IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.11438 to 11440 of 2018
&
W.M.P Nos.13355 to 13360 of 2018

M/s.J.D.Automobiles and Allied Services Pvt. Ltd.,
Represented by its Director J.Dinakaran
No.90, Madhavaram High Road
Perambur
Chennai - 600 011 .. Petitioner in all WP's

Vs.

The Assistant Commissioner of Income Tax
Central Circle - 3(2), Chennai
46, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034 .. Respondent in all WP's

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the respondent in PAN No.AADCJ2101M and quash the impugned order u/s.271(1)(c) dated 14.09.2017 for the Assessment years 2013-14, 2014-15 and 2015-16 passed by the respondent .

For Petitioner : Mr.S.S.Rajesh
for Mr.R.C.Paul Kanagaraj

For Respondent : Mr.A.N.R.Jayaprathap

COMMON ORDER

Heard Mr.S.S.Rajesh, learned counsel for the petitioner and Mr.A.N.R.Jayaprathap, learned standing counsel appearing for the respondent.

2. These writ petitions have been filed by the petitioner to quash the notice issued by the respondent under Section 271(1)(c) of the Income Tax Act, 1961 dated 14.09.2017. By the impugned notice, the respondent has called upon the petitioner

to show-cause as to why the penalty under Section 271(1)(c) of the Act be not levied and if he does not respond to the penalty order, an order imposing penalty would be passed.

3. Since the petitioner has filed appeals before the Commissioner of Income Tax (Appeals) as against the Assessment Orders, he requested the respondent to keep the penalty proceedings in abeyance. However, such request made to the respondent was not accepted. Therefore, the petitioner has moved this Court.

4.The learned counsel for the petitioner referred to a decision of this court in W.P.Nos.31021 to 31027 of 2017 dated 25.01.2018, where the penalty was kept in abeyance pending appeals. Reliance was also placed on an interim order passed by this Court on 28.04.2018. Since the petitioner has made out a prima facie case for grant of interim order, the Court vide order dated 28.04.2018, granted an order of interim stay.

5.Counter affidavit has been filed by the respondent in which apart from making brief averments as regards the merits of the assessment, which was made on the petitioner and the additions made, reference has been made to Section 275 of the Act and by referring to Section 275 (1) (a) of the Act, it is submitted that the last words “whichever is later”only sets out the outer limit of time for levy of penalty and it does not bar from levying penalty between the period of completion of assessment and disposal of appeal by CIT (A). In the counter affidavit, reliance has also been placed on the decision of this Court in W.P.Nos.1311 to 1313 of 2013 (Coromandel Oils Pvt. Ltd.,). The effect of said decision was considered by this Court in W.P.Nos.31021 to 31027 of 2017 (J.Srinivasan Vs. The Assistant Commissioner of Income Tax) and the Court allowed the writ petitions and directed the similar impugned notices be kept in abeyance and granting liberty to the respondent to initiate fresh proceedings after the disposal of the appeals by the Commissioner of Income Tax (Appeals). The operative portion of the order reads as follows:

> “7. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, the issue, which falls for consideration, is as to whether the impugned notices issued by the respondent are time barred and whether the respondent could have issued the impugned notices at this juncture or not.
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> 8. Section 275 of the Income Tax Act deals with bar of Limitation for imposing penalties, and the said provision read as follows :-

"13[(1)] Bar of Limitation for imposing penalties-

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 16[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 completed16a, 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 Chief Commissioner or Commissioner, whichever period expires under;

[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 Chief 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 18[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.]

(1A) 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 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264."

9. Sub Section (1) of Section 275 of the Act commences with the word "no order imposing a penalty under the said chapter (chapter XXI) shall be passed" 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, 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).

10. Thus, it is seen that they are two limbs to Clause (a) of Section 275 (1). The Section makes it clear that, no order imposing a penalty shall be passed after the expiry of one of the two periods, which have been mentioned therein, which expire later than the other. The first time limit is until the expiry of the financial year, in which, the assessment proceedings during which, penalty proceedings were initiated are completed. The period stipulated in the second time limit is until the expiry of six months from the end of the month, in which, the order of the CIT (A), in respect of appeals received by the Commissioner of Income Tax or Principal Commissioner of Income Tax.

11. Thus, the time limit as per the second limb is six months from the end of the month, in which, the order of Commissioner (Appeals) is received. So far as the petitioner in W.P.No.31217 of 2017 is concerned, the relevant assessment year is 2011-12 and the order of assessment under Section 143(3) was passed on 30.12.2016. Therefore, the limitation for initiation of penalty under Section 275 (1) (a) of the

Act, is on or before 31.03.2017, as per the first limb of the said provision. According to the second limb of the provision, though it is six months from the end of the month, in which, the Commissioner (Appeals) has received the Appeal, in the instant case, the proviso to Section 275 (1)(a) would be attracted and the period would be one year from the date on which, the order is passed by the Commissioner (Appeals).

12. The petitioners have preferred the Appeals before the CIT (A) on 01.02.2017, and at that time, when the impugned penalty notices were issued, the Appeals were pending. Therefore, it is clear that the respondent has lost out on the limitation aspect with regard to first limb of Section 275 (1) (a), as the impugned penalty notices have been issued on 11.09.2017 and 14.09.2017, which are after 31.03.2017, which would be the period of limitation for initiating penalty proceedings under Section 275(1) (a) of the Act.

13. In Coromandel Oils Pvt., Ltd. (supra), the Court though considered some what a similar plea, has not taken a decision, as to whether the penalty notices were barred by limitation or in fact, in para No.7 of the order, the Court has made it clear that that, it it is not inclined to interfere with the order, which has been challenged on merits, but, permitted that assessee therein to pursue the appeal remedy and the CIT (A) was directed to dispose the appeals filed against the assessment orders as well as against the imposition of penalty together, so as to bring a finality to the issue. Thus, the decision in Coromandel Oils Pvt., Ltd. (supra), does not render any support to the case of the respondent.

14. Thus, the impugned penalty notices having issued well beyond the period of limitation fixed in the first limb of Section 275(1) (a) of the Act, are held to be barred by limitation. However, the respondent is at liberty to initiate penalty proceedings after the order is passed by the CIT (A) before whom the matters are pending.

15. In the result, these Writ Petitions are allowed, the impugned notices are directed to be kept in abeyance with liberty to the respondent to initiate `fresh proceedings after the disposal of the Appeals by the Commissioner of Income Tax (Appeals), which have been preferred against the orders of assessment

passed by the respondent. No costs. Consequently, connected Writ Miscellaneous Petitions are closed."

6. The above referred decision would squarely apply to the case on hand. The learned standing counsel appearing for the revenue has not been able to point out any distinguishing features as to why the above decision should not be applied to the case on hand.

7. In the light of the above, these writ petitions are allowed and impugned notices are directed to be kept in abeyance with liberty to the respondent to initiate fresh proceedings after the disposal of the appeals by the Commissioner of Income Tax (Appeals), which have been preferred against the assessment orders passed by the respondent. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner of Income Tax
Central Circle - 3(2), Chennai
46, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.47766

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AD(Co)
CS/07/08/18