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

% *Date of Decision :20.11.2024*

\+ **W.P.(C) 15717/2024 CM APPL. 65962/2024**

PROPERTY PLUS REALTORS .....Petitioner

Through: Mr. Deepak Kapoor, Mr. Saurabh Soni, Mr.Mannat Singh and Mr. Sanjeet Kumar Thakur, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC with Mr. Sarvan Kumar, Adv. for UOI.
Mr. Sanjay Kumar, Adv. for R-2 to R-4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (*ORAL*)

1. The petitioner has filed the present petition, *inter alia*, impugning the notices dated 09.09.2024 and 27.09.2024 issued under Section 271DA read with Section 274 of the Income Tax Act, 1961 (hereafter *the Act*) as well as an order dated 17.10.2024 (hereafter *the impugned order*) passed under Section 271DA of the Act, imposing a penalty of ₹12,89,31,909/- in contravention of the provisions of Section 269ST of the Act, pertaining to the assessment year (AY) 2021-22.

2. It is the petitioner's case that the impugned order is barred by limitation. The petitioner is a partnership firm, constituted on 01.01.2017. The petitioner firm was engaged in the business of acting as a real estate

broker and has acted as a broker for various developers, including Gaursons Group of Companies (hereafter *Gaursons Group*).

3. On 02.03.2022, a search was conducted under Section 132 of the Act in the premises of Gaursons Group and related entities. Simultaneously, the search was also conducted in the premises of the petitioner as well as in the premises of the constituent partners of the petitioner firm.

4. The petitioner's return for the AY 2021-22, had earlier been selected for scrutiny and the assessment proceedings were transferred to the Assessing Officer (hereafter *the AO*) for assessment. The AO had passed an assessment order dated 24.03.2023 under Section 143(3) of the Act. During the course of the proceedings, it appeared that the petitioner was liable for penalty for violation of Section 269ST of the Act. Accordingly, on 24.03.2023, the AO had forwarded a reference to the Additional Commissioner of Income Tax, Central Range-4, New Delhi (respondent no. 3) proposing for initiation of the penalty proceedings under Section 269ST read with Section 271DA of the Act.

5. Respondent no. 3 did not take any immediate steps thereafter. However, after a lapse of more than one year, respondent no. 3 sent a letter dated 03.09.2024 acknowledging that it had received a reference in the case of the petitioner for the AY 2021-22 and further seeking evidence regarding receipt of the sale proceeds on account of sale of flats/units/shops as well as earning of commission/brokerage income above the prescribed limit of ₹2,00,000/-. This was followed by a communication dated 04.09.2024 by the concerned AO to respondent no.3.

6. The impugned order was passed on 17.10.2024. The limited question to be examined is whether the impugned order was passed beyond the period

of limitation as prescribed under Section 275(1)(c) of the Act. The said provision is set out below:-

> "**275. Bar of limitation for imposing penalties**.
>
> (1) No order imposing a penalty under this Chapter shall be passed-
>
> (a) xxxxxxx
>
> (b) xxxxxxx;
>
> (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."

7. The controversy, as to the date on which the penalty proceedings are to be construed as initiated, is no longer *res integra*. The said issue is covered by the decision of this court in ***Principal Commissioner of Income Tax v. JKD Capital & Finlease Ltd: 2015 SCC OnLine Del 14476*** as well as the decision in ***Commissioner of Income Tax (TDS)-2 Delhi v. Turner General Entertainment Networks India Pvt. Ltd.: 2024 SCC OnLine Del 7760***.

8. In terms of the said decisions, the date of receipt of the reference is required to be considered as the date of initiation of the proceedings. The order of penalty was required to be passed within six months from the end of the month in which the reference was received. There is no dispute that the reference was received by respondent no. 3 from the AO on 24.03.2023. Paragraph 3 of the said letter clearly indicates the above. The same is reproduced below:

> "3. Since the amount of cash received involved more than Rs.2,00,000/- in the transaction from the customer, therefore information is being shared with your office for initiation of

penalty as per the provisions of 269ST in the above case."

9. However, Mr. Sanjay Kumar, the learned counsel appearing for the Revenue contends that since the reference did not include the necessary particulars, the date of reference ought to be considered as 04.09.2024, being the date on which the AO had submitted the copies of certain documents, as was requested by respondent no. 3 in terms of the letter dated 03.09.2024. He submits that if the date of reference is considered as 04.09.2024, the impugned order would be within the period of limitation as prescribed under Section 275(1)(c) of the Act.

10. We are not persuaded to accept this contention. As noted above, the proposal to initiate the penalty proceedings had been forwarded by the AO to respondent no. 3 on 24.03.2023. Further, this court is also unable to countenance that respondent no. 3 had not taken any steps immediately after receipt of the said reference and it waited almost one year to ask for further documents, which was beyond the period prescribed for passing the impugned order under Section 271DA of the Act.

11. In view of the above, the present petition is allowed and the impugned order is set aside. Pending application, if any, also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 20, 2024

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