Court in the case of **Commissioner of Income Tax, Delhi XVII v. NHK Japan Broadcasting Corpn., [2008] SCC Online Del 1433**,

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observed as under:-

> "**18**. Insofar as the Income-tax Act is concerned, our attention has been drawn to section 153(1)(a) thereof which prescribes the time-limit for completing the assessment, which is two years from the end of the assessment year in which the income was first assessable. It is well-known that the assessment year follows the previous year and, therefore, the time-limit would be three years from the end of the financial year. This seems to be a reasonable period as accepted under section 153 of the Act, though for completion of assessment proceedings. The provisions of re-assessment are under sections 147 and 148 of the Act and they are on a completely different footing and, therefore, do not merit consideration for the purposes of this case.
> **19**. Even though the period of three years would be a reasonable period as prescribed by section 153 of the Act for completion of proceedings, we have been told that the Income-tax Appellate Tribunal has, in a series of decisions, some of which have been mentioned in the order which is under challenge before us, taken the view that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed.
> **20**. The rationale for this seems to be quite clear - if there is a time-limit for completing the assessment then the time-limit for initiating the proceedings must be the same if not less. Nevertheless, the Tribunal has given a greater period for commencement or initiation of proceedings.
> **21**. We are not inclined to disturb the time-limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Co-op. Mil (P.) Union Ltd.'s case (supra) action must be initiated by the competent authority under the Income tax Act where no limitation is prescribed as in section 201 of the Act within that period of four years."

24. In the present case, survey operation was conducted by the Revenue on 21.01.2008, whereupon, the alleged non-compliance of TDS provisions was first deducted. However, the SCN was issued on 31.01.2013 i.e. after a gap of almost five years. The Tribunal came to the conclusion, and with which we agree, that even SCN has been issued with inordinate delay, and as such, penalty is not sustainable.

25. In the case of **Principal Commissioner of Income-Tax (Central)-2 v. Mahesh Wood Products Pvt. Ltd., 2017 SCC OnLine**

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Del. 8214, a reference was made by AO to the prescribed authority on 23.07.2012 and the SCN was issued on 28.08.2012. Therefore, as per the date of reference, the limitation was to expire on 31.01.2013 and as per the SCN, the limitation would have expired on 28.02.2013. The penalty order was passed on 26.02.2013. This Court, on 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. The relevant portion of the said judgment reads as follows:-

> *"7.* ***Mr. Sanjay Kumar, learned counsel/or the Revenue has sought to place reliance on the decision of this Court*** *in Commissioner of Income Tax (I'DS) v. IKEA Trading Hong Kong Ltd., [2011] 333 /TR 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 28February, 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.*
>
> *XXX XXX XXX*
>
> *9. However, this question came up for consideration in PCIT v. JKD Capital & Fin/ease 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. "*

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26. Dealing with a similar question of the date of initiation of penalty proceedings, another Division Bench of this Court in **Principal Commissioner of Income-Tax v. JKD Capital and Fin/ease Ltd., 2015 SCC OnLine Del 12836**, held as under:-

> *"3 ... **While finalising the assessment order dated December 28, 2007 the Assessing Officer ("the A0") 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 271 E(2) of the Act, any penalty under section 271E(l)can only be imposed by the Joint Commissioner of Income-tax ("the Joint CIT"). **Consequently, the AO referred the matter to the Additional CIT.***
>
> *4. A perusal of the order dated March 20, 2012, of the Additional CIT shows that a show-cause notice initiating penalty proceedings under section 271E was issued to the assessee on 12th March, 2012,requiring it to explain as to why penalty should not be levied on it under section271 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.*
>
> *XXX XXX XXX*
>
> *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 27 lE 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(l)(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 o] 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."*

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> *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 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 ofsix 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 30th June 2008. The later of the two dates is 30th June 2008."***

27. The contentions raised by learned counsel of the Revenue therefore already stand answered in the above-referred judgments of the Coordinate Benches of this Court.

28. In this case, as noted hereinabove by us while narrating the facts, the survey was conducted in January 2008 to verify whether the TDS has been correctly deducted and deposited timely into Government's account. The order was passed by the AO on 30.03.2011, holding the assessee to be in default for not paying the relevant TDS and the penalty proceedings were referred to the Additional CIT, Range-50 for levy of penalty. Thus, the last date by which the penalty order could have been passed was 30.09.2011 as the six months from the end of the month from which action for imposition of penalty was initiated, would expire on 30.09.2011. However, in this case, admittedly, penalty order was passed on 29.07.2013, and therefore, ITAT had rightly concluded that the orders were barred by limitation.

29. Consequently, we answer this question of law against the Revenue and in favour of the petitioner by holding that in the facts and circumstances of the present appeal, ITAT was correct in law in

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deleting penalty levied by the AO on the ground that penalty order dated 29.07.2013 was passed beyond the time period framed by Section 275(1)(c) of the Act and 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.

30. Appeal is accordingly dismissed.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

November 12, 2024
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