IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2023

PRONOUNCED ON : 23.01.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.16335 of 2022
and
WMP.Nos.15656, 15657 & 34330 of 2022

Jagadeesan Jaganathan ... Petitioner

vs.

1. The Joint Commissioner of Income Tax,
Non Corporate Range 11,
Ribbon No.211, BSNL Building,
2nd Floor, Income Tax Office,
No.16, Greams Road,
Chennai 600 006.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle 1191),
Room No.208, BSNL Building,
2nd Floor, Income Tax Office,
Greams Road, Chennai 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in DIN:

ITBA/PNL/F271D/2022-23/1043219491(1) dated 27.05.2022 on the file of the 1st respondent relating to the Assessment Year 2017-18 and quash the same.

For Petitioner : Mr.R.Sandeep Bagmar

For Respondents : Mr.B.Ramaswamy
Senior Standing Counsel

ORDER

The petitioner is aggrieved by the impugned order dated 27.05.2022 passed by the jurisdictional Joint Commissioner of Income Tax under Section 271D of the Income Tax Act, 1961 for the Assessment Year 2017- 2018.

2. The Impugned order precedes a show cause notice dated 26.11.2021 by the jurisdictional Joint Commissioner/the first respondent herein under Section 271D of the Income Tax 1961. The above said notice of the first respondent dated 26.11.2021 precedes the assessment order dated 22.12.2019 for the assessment year 2017-2018 under Section 143(3) of the Income Tax Act, 1961 of the Jurisdictional Assistant Commissioner.

3. In the aforesaid Assessment order dated 22.12.2019, the Assessing Officer, the Jurisdictional Assistant Commissioner has stated as follows:

> " *Penal proceedings under Section 269SS of Income Tax Act, 1961 are initiated separately.*
>
> *Penal proceedings under Section 271AAC(1) of Income Tax Act, 1961 initiated separately."*

4. The specific case of the petitioner is that the initiation of proceedings under Section 271D of the Income Tax Act by the first respondent on 26.11.2021 was clearly barred by law, in view of the limitation under Section 275(1)(c) of the Income Tax, 1961. He further submits that in view of the outbreak of Covid-19 Pandemic, there were relaxations of time lines in terms of the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, by virtue of which, the limitation was extended till 31.03.2021. This period was further extended by the Board by its Notification dated 17.09.2021 till 31.03.2022. It is therefore submitted that the impugned order dated 27.05.2022 was barred under law.

5. Learned counsel for the petitioner further submits that the period for reckoning the period of limitation for the purpose of completing the proceedings initiated under Section 271D of Income Tax Act, 1961 was to be reckoned from 22.12.2019. However, in view of the relaxation under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, by CBDT and Notification in S.O.3814(E) dated 17th September 2021 there was further relaxation. It is submitted that the proceedings initiated by the first respondent/Joint Commissioner on 26.11.2021 should have been completed latest by 31.03.2022. Instead, it was completed on 27.05.2022.

6. That apart, it is submitted that on 19.01.2022 the Penalty proceeding was transferred under the Faceless Penalty Scheme 2021 and was re-transferred back to the first respondent/the jurisdictional Joint Commissioner on 22.04.2022. It is submitted that this transfer was clearly contrary to Rule 5(2) of the Faceless Penalty Scheme 2021.

7. It is further submitted that the Principal Chief Commissioner or the Principal Director General, the incharge of the National Faceless Penalty Center, may at any stage of the penalty proceeding, transfer the proceeding to the Income Tax Authority of the National Faceless Penalty Centre who is the jurisdictional authority for the assessment or any other person, in case of penalty proceeding were initiated with the approval of Board. In this case, there is no approval.

8. Learned counsel appearing for the petitioner further submitted that the counter filed by the respondent is silent on the same. That apart, it is further submitted that the system was also not permitted the respondent to complete the proceedings under Faceless Penalty Scheme 2021 began on 31.03.2022 as the limitation expired on 31.03.2022.

9. In this context, the learned counsel for the petitioner placed reliance on few decisions of the Kerala, Delhi, Gujarat, Rajasthan and Calcutta High Court as detailed below:-

i. ***PCIT Vs. Mahesh Wood Prodcuts*** *2017 (394) ITR 312 (Delhi)*

ii. ***CIT Vs. Jitendra Singh Rathore*** *2013 (31) taxmann.com 52 (Rajasthan)*

iii. ***CIT Vs. Narayani & Sons(P.) Ltd*** *2016 (73) taxmann.com 21 (Calcutta).*

iv. ***CIT Vs. Maa Khodiyar construction*** *2014(45) taxmann.com 566 (Gujarat)*

v. ***Grihalakshmi Vision Vs. Additional CIT in ITA*** *Nos.83 & 86 of 2014 (Kerala High Court)*

10. The learned counsel for the petitioner submitted that the decisions of the Kerala High Court in **Grihalakshmi Vision Vs. Additional CIT** in ITA Nos.83 & 86 of 2014, has clearly laid principles of law

11. The learned counsel for the respondents submitted that the impugned order is a well reasoned order and it does not require any interference of this Court. Further, he submitted that the petitioner has an alternate remedy by way of an appeal. Hence at this stage, the Writ Petition is liable to be dismissed.

12. He further submitted that there is no violation of principles of natural justice as the petitioner was given show cause notice dated 26.11.2021. The petitioner has also filed a reply. That apart, it is submitted that as per Circular No.09/DV/2016 dated 26.04.2016, the competent authority to issue notice under Section 271(1)(D) of Income Tax is only the Joint Commissioner. The limitation for completing the assessment would be start from the date of issuance of the Notice and not from the date of Assessment Order.

13. The learned counsel has placed reliance on the decisions of the Apex Court as detailed below:-

i. ***Commissioner of Income Tax Vs. Chhabil Dass Agarwal,*** *2013 (36) taxmann.com 36(SC)*

ii. ***Assistant Collector of Central Vs. Dunlop India Limited and others,*** *1985 (1) SCC 260*

iii. ***Authorized Officer, State Bank of India, Vs. Mathew K.C.*** *2018 (3) SCC 85*

14. The learned counsel for the petitioner by way of rejoinder submits that even in the portal, the respondents have stated that the proceeding under Section 271D of the Income Tax, the limitation expires on 31.03.2022

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

16. Ordinarily, a Notice to impose penalty is issued along with the Assessment Order. However, no such Notice was issued to the petitioner along with the Assessment Order dated **22.12.2019.** In this case, the Assessment Order was passed by the second respondent on 22.12.2019. In the said order, the right to initiate penalty proceedings was mentioned. It however did not mention about the proposed proceeding under Section 271D of the Income Tax Act, 1961. Impugned order dated 27.05.2022 has been passed under Section 271D of the Income Tax Act, 1961 purportedly within the limitation under Section 275(1)(c) of the Income Tax Act, 1961 read with Tamil Nadu Taxation

and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 which was later replaced by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

17. Therefore, the point for consideration in this writ petition is whether the impugned order is in time or time barred.

18. Section 275(1)(c) of the Income Tax Act, 1961 reads as under:-

Section 275 of the Income Tax Act, 1961	
[(1)] No order imposing a penalty under this Chapter shall be 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]

19. As per section 3(1)(a) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the Central Government was empowered to issue notification specifying the time limit for

(i) completion of any proceedings or

(ii) for passing any order or

(iii) issuance of any notice, intimation, notification, sanction or approval, or

(iv) such other action by whatever name called by any Authority, Commission or Tribunal under any of the specified enactments where any time limit prescribed or notified under any of the "Specified Enactments" fell during the period **between 20th day of March, 2020 and 31st day of December, 2020** or such other date after 31st day of December 2020.

20. Section 3(1)(a) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, reads as under:-

3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or

21. In this connection, several notification were issued thereby extending the period of limitation for filing returns, for passing orders and for issuing notices, notifications et cetera as the Covid-19 Pandemic did not abate immediately.

22. The last of the Notification that came to be issued by the Central Board of Direct Taxes, Department of Revenue under the Ministry of Finance under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, was on 17.9.2021 in S.O.No 3814(E). Relevant portion of Notification dated 17.09.2021 in S.O.No.3814(E) reads as under:-

In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020 and No. 10/2021 dated the 27th February, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii),vide number S.O. 966(E) dated the 27th February, 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O 1432(E) dated the 31st March, 2021and No. 74/2021 dated 25th June, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 2580(E) dated the 25th June, 2021, (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act, that,

(A) where the specified Act is the Income-Tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for imposition of penalty under Chapter XXI of the Income-tax Act, —

(i) the 30th day of March, 2022 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 31st day of March, 2022 shall be the end date to which the time-limit for completion of such action shall stand extended;

23. There is no time limit prescribed under the Income Tax Act, 1961, for issuance of notice under the provisions of the Act for imposing penalty under section 274 r/w Section 271D of the Income Tax Act, 1961. Limitation for passing orders is prescribed only under Section 275(1) of the Income Tax Act, 1961.

24. Section 275(1)(c) of the Income Tax Act, 1961, will apply ie., "any other case" i.e. where neither an appeal nor a revision is pending against the relevant Assessment Order or other orders. Under Section 275(1)(c) of the Income Tax Act, 1961 no order imposing a penalty under Chapter XXI of the Income Tax Act, 1961, can be passed either after :-

> (i) 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
>
> (ii) six months from the end of the month in which action for imposition of penalty was initiated,
>
> whichever period expires later.

25. Section 275(1)(c) of the Income Tax, 1961 however prescribes the time limit for passing order within prescribed period. Order is to be passed by the end of financial year in which the proceedings, in the course of which action for 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, which ever period expires later.

26. Therefore, notice has to be issued before the end of the financial year. Hypothetically, notice under Section 274 read with Section 271 D of the Income Tax Act, 1961 to impose penalty could be the same date as that of the Assessment Order or any time thereafter or the latest by the end of the Financial Year in which Assessment Order was passed. Thus, order can be passed on 30.9.2020, if such a notice was issued on the last date of Financial Year in which Assessment Order was passed on 31.03.2020.

27. Therefore, in this case, the notice could have been issued latest by 31.3.2020 being the last date of financial year, The last date for passing order would have therefore expired on 30.9.2020. However, notice was not issued before the expiry of Financial Year in which Assessment Order was passed on 22.12.2019, perhaps due to the outbreak of COVID-19 pandemic. Notice to impose penalty under Section 274 read with Section 271 D of the Income Tax Act, 1961 was issued only on 26.11. 2021.

28. The delay in issuance of notice on 26.11.2021 notice under Section 274 read with Section 271 D of the Income Tax Act, 1961 under was saved due to operation of Section 3 of Tamil Nadu Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 promulgated on 31.03.2020 which was later replaced by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 read with notification issued therein.

29. In terms of section 3(1)(a) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the Central Government can by notifications, specify the time limit for Completion of any Proceeding (CoP), Passing of any Order (PoaO), Issuance of any Notice (IoaN), Intimation (I), Notification (N), Sanction (S), Approval (A), and Such other Action (SOA). The notice dated 26.11.2021 to impose penalty under Section 271 D read with, Section 274 of the Income Tax Act, 1961 was saved by Notification S.O.No.3814(E) dated 17.9.2021. Having issued notice on 26.11.2021, Order has to be passed in time.

30. Time line to pass such Order under section 275 (1)(C) of the Income Tax Act,1961 is to be gathered from Notification S.O.No.3814(E) dated 17.9.2021 read with Section 3(1)(a) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. As far as passing of any order to impose penalty under Chapter XXI of Income Tax Act, 1961 is concerned, following time line are prescribed in Clause A(i) & (ii) of Notification S.O.No.3814(E) dated 17.9.2021 as under:-

(i) the 30th day of March, 2022 shall be the End date	**(ii) the 31st day of March, 2022 shall be the end date**
of the period during which the time limit specified in or prescribed or notified under, the Income-tax Act falls for the completion of such action ; and	to which the time-limit for completion of such action shall stand extended ;

31. Thus, the limitation for passing order imposing penalty under Section 271D read with Section 274 & 275(1)(C) of the Income Tax Act, 1961 which

would have otherwise expired on 31.03.2020 or within a period of six months from the date of issuance of the notice, expired on 30.03.2022 as per Clause(A)(a)(i) of the Notification in S.O.No.3814(E) dated 17.09.2021.

32. Wherever extension was granted earlier under previous Notifications issued under the provisions of the Section 3 of Tamil Nadu Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 on 31.03.2020 as replaced by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 Act, the end date for passing the order would have stood extended to 31.03.2022.

33. In this case, the petitioner was issued with a notice on 26.11.2021 under section 271D read with Section 274 of the Income Tax Act, 1961. As mentioned above, notice imposing penalty was issued belatedly under the extension of time granted under the above Notification dated 17.09.2021. Therefore, the order ought to have been passed on 31.03.2022. Since, the impugned order has been passed on 25.07.2022, it has to be held that it was passed beyond the limitation prescribed and is therefore without the authority

of law and without jurisdiction.

34.Therefore, the impugned order dated 27.05.2022 passed beyond the period of limitation is liable to be quashed and is hereby quashed.

35. This writ petition stands allowed with the above observation. Consequently, connected miscellaneous petition is closed. No costs.

23.01.2024

Index : Yes/No
Neutral Citation : Yes/No
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<u>To</u>

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Non Corporate Range 11,
Ribbon No.211, BSNL Building,
2^{nd} Floor, Income Tax Office,
No.16, Greams Road,
Chennai 600 006.

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Non-Corporate Circle 1191),
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C.SARAVANAN, J.

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Pre-delivery Order in
W.PNo.16335 of 2022

23.01.2024