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

+ **ITA 1443/2018**

PR. COMMISSIONER OF INCOME TAX-4 Appellant

Through Mr. Zoheb Hossain, Sr. Standing
counsel

versus

INDIAN SUGAR EXIM CORPORATION LTD. Respondent

Through Dr. Rakesh Gupta, Mr. Rohit Kumar
Gupta & Ms. Monika Ghai,
Advocates

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

22.07.2019

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Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue against the order dated 16th April, 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 3860/Del/2017 & SA No. 85/Del/2018 for the Assessment Year (AY) 2009-2010 whereby the ITAT deleted the penalty imposed on the Respondent Assessee under Section 271(1)(c) of the Income Tax Act, 1961 ('Act') on the basis that it was done after the expiry of the limitation period under Section 275(1)(a) of the Act.

2. The facts in brief are that the Assessee filed its return on 30th September, 2009 for AY 2009-2010. The assessment order was passed by the Assessing

Officer (AO) under Section 143(3) of the Act on 1st December, 2011. A penalty order was passed for interest on late payment of TDS on 27th November, 2015.

3. In terms of the information obtained by the Assessee under the Right to Information Act (RTI Act), it appeared that in the quantum matter the ITAT's order dated 25th March, 2013 in ITA Nos. 2859/Del/2013 and 2042/Del/2013 had been served on the CIT (Judicial), CR building, New Delhi on 9th April, 2015. The RTI information also disclosed that the order of the ITAT was also simultaneously served on the same date on the CIT (DR). The limitation period, therefore, began running from that date itself.

4. A Full Bench of this Court in ***Odeon Builders Pvt. Ltd. v. Principal Commissioner of Income Tax (2017) 393 ITR 27*** categorically held that in the context of Section 260A of the Act, the limitation period for filing an appeal against an order of the ITAT would begin to run immediately upon a copy of the order being received by the CIT (Judicial). This Court rejected the contention of the Revenue that till the 'concerned jurisdictional CIT' received the order of the ITAT sought to be appealed against, limitation would not begin to run. In other words, the expression 'CIT' in Section 260 A (1) of the Act was interpreted by this Court as meaning any CIT and not just the 'concerned' CIT.

5. The decision of this Court in ***Odeon Builders Pvt. Ltd. (supra)*** was affirmed by the Supreme Court by dismissal of the Revenue's SLP (C) Diary No. 11792/2018 (***Commissioner of Income Tax 7 v. M/s Odeon***

Builders Pvt. Ltd) on 1st May, 2018.

6. Subsequent to the decision in **Odeon Builders Private Limited** (*supra*) the issue whether the computation of limitation for initiation of penalty proceedings under Section 158 (BFA) (3) (c) of the Act would also follow the same logic was considered by this Court in ITA No. 822/2017 (**Principal Commissioner of Income Tax -14 v. Kamaljeet Khosla**). There the ITAT had followed the decision of this Court in **Odeon Builders Private Limited** and held the penalty order in those cases to be beyond the period of 6 months after the order of the ITAT was first received by the CIT (Judicial). The order of the ITAT in the aforementioned case was affirmed by this Court by its order dated 20th September, 2017 dismissing the Revenue's Appeal ITA No. 822/2017. Paras 5,6 and 7 of the said order are relevant for the case on hand and read as follows:

“5. It is submitted by the learned counsel for the Revenue that the decision of this Court in **Odeon Builders Pvt. Ltd.** (*supra*) was in the context of an appeal under Section 260A of the Act and, therefore, will not *ipso facto* apply to Section 158 BFA(3)(c) although the expression used in both provisions is the same. Secondly, he submits that in the present case at the time the AO initiated the penalty proceedings, the decision in **Odeon Builders Pvt. Ltd.** (*supra*) had not been pronounced and, therefore, the said decision of this Court should be held to be prospective, that is, applicable only to those cases where the proceedings under Section 158 BFA (3) were initiated thereafter.

6. As far as the first submission is concerned, the Court finds that the expression “received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner” appearing in Section 158 BFA(3)(c) is identical to the expression in Section 260A (1) of the Act which was interpreted by this Court in **Odeon Builders Pvt. Ltd.** (*supra*) as any CIT and not necessarily the

‘concerned’ CIT. In other words, for the purpose of Section 158BFA(3)(c) of the Act, if the order of the ITAT was received by the CIT (Judicial), the limitation of 6 months within which the penalty order had to be passed would begin to run from that date regardless of the fact that the order of the ITAT was received by the concerned CIT only thereafter.

7. As far as the second submission is concerned, this Court in **Odeon Builders Pvt. Ltd.** (*supra*) declared the law as it always stood. The question of the said decision applying only prospectively does not arise. While it will not result in matters that have attained finality being reopened, it will apply to cases that are pending at various levels in the hierarchy of authorities.”

7. In the present case as well the ITAT has followed this Court’s decision in **Odeon Builders Private Limited** and held that even for the purposes of the penalty order under Section 271(1)(c) read with Section 275(1)(a) the limitation begins to run from the date of the order of the ITAT was served upon the CIT (Judicial).

8. Learned counsel for the Revenue sought to distinguish the said decision in **Odeon Builders Private Limited** on the ground that it was in context of the Revenue filing an appeal under Section 260 A of the Act. However, he was unable to dispute that the wording of Section 275 (1) (a) as far as ‘Commissioner of Income Tax’ and other officers was identical to the wording in both Section 158 (BFA)(3)(c) and Section 260 A of the Act.

9. Consequently, the Court finds no error in the ITAT having followed the decision of this Court in **Odeon Builders Private Limited** to hold the penalty order in the present case to be barred by limitation.

10. No substantial question of law arises. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 22, 2019

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