IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

D.B. Income Tax Appeal No.166/2015

Pr. Commissioner of Income Tax, Central
vs.
M/s Govindkripa Buildmart Pvt. Ltd.

D.B. Income Tax Appeal No.167/2015

Pr. Commissioner of Income Tax Central
vs.
M/s Govindkripa Buildmart Pvt. Ltd.

DATE OF ORDER ::: 19.10.2016

HON'BLE MR. JUSTICE K.S. JHAVERI
HON'BLE MR. JUSTICE MAHENDRA MAHESHWARI

Mr. Archana for
Mr. Anil Mehta for the appellant.
Mr. Mahendra Gargieya for the respondent.

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1. By way of the appeals, the department has assailed the judgment & order of the Tribunal whereby the Tribunal has partly allowed the appeal preferred by the assessee and dismissed the appeal of department where CIT(A) has partly allowed the appeal of the assessee.

2. This Court while admitting the appeal framed following substantial questions of law:-

> "(i) Whether the ITAT has erred in law and on face by holding that the time limit prescribed for completion of penalty proceedings under Section 275(1)(a) is applicable and not 275(1)(c).
> (ii) Whether the ITAT has erred in law in holding that in quantum appeal, the CIT(A) as well as ITAT has not considered the nature of transaction and has given wrong findings."

3. The brief facts of the case are that a search under Section 132 of the Act was carried out at the assessee's business premises and residential

premises of its members, during which stock-in-trade, valuables, cash, jewellery, documents, books of accounts and/or loose papers were found and seized. During the course of assessment proceedings u/s 153A r.w. Section 143(3) of the Income Tax Act the assessing officer initiated the penalty proceedings on 30/12/2009. Meanwhile the assessee went in appeal against the additions made by the assessing officer. The order of the CIT(A) was received on 30/3/2011 against which further appeal was filed before the ITAT. The order of ITAT was received on 14/2/2012. In the meantime a reference was made to the Addl. CIT, central range, Jaipur for imposing penalty u/s 271E of the Income Tax Act 1961. Show cause notice was issued vide letter dt. 24/2/2012 by the Addl. CIT and penalty amounting Rs. 1,77,00,000/- was imposed by order dated 30/3/2012.

4. Both the appeals were directed to be heard looking to the earlier order passed by this Court where it has been observed that in the interest of both the sides, it will be advisable to dispose off the matter at initial stage on 4/1/2016 & 26/7/2016, therefore, the matter has been taken up today.

5. Counsel for the appellant contended that the Tribunal has seriously committed an error in levying the penalty on 30/3/2011. In fact, the competent authority-Commissioner issued notice within the limitation and therefore, question is

not required to be answered whether 275(1)(a) who is the competent authority under the Act.

6. Counsel for the respondent contended that the second issue has come to be decided by the decision of this Court in **CIT Vs. Hissaria Bros.** reported in **(2007) 211 CTR 156 (Raj.)** and **CIT Vs. Jitendra Singh Rathore** reported in (2013) 83 DTR 0227 (Raj.) as well as Bombay Tribunal in **Lodha Builders (P) Ltd. vs. Assistant Commissioner of Income Tax** reported in (2014) 163 TTJ 778 (Mum Trib) and Supreme Court in CIT vs. Hissaria Bros. reported in (2016) 288 CTR 244 (SC) and circular of CBDT which reads as under:-

> "1. It has been brought to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that there are conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271D and 271E of the Income tax Act, 1961 (hereafter referred to as the Act) commences at the level of the Assessing Officer (below the rank of Joint Commissioner of Income Tax.) or at level of the Range authority i.e. the Joint Commissioner of Income Tax./Addl. Commissioner of Income Tax.
> Some High Courts have held that the limitation commences at the level of the authority competent to impose the penalty i.e. Range Head while others have held that even though the Assessing Officer is not competent to impose the penalty, the limitation commences at the level of the Assessing Officer where the Assessing Officer has issued show cause notice or referred to the initiation of proceedings in assessment order.
> 2.On careful examination of the matter, the Board is of the view that for the sake of clarity and uniformity, the conflict needs to be resolved by way of a "Departmental View".

3. The Hon'ble Kerala High Court in the case of Grihalaxmi Vision v. Addl. Commissioner of Income Tax, Range 1, Kozhikode, vide its order dated 8.7.15 in ITA Nos. 83&86 of 2014, observed that, "Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessment to which he has filed his reply."

4. The above judgment reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of Income Tax) may be advised to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer, (below the rank of Joint Commissioner of Income Tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed u/s 275 (1)(c) of the Act.

5. Where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant

> High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee. The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.
> 6. The above clarification may be brought to the notice of all officers."

7. We have heard counsel for the appellant and counsel for the respondent.

8. Taking into consideration that under Section 275(1)(c) of the Act, it is no doubt that Commissioner is the competent authority and other contention that the notice was within limitation, in our view is misconceived inasmuch as AO on 30/12/2009 issued notice to the assessee and he was clear that no penalty proceedings required to be initiated. We ought to have held that the Department has taken advantage of any wrong.

9. We are of the opinion that the issues are squarely covered therefore, in both the appeals we answer the question raised in favour of the assessee and against the Department.

The appeals are accordingly dismissed.

A copy of this order be placed in each file.

(Mahendra Maheshwari), J. **(K.S. Jhaveri), J.**

A.Sharma/s-88-89