

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14259 of 2016

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Karnail Singh son of Late Charan Singh resident of M/s Bhargo Saw Mill,
Mithapu, P.S. Jakkanpur, District- Patna. Proprietor of M/s Bhargo Saw Mill,
Mithapu, P.S.- Jakkanpur, district- Patna.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Department of Revenue, North Block, New Delhi- 110001.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi- 110001.
3. The Principal Chief Commissioner of Income Tax, Birchand Patel Marg, Patna- 800001.
4. The Joint Commissioner of Income Tax, Central Range-1, Birchand Patel Marg, Patna- 800001.
5. The Assistant Commissioner of Income Tax, Central Circle No.3, Birchand Patel Marg, Patna- 800001.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Advocate Mr. Vinay Mistry, Advocate Mr. Mrigank Mauli, Advocate
For the Respondent/s	:	Ms. Archana Sinha @ Archana Shahi, Advocate Mr. Alok Kumar, Advocate Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 11-12-2018

Heard Mr. Ajay Kumar Rastogi, learned counsel
appearing for the petitioner along with Mr. Vinay Mistry, Advocate
on record and Ms. Archana Sinha for the Department.



It is the initiation of the proceeding under Section 271E of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide notice dated 27.11.2014 which led to the filing of the writ petition. While the matter is pending that the final order has been passed on 21.09.2016 placed on record through Annexure-1 to I.A. No.7919 of 2016. The notice/order is put to question in this writ petition relying upon the prescription underlying Section 275(1)(c) of 'the Act', which *inter alia* prescribes a stipulated period for passing of final order once a proceeding is initiated by the Department in exercise of powers vested in Section 271E of the Income Tax Act. In the present case it is for alleged violation of the provision underlying Section 269T of 'the Act' that the proceeding in question was initiated.

There is absolutely no dispute on facts or the dates on which the notice was issued or the order has been passed. What Ms. Archana Sinha, learned counsel for the Department, canvasses before this court is that it is the petitioner who engaged the Department in different proceedings before different forums, which led to the delay in passing the final order under Section 271E of 'the Act', however all these submissions are oral and are not supported from the records.



We do note that any order passed under Section 271E of 'the Act' is appealable, but since Mr. Rastogi questioned the very jurisdiction of the statutory authority to pass such order after expiry of the period of limitation that we have proceeded to give a hearing to the issue so raised waiving of the objection on the plea of alternative remedy raised by the Department.

The three provisions which are pressed into service are Section 269T which *inter alia* prohibits repayment except by way of an account payee cheque or an account payee bank draft drawn in the name of the person who made the loan or deposit or by any electronic mode. Obviously since there was an allegation against the petitioner of violation of such provision that led to drawing of a proceeding under Section 271E of 'the Act' by service of notice thereunder dated 27.11.2014 at Annexure-2 to the writ petition. It is at this stage that the petitioner approached this court and while the matter is pending before this court that final order has been passed on 29.01.2016, which has been placed on record vide Annexure-1 series to I.A. No. 7919/2016, and since it is consequential to the notice which was impugned before this court that we have permitted the petitioner to question the same in the present proceedings.



Section 271E falls under Chapter-XXI which deals with 'penalties imposable' and makes any person liable to penalty for any contravention of the provisions of Section 269T. Such proceedings are regulated under Section 275 which prescribes limitation and opens with a restraint to the statutory authorities to abide by the stipulations so present thereunder.

In so far as the present issue is concerned, where the foundation for the proceedings lies not in any order passed on a statutory appeal or revision, it is the stipulations present in Section 275(1)(c) which would govern the present contest.

A plain reading of the provisions would confirm that the statutory authority concerned, is restrained from passing any order of penalty beyond the expiry of a financial year in which a proceeding which has led to the penalty proceeding has been completed or within six months from the end of the month in which a penalty proceeding has been initiated, whichever expires later.

The order of penalty dated 21.09.2016 placed on record vide Annexure-1 series to the Interlocutory Application arises from an order passed in purported exercise of power vested in the statutory authority under Section 143(3)/153(A) of 'the Act' on 31.03.2013 and which is not in dispute. It is also not in dispute that



it is following a detection of violation of Section 269(T) that a proceeding for imposition of penalty under Section 271E was initiated by service of show cause notice on 27.11.2014 vide Annexure-2. The proceeding so initiated under Section 271E culminated in the order dated 21.09.2016 passed for the assessment years 2009-10, 2010-11 and 2011-12 at Annexure-1 series to the Interlocutory Application and upholds the default by the petitioner of the provisions underlying Section 269(T) of 'the Act'.

Undisputedly, in between the issuance of the show cause notice on 27.11.2014 and the date of passing of the final orders on 29.01.2016, the limitation period prescribed under Section 275(1) (c) had expired.

Ms. Archana Sinha, learned counsel for the Department has relied upon the explanation accompanying the provision of Section 275 to justify the delay, as according to her, a proceeding for rectification under Section 154 was pending and got disposed only on 26.11.2015. We fail to appreciate as to how even this order on the rectification application, passed on 26.11.2015 as admitted by Ms. Sinha would save the limitation for the Department because even though the law does not give any condonation for a pending rectification application filed under Section 154 of the



‘the Act’ but for the sake of argument, even taking the submission of the counsel for the Department on face value, yet the final order passed in Section 271E proceeding on 21.09.2016 is much beyond the period of six months, since the order on rectification was passed i.e. 26.11.2015.

Apart from what we have discussed above, a plain reading of various circumstances discussed under Section 275 of ‘the Act’ would confirm that a plea of a pending proceeding under Section 154, does not suffice for explaining a delay in passing the final order because this situation does not find mention in either of the situations discussed.

Mr. Rastogi, learned counsel has made reference to a judgment of the Delhi High Court reported in **(2017) 394 ITR 312 (Del) (Principal Commissioner of Income Tax Vs. Mahesh Wood Products Pvt. Ltd.)** with particular reference to the opinion recorded at paragraph 5 & 10 and in our opinion the conclusion drawn by the Delhi High Court at Paragraph Nos. 5 & 10 of the judgment squarely applies to the present case and we are persuaded to reproduce the same hereunder for the sake of convenience:

“5. After considering the reply, the Additional Commissioner of Income-tax, on February 26,



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 Commissioner of Income-tax (Appeals). Two separate orders dated September 10, 2013 were passed and the penalty imposed was cancelled on the merits. However, on the aspect of penalty orders being barred by limitation, the Commissioner of Income-tax (Appeals) negated the plea of the assessee.

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

On the undisputed facts discussed above and in view of the legal position noted, we are persuaded with the argument of Mr. Rastogi to hold that the entire proceedings initiated for imposition of penalty under Section 271E of ‘the Act’ for alleged



violation of Section 269(T) of ‘the Act’ is barred by limitation as prescribed under Section 275(1)(c) of ‘the Act’ and consequently the entire proceedings culminating in the order dated 21.09.2016 enclosed at Annexure-1 series to the Interlocutory Application are quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

Arvind/Rajeev

AFR/NAFR	A.F.R.
CAV DATE	
Uploading Date	13.02.2019
Transmission Date	

