

Court No. - 37

Case :- INCOME TAX APPEAL No. - 59 of 2006

Appellant :- Commissioner Of Income Tax-Ii, Kanpur

Respondent :- M/S K.M. Sugar Mills Ltd., Kanpur

Counsel for Appellant :- R.K. Upadhyaya,B.Agrawal

Counsel for Respondent :- Ashish Bansal,S.K.Garg

Hon'ble Tarun Agarwala,J.

Hon'ble Vinod Kumar Misra,J.

The present appeal relates to the assessment year 1986-87. The relevant facts giving rise to this appeal is, that the assessment was completed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 30.03.1988. An addition of Rs.39,44,650/- was made by the Assessing officer on account of depreciation claimed by the assessee on Gas Cylinders. The Assessing Officer also disallowed Rs.5,23,674/- on account of truck hire charges and, consequently, initiated proceedings under Section 271 (1)(c) of the Act for concealment and furnishing inaccurate particulars of income. The said additions were subsequently affirmed by the Tribunal by its order dated 28.04.1999. Eventually, this order of the Tribunal was received by the Commissioner of Income Tax on 28.06.1999. The penalty order under Section 271(1)(c) of the Act was passed by the Assessing Officer on 31.01.2002. The assessee, being aggrieved, filed an appeal, which was allowed by the Ist Appellate Authority on the ground that the penalty order was passed beyond the period of limitation. The order of the Ist Appellate Authority was challenged by the Department by way of second appeal before the Tribunal, which was dismissed. The Department has thereafter, filed the present appeal under Section 260A of the Act, which was admitted on the following substantial question of law:

1."Whether on the facts and in the circumstances of the case, the

Income Tax Appellate Tribunal was legally justified in cancelling the penalty amounting to Rs. 30,96,548/- imposed by the Assessing Officer vide order u/s 271 (1) (c) dated 31.01.2002, without properly appreciating the facts of the case?"

2. "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in cancelling the penalty amounting to Rs. 30,96,548/- imposed by the Assessing Officer, without appreciating the fact that the assessee has concealed particulars of income of Rs. 39,44,650/- on account of depreciation on Gas Cylinders and Rs. 5,23,674/- in respect of disallowance of Truck Hire charges paid to TELCO, made by the Assessing Officer?"

3. "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in cancelling the penalty amounting to Rs. 30,96,548/- imposed by the Assessing Officer by relying on the decision reported in 83 ITD 130, ignoring the decision of the Hon'ble Supreme Court in the case of Hind Wire Limited Vs. Commissioner of Income Tax, reported in 212 ITR 242?"

After hearing Sri Ashok Kumar, the learned counsel for the Department and Sri Ashish Bansal, the learned counsel for the assessee, we are of the opinion that the question of law, as formulated above, requires to be modified as under:

"Whether the Assessing Officer was justified in passing the penalty order under Section 271(1)(c) of the Act on 31.01.2002, which was beyond the period of limitation as per Section 275 of the Act?"

Section 275 of the Act provides a bar of limitation for imposing

penalty. The relevant portion of Section 275 of the Act is extracted hereunder:

"275(1) 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 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 completed, 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 Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever period expires later:

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 Principal Chief Commissioner or Chief Commissioner or Principal 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 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."

From a perusal of the aforesaid, it is apparently clear that the order of penalty is required to be passed within the end of the financial year from the date when the assessment order or the appellate order is received by the competent authority or within six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

In the instant case, admittedly, the Tribunal's order was received by the Commissioner of Income Tax on 28.06.1999 and, consequently, the penalty order was required to be passed on or before 31.12.1999. In the instant case, the penalty order was passed on 31.01.2002 much after the expiry of the period of limitation and, consequently, the order of penalty was barred by limitation.

It was urged by the learned counsel for the appellant that after passing of the order of the Tribunal, a rectification application under Section 254 of the Act was filed by the assessee before the Tribunal, which was dismissed by the Tribunal on 30.04.2001 under Section 254 of the Act, which was received by the Commissioner of Income Tax on 16.07.2001 and, therefore, applying the provision of Section 275(1)(c) of the Act the period of limitation was extended till 31.03.2002 and, before the expiry of this period, the impugned penalty order was passed on 31.01.2002, hence, it was within the period of limitation.

Having heard the learned counsel for the appellant, we are of the opinion that the period of limitation prescribed under Section 275 of the Act is apparently clear, namely, that the order of penalty must be passed within six months from the end of the month in which the appellate order is received. The said order of the Tribunal was received by the Commissioner of Income Tax on 28.06.1999. Six months would expire on 31.12.1999. The period of limitation cannot be extended merely because an application under Section 254 of the Act was filed by the assessee. The Department cannot take advantage of the filing of the application by the assessee. There was no embargo upon the Assessing Officer in not completing the penalty proceedings within the period of limitation. The decisions cited by the learned counsel for the Department in the cases of **Hind Wire Industries Ltd. Vs. Commissioner of Income Tax, 212 ITR 639 (SC)** and **Henri Isidore Vs. Commissioner of Income Tax, 240 ITR 247 (Mad)** have no application in the present case.

Consequently, for the reasons stated aforesaid, we are of the opinion that the Tribunal was justified in rejecting the appeal and deleting the order of penalty holding it as barred by limitation. The appeal is, accordingly, dismissed. The question of law, as referred, is answered in favour of the assessee and against the Department.

Order Date :- 16.12.2015
MAA/-

(Vinod Kumar Misra,J.) (Tarun Agarwala,J.)