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2023:DHC:5518-DB

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

% *Date of Decision: 27.07.2023*

\+ **ITA 408/2023**

PR. COMMISSIONER OF INCOME TAX (TDS)- 1..... Appellant

Through: Mr Puneet Rai, Sr Standing Counsel with Mr Ashvini Kumar and Ms Madhavi Shukla, Advs.

versus

HINDUSTAN COCA COLA BEVERAGES PVT. LTD. ..... Respondent

Through: Mr Sachit Jolly, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.37857/2023

1. Allowed, subject to just exceptions.

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2. This appeal concerns Assessment Year (AY) 2005-06.

3. *Via* this appeal, the appellant/revenue seeks to assail the order of the Income Tax Appellate Tribunal [in short, "Tribunal"] dated 17.01.2023.

4. The broad facts, which are required to be noticed in order to adjudicate the instant appeal, are the following:

4.1 On 30.10.2004, the respondent/assessee had filed its return of income (ROI), declaring a loss amounting to Rs.439,67,64,096/-.

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4.2 The respondent/assessee's case was selected for scrutiny, and ultimately, an order dated 17.12.2008 was passed under Section 143(3) of the Income Tax Act, 1961 [in short, "Act"].

4.3 The Assessing Officer (AO) scaled down the loss declared by the respondent/assessee and thus, pegged it at Rs.383,96,56,832/-.

5. It is relevant to note that in the return, the respondent/assessee had *suo motu* sought disallowance of expenses incurred towards certain transactions, amounting to Rs. 39,80,73,391/-, having regard to the provisions of Section 40(a)(ia) of the Act.

5.1 The record shows that more than a decade later, the Joint Commissioner of Income Tax (JCIT) proposed initiation of penalty against the respondent/assessee for failing to deduct tax at source, with regard to the *sou motu* disallowance which stood embedded in the return of the respondent/assessee. The value of the transactions *qua* which disallowance was entered in the return filed by the respondent/assessee was Rs.39,80,73,391/-.

5.2 Tax at source, which according to the AO, ought to have been deducted under Section 194C of the Act, was pegged at Rs.1,05,36,376/-. It is this amount which was ultimately handed down as penalty.

5.3 Importantly, the proposal for initiation of penalty was made on 27.03.2019.

5.4 The show cause notice under Section 271C of the Act was issued on 23.04.2019, which was nearly eleven (11) years after the assessment order was passed, and fourteen (14) years from the time when the return was filed.

6. The moot question which arose before the statutory authorities was

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whether penalty could have been levied, under the aforementioned circumstances.

7. The Tribunal ruled in favour of the respondent/assessee.

8. According to us, apart from anything else, the issue raised in the present appeal stands covered by the judgment of a coordinate Bench of this court rendered in ***Clix Capital Services Pvt. Ltd. vs. DCIT***, 2023/DHC/001703[1].

9. The sum of the ratio of the said decision is that penalty ought to be levied within a reasonable timeframe. This attains criticality, as Section 275(1)(c) of the Act does not fix a date for the commencement of the period of limitation. This legislative gap in the provision works to the disadvantage of the assessee, as often, the AO takes his own sweet time in making a proposal for the initiation of penalty proceedings.

9.1 In this case, as noticed above, more than 11 years have passed since the time the assessment order was passed, and if the date of filing of the return is taken into account, there is a yawning 14 years of time gap.

10. Mr Puneet Rai, learned senior standing counsel, who appears on

[1] "…17.2 It is apparent, that while a timeframe has been provided for the conclusion of penalty proceedings once initiated, there is no indication, as to when the period of six months ought to commence. In other words, can initiation of penalty proceeding be left to the whims and fancies of the revenue or it should be hitched to the dicta of "reasonable period" adopted by Courts in such situations, in the absence of a statutory provision?
18. (x)
19. (x)
20. However, we are inclined to agree with the submission made on behalf of the petitioner, i.e., the assessee, and the reason for that is quite simple. <u>If we were to accept the respondent/revenue's stand, then it could end up [as it has in this case] in a situation, where the revenue could decide the date when it could trigger a SCN to fulfil, as a mere formality, the principles of natural justice, which are engrafted under Section 274 of the Act. Section 274 of the Act, inter alia, mandates that no order imposing a penalty under the Chapter i.e., Chapter XXI shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard…</u>"

[Emphasis is ours]

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behalf of the appellant/revenue, however, says that since there no date is provided for the commencement of limitation in Section 275 (1) (c) of the Act, the appellant/revenue should have the benefit of the second limb of the said provision and six months provided for passing the penalty order should commence from the date when show cause notice is issued. For the sake of convenience, the relevant part of Section 275 is extracted hereafter:

> *"275. (1) No order imposing a penalty under this Chapter shall be passed -*
> *(a) 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 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 Principal Chief Commissioner or Chief Commissioner or Principal 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;*
> *(b) in a case where the relevant assessment or other order is the subject matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;*
> *(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."*

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[Emphasis is ours]

11. A careful perusal of the second limb would show that the legislature has provided a limitation of six months, from the end of the month in which the action for imposition of penalty is initiated.

12. Even according to Mr Rai, the first limb of Section 275(1)(c) is not applicable.

13. Therefore if the dates and events, (which obtain in the matter and are not in dispute), are taken into account, even then, the proceedings would be time-barred as initiation of penalty proceedings commences with the proposal being submitted for triggering penalty proceedings.

14. In this case, the proposal, as noticed above, for commencing of penalty proceedings was submitted by the JCIT on 27.03.2019.

15. The record shows that the order under Section 271(1)(c) of the Act was passed only on 31.10.2019, which is a date well beyond six months, that expired on 30.09.2019.

15.1 Although it is Mr Rai's argument that six month period should commence from the date when show cause notice is issued, in our view, once again, this is a submission which cannot be accepted, as it would provide a scope to the AO to trigger the penalty proceedings at the date of his choosing, as is palpably evident in this case.

15.2 The word used in the provision is "initiated" which according to us, is an act which would get triggered on the date when the proposal is made. This rationale ties in with our view, as noted hereinabove, that penalty proceedings should be initiated within a reasonable period.

16. We are, thus, not in agreement with the submission made by Mr Rai.

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17. Accordingly, the appeal is closed, since no substantial question of law arises for consideration.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 27, 2023/pmc