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

+ **ITA 786/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX (CENTRAL) - 2
..... Appellant

Through: Mr. Sanjay Kumar & Mr. Dileep
Shivpuri, Advocates

versus

MAHESH WOOD PRODUCTS PVT. LTD., Respondent

Through: Mr. Salil Kapoor, Mr. Sanat Kapoor,
Mr. Sumit Lalchandani & Mr.
Ananya Kapoor,

WITH

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..... Appellant

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MAHESH WOOD PRODUCTS PVT. LTD., Respondent

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Mr. Sumit Lalchandani & Mr.
Ananya Kapoor,

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR**

ORDER

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05.05.2017

Dr. S. Muralidhar, J

1. These are two appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against the order dated 24th May, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 6256/Del/2013 and 6257/Del/2013 for the Assessment Year ('AY') 2009-10.

2. The short question urged by the Revenue is whether the ITAT erred in law by holding that the order imposing the penalty was not passed within the time limit laid down under Section 275(1)(c) of the Act.

3. Pursuant to a search operation, a notice under Section 153A of the Act was issued to the Assessee, leading to the passing of an Assessment Order by the Assessing Officer ('AO') on 30th December, 2011 for the AY in question. As rightly pointed out by learned counsel for the Assessee, before issuance of notice under Section 153A of the Act, approval of the Joint Commissioner of Income Tax ('JCIT') would have been taken for issuing the notice under Section 153 A. As it transpires, in the Assessment Order itself, there was no initiation of penalty proceedings. More than six months thereafter, on 23rd July, 2012, the AO made a reference to the Additional Commissioner of Income Tax ('ACIT') on the basis of which a notice was issued on 28th August, 2012 by the ACIT asking the Assessee to show cause as to why penalty be not levied under Sections 271D and 271E of the Act as a result of the contravention of Sections 269SS and 269T of the Act. A further notice was sent on 25th September, 2012, seeking the Assessee's reply, which ultimately was submitted on 10th October, 2012.

4. In the reply itself, the Assessee contended that the penalty proceedings were barred by limitation under Section 275(1)(c) of the Act, which reads as under:

"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."

5. After considering the reply, the ACIT, on 26th February, 2013, passed the two penalty orders in which the plea of limitation was negated. It was noted that initiation of penalty proceedings was not linked to any pending assessment proceedings. The Assessee then went in appeal before the CIT(A). Two separate orders dated 10th September, 2013 were passed and the penalty imposed was cancelled on merits. However, on the aspect of penalty orders being barred by limitation, the CIT(A) negated the plea of the Assessee.

6. Aggrieved by the above order of the CIT(A), the Revenue filed the aforementioned two appeals before the ITAT. In the impugned common order the ITAT referred to its earlier decision in **DCIT, Central Circle-03, New Delhi v. Raj Katha Products P. Ltd.** (order dated 8th March, 2016) which, in turn, relied upon on the decision of this Court in **PCIT-5 v. JKD Capital & Finlease Ltd. (2015) 378 ITR 640 (Del)**. The ITAT, accordingly,

held that the penalty orders were barred by limitation under Section 275(1)(c) of the Act.

7. Mr. Sanjay Kumar, learned counsel for the Revenue has sought to place reliance on the decision of this Court in ***Commissioner of Income Tax (TDS) v. IKEA Trading Hong Kong Ltd., [2011] 333 ITR 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 28th August, 2012, limitation would expire on 28th February, 2013. Therefore, the penalty orders having been passed on 26th 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.

8. At the outset, the Court observes that no question arose in ***Commissioner of Income Tax (TDS) v. IKEA Trading Hong Kong Ltd. (supra)*** as to whether the starting point of limitation could be a date earlier than the issuance of the SCN, viz., the date on which the AO wrote a letter to the ACIT recommending such initiation. No such contention appears to have been raised or dealt with in the said case. Therefore, the said decision is distinguishable on facts.

9. However, this question came up for consideration in ***PCIT v. JKD Capital & Finlease 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.

10. In the present case, the limitation in terms of Section 275 (1) (iii) of the Act began to run on 23rd July, 2012 and the last date for passing the penalty orders was 31st January, 2013. Therefore, the penalty orders issued on 26th February 2013 were clearly barred by limitation.

11. No substantial question of law arises for consideration from the impugned common order of the ITAT. The appeals are dismissed.

CM APPL. 41567/2016 in ITA No. 786/2016

12. Allowed, subject to all just exceptions.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 05, 2017

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