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

% *Decision delivered on: 14.12.2023*

+ **ITA 763/2023 & CM APPL. 64814/2023**

PR. COMMISSIONER OF INCOME TAX -7 Appellant
Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Mr Pratyaksh Gupta,
Standing Counsel.

versus

THAPAR HOMES LTD. Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (ORAL):

1. This appeal concerns Assessment Year (AY) 2008-09.
2. Via the instant appeal, the appellant/revenue seeks to assail the order dated 23.11.2021 passed by the Income Tax Appellate Tribunal [in short 'Tribunal'].
3. The record shows that the Tribunal was called upon to adjudicate on two appeals filed by the appellant/revenue, against orders dated 09.09.2016 and 28.10.2016 passed by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] for AY 2008-09.
4. The record also discloses that the penalty proceedings were initiated against respondent/assessee for violating the provisions of Section 271D of the Income Tax Act, 1961 [in short 'the Act']. Section 271D is tied in with the provisions of Section 269SS of the Act.



5. Thus, if the person takes or accepts any loan or deposit or specified sums in contravention of Section 269SS, he is liable to pay penalty equivalent to the sum taken or accepted as loan or deposit or specified sum.
6. Section 269SS of the Act , *inter alia*, discloses that no person shall take or accept loan or deposit or specified sum otherwise than by an account payee cheque or account payee bank draft or through the Electronic Credit System *via* a bank account.
7. The case of the appellant/revenue was that the respondent/assessee had accepted monies from 29 parties, which led to addition of Rs. 16,69,53,000/- under Section 69C and 68 of the Act.
8. Accordingly, against this backdrop, the Assessing Officer (AO) initiated penalty proceedings under Section 271D, 271E, and 271AAA.
9. The record shows that the CIT(A) *via* order dated 29.09.2016 ruled in favour of the respondent/assessee on the ground that the penalty order dated 30.12.2011 was barred by the limitation. This view has been sustained by the Tribunal *via* the impugned order.
10. As indicated above, while framing the assessment order dated 31.12.2010, the AO initiated penalty proceedings under Section 271D, 271E and 271AAA.
11. Therefore, in terms of the provisions of Section 275(1)(c), the penalty order could have been passed either before the expiry of the Financial Year [FY] in which proceedings in the course of which action for imposition of penalty was initiated is completed or within six months from the end of the month in which action for imposition of penalty was initiated, with the caveat that the appellant/revenue had the benefit of taking advantage of whichever period expired later.



12. In the facts that obtain in the instant case, the FY in the course of which the quantum proceedings, in the course of which the penalty proceedings were initiated, concededly culminated on 31.03.2011. On the other hand, the period of six months from the end of the month in which action for imposition of penalty was initiated ended on 30.06.2011.

13. Concededly, the penalty order was passed way beyond the later date i.e., 30.06.2011.

13.1 The record discloses that the penalty order was passed on 30.12.2011.

14. Mr Ruchir Bhatia, Senior Standing Counsel, who appears on behalf of the appellant/revenue, says that the AO was not empowered to pass the penalty order under the provisions referred to hereinabove.

14.1 Mr. Bhatia places reliance on Section 271E(2), which provides that the penalty imposable under sub-section (1) of the said section shall be imposed by the ACIT.

14.2 It is based on the language of sub-section (2) of section 271E that Mr. Bhatia argues that the AO could not have triggered the penalty proceedings and hence, the limitation would commence, as prescribed, only from the date when the ACIT issued the notice, i.e., 13.06.2011.

14.3 Therefore, based on this line of argument, Mr. Bhatia says that the limitation in this case expired only on 31.12.2011, and since the penalty order was passed on 30.12.2011, it was within the prescribed period of limitation, as being the latter of the two dates, as indicated in Section 275 (1) (c) of the Act.

15. We may note that the very same issue stands concluded against the appellant/revenue *via* the decision rendered by this Court in ITA 19/2021 titled as *PCIT vs. Thapar Homes Limited*, 2023:DHC:7808:DB. The



following observations made in the aforesaid judgment in this behalf, being relevant, are extracted hereafter:

“17. In our view, this argument, if accepted, would lead to absurdity, the reason being that once the appellant/ revenue decides to trigger penalty proceedings against the respondent/ assessee, it is incumbent upon them to keep an eye on the limitation period prescribed under Section 275 (1) (c) of the Act.

18. If the limitation period is connected to when the concerned officer issues notice, then the appellant/ revenue can extend the period of limitation, way beyond the timeline prescribed in Section 275 (1) (c).

19. We are clearly of the view that the notice issued by the JCIT on 13.06.2011 could not have extended the period of limitation, as prescribed under Section 275 (1) (c) of the Act.

20. In this case, what is required to be brought to the forefront is that the AO had taken prior approval of the ACIT, who is equal in rank to the JCIT, before triggering the penalty proceedings. Thus, although the decision to initiate penalty proceedings is found embedded in the assessment order dated 31.12.2010 and approval to frame the assessment order was given prior to the said date, the notice was issued only on 13.06.2011.

20.1 Even though this may be an additional factor in this particular case, our reasons for holding the limitation period as prescribed under Section 275 (1) (c) of the Act had expired latest by 30.06.2011, is not confined only to this aspect of the matter. The appellant/ revenue, as noticed above, cannot extend the period of limitation by deciding at its whim and fancy when the notice has to be issued. The notice under Section 274 should have been issued before the period of limitation, as discussed above.

21. Thus, for the foregoing reasons, the question of law which has been framed is answered against the appellant/ revenue and in favour of the respondent/ assessee.

22. The appeal is disposed of, in the aforesaid terms.”

16. Therefore, in our opinion the impugned order requires no interference.

17. Given the aforesaid position, the appeal is closed as no substantial question of law arises for consideration.

RAJIV SHAKDHER, J.

GIRISH KATHPALIA, J.

DECEMBER 14, 2023/rk

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