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

% *Date of Decision :06.11.2024*

\+ **ITA 547/2024**

COMMISSIONER OF INCOME TAX (TDS)-2 DELHI .....Appellant

Through: Mr. Sanjay Kumar, Advocate

versus

TURNER GENERAL ENTERTAINMENT NETWORKS INDIA PVT. LTD. .....Respondent

Through: Mr. Manuj Sabharwal, Mr. Drona Negi and Mr. Devrat Tiwari, Advocates

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (*ORAL*)

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 29.04.2024 passed by the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*) in ITA No. 6597/Del/2017 captioned ***ITO v. Turner General Entertainment Networks India Pvt. Ltd***.

2. The Revenue has projected several questions for consideration of this Court. However, the only question that arises in the present appeal is whether the order levying penalty under Section 271C of the Act is barred by limitation. The learned ITAT had held in the affirmative.

3. In the present case, the assessee had filed his return of income for the assessment year 2011-2012 on 30.11.2011 declaring a total loss of ₹2,62,04,18,432/-. The tax audit report furnished by the assessee had reported that the assessee had not deducted ₹5,00,40,103/- as tax at source which was deductable by the assessee. The return was selected for scrutiny and the assessment proceedings under Section 143(3) of the Act were completed on 26.03.2014. The learned Assessing Officer (hereafter *the AO*) was of the view that the default in deducting and depositing tax at source was admitted, as it was reflected in the tax audit report. Accordingly, the AO made a reference to the JCIT, Range 76, Delhi on 25.09.2014.

4. The concerned JCIT did not take any steps for issuance of show cause notice for a considerable period of time after receipt of the reference. He issued the show cause notice on 04.08.2015 after the lapse of almost one year of receipt of the reference from the AO. He, thereafter proceeded to pass order dated 25.02.2016, levying a penalty of ₹5,00,40,103/- under Section 271C of the Act. The assessee successfully appealed the said decision before the learned CIT(Appeals) [hereafter *CIT(A)*]. By an order dated 16.08.2017, the learned CIT(A) allowed the assessee's appeal (Appeal No. 289/16-17) and deleted the penalty on the ground that it was barred by limitation.

5. The learned CITA noted that in terms of Section 275(1)(c) of the Act, no order imposing penalty could be passed after expiry of six months from the end of the month in which the action for imposition of penalties was initiated.

6. It is the assessee's case that the penalty proceedings were initiated on

receipt of the reference on 25.09.2014 and thus the proceedings were required to be completed by 31.03.2015. It is the Revenue's contention that the date of initiation of penalty proceedings is required to be considered as the date of issuance of the show cause notice; that is, 04.08.2015.

7. The learned CIT(A) held that the said issue is covered in favour of the assessee by the decisions of this Court in ***Principal Commissioner of Income Tax (Central)-2 v. Mahesh Wood Products Pvt. Ltd.; 2017 (82 Taxmann.com 39)*** decided on 05.05.2017, and ***Principal Commissioner of Income Tax-5 v. JKD Capital & Finlease Ltd.; ITA No. 780/2015*** decided on 13.10.2015.

8. Aggrieved by the decision of the learned CIT(A), the Revenue appealed the said decision before the learned ITAT. The learned ITAT concurred with the learned CIT(A) and dismissed the said appeal.

9. The period of limitation within which the proceedings under Section 271C of the Act are to be completed is covered under Section 275(1)(c) of the Act. The said provision is set out below:

> "275. Bar of limitation for imposing penalties.— (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."

10. The principal question to be addressed in whether the penalty proceedings were initiated on receipt of reference on 25.09.2014 or on issuance of the show cause notice on 04.08.2014?

11. The question as to when a penalty proceeding can be stated to be initiated is squarely covered in favour of the assessee by the decision of this Court in ***Principal Commissioner of Income Tax-5 v. JKD Capital & Finlease Ltd.; (2015) 378 ITR 614 (Del)***. The relevant extract of the said decision is set out below:

> "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:
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> > "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."

12. Mr. Sharma, the learned counsel appearing for the Revenue sought to

distinguish the case of ***Principal Commissioner of Income Tax-5 v. JKD Capital & Finlease Ltd.*** (*supra*) on the ground that the delay in the said case was over five years. However, we are unable to accept that the *ratio decidendi* of the said decision is inapplicable in the facts of this case. Although, the delay in the case of ***Principal Commissioner of Income Tax-5 v. JKD Capital & Finlease Ltd.*** (*supra*) was more than five years and there was no explanation to the said delay, the said decision also rests on the principle that the initiation of penalty proceedings cannot be delayed in an arbitrary manner. And, the initiation of proceedings must be considered as on date on which a reference was made to the concerned officer if not earlier.

13. In the present case, the learned JCIT, after receipt of the reference for penalty proceedings, had not taken immediate steps for concluding the said proceedings. He issued the show cause notice almost a year after receiving of the reference.

14. The expression initiated is not defined under the Act and must be construed in its normal sense.

15. The word 'initiated' is a past tense of the word 'initiate'. The Shorter Oxford English Dictionary defines the word 'initiate' as under:

> "to begin, commence, enter upon, to introduce, set going, originate."

16. In Webster's Third New International Dictionary, the word 'initiate' has, *inter alia*, been defined thus:

> "to begin or set going: make a beginning of: perform or facilitate the first actions, steps, or stages of:"

17. The Words and Phrases (Permanent Edition) defines 'initiate' to mean:

> "an introductory step or action, a first move; beginning; start, and to initiate as meaning – to commence."

18. In ***Om Prakash Jaiswal v. D.K. Mittal & Anr.: (2000) 3 SCC 171***, the Supreme Court had considered the meaning of the expression 'initiate any proceedings for contempt' by referring to the dictionary meaning of the said word. It is relevant to refer to paragraph 10 of the said decision, which is set out below:

> "10. The expression—"initiate any proceedings for contempt" is not defined in the Act. *Words and Phrases* (Permanent Edition) defines "initiate" to mean – an introductory step or action, a first move; beginning; start, and "to initiate" as meaning to commence. *Black's Law Dictionary* (6th Edn.) defines "initiate" to mean commence; start; originate; introduce; inchoate. In section 20, the word "initiate" qualifies "any proceedings for contempt". It is not the initiation of just any proceedings; the proceedings initiated have to be proceedings for contempt."

19. The expression 'action for imposition of penalty is initiated' must, thus, clearly refers to the date on which the first introductory step for such action is taken, it must necessarily mean the start of such action. It must mean the commencement of action for imposition of penalty. As noted above, the AO had found that it was the admitted case that the assessee had defaulted in deduction of TDS, which it was obliged to do. It had, accordingly, made a reference to the learned JCIT. This was obviously for the purposes of imposition of penalty. The reference, thus, clearly marked the first step for initiation of action for imposition of penalty. The Show

Cause Notice issued subsequently was to provide the assessee an opportunity to show cause why penalty not be imposed.

20. In the given context, this was in the beginning of the action for imposition of penalty. The same had commenced earlier with the AO determining that there was a cause for such imposition.

21. In view of the above, we find no infirmity with the decision of the learned ITAT that the penalty proceedings had been initiated at the earliest on 25.09.2014 and the order of penalty passed by the learned JCIT (TDS) was barred by limitation.

22. In view of the above, no substantial question of law arises for consideration of this Court in this appeal.

23. Accordingly, the present appeal is dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 06, 2024
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Click here to check corrigendum, if any