

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2018

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

**Writ Petition Nos. 31021 to 31027,
31217 to 31221 of 2017
and
W.M.P. Nos. 34000 to 34006,
34278 to 34282 of 2017**

W.P.No.31021 of 2017

J.Srinivasan

...Petitioner

Vs.

The Assistant Commissioner of Income-tax,
Central Circle – 3(2), Chennai,
46, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the respondent in PAN.No.AOVPS4456H and to quash the impugned notice under Section 271(1)(c) dated 11.09.2017 passed by the respondent.

For Petitioner in all W.P.Nos. : Mr.R.Sivaraman

For Respondent in all W.P.Nos : Mr.A.N.R.Jayaprathap for
Senior Standing Counsel
: Mr.A.P.Srinivas
Senior Standing Counsel

COMMON ORDER

Heard Mr.R.Sivaraman, the learned counsel appearing for the petitioners, Mr.A.P.Srinivas and Mr.A.N.R.Jayaprathap, the learned Senior Standing Counsels for the respondent, and carefully perused the materials placed on record, including the counter affidavit filed by the respondent.

2. Since the relief sought for, in these Writ Petitions is common and the petitioner in W.P.No.31217 of 2017, being the Company and the other petitioners, being the Directors, all these Writ Petitions were heard together and disposed of, by the common order. W.P.No.31217 of 2017, filed by the Company is taken as a lead case, and it would suffice to refer to the facts stated thereunder.

3. The petitioner seeks for issuance of a writ of certiorari, to quash the notice issued by the respondent under Section 271(1)(c) of the

Income Tax Act, 1961 (hereinafter, referred to as 'the Act') dated 14.09.2017. The proceedings, which led to the issuance of the impugned notice are as hereunder:-

i) A search was conducted in the personal and business premises of the petitioner, Mr.J. Srinivasan, and his group Companies on 28.01.2015. Subsequently, notices under Sections 153 A, 142 (1) and 143 (2) of the Act were issued to the petitioner for the assessment years 2011-12 to 2015-16 respectively, pursuant to which, after giving an opportunity to the petitioner, the respondent computed the undisclosed income for the impugned assessment years and completed the assessment under Section 143(3) read with Section 153A of the Act for AY 2011-12 to 2014-15 and under Section 143(3) read with Section 153B (1)(B) of the Act for the AY 2015-16, and raised a total demand of Rs.11,37,26,860/-.

ii) The petitioner has filed Appeals, challenging the orders of assessment before the Commissioner of Income Tax (Appeals) [CIT(A)], in I.T.A. Nos.214 to 218/17-18/CIT(A)-19 on 01.02.2017 for the assessment years 2011-12 to 2015-16 and the Appeals are pending. Similar appeals

have been filed by the other petitioners and the Appeals are pending before the CIT (A)). Whiles, the petitioners has received the impugned notices under Section 271 (1) (c) of the Act, calling upon them to show cause as to why, penalty should not be levied. These notices are put to challenge in these Writ Petitions.

4. The sheet anchor of the arguments advanced by the learned counsel appearing for the petitioners is that, the impugned notices are in violation of the limitation prescribed under Section 275 of the Act. It is further submitted that the respondent ought to have initiated penalty proceedings for the impugned assessment years (in W.P.No.31217 of 2017, AY 2011-12) either before the end of the financial year, in which, the proceedings have been initiated, or within a period of six months from the date of passing of the order by the CIT (A).

5. It is further submitted that, by issuing the impugned notices dated 11.09.2017 and 14.09.2017, the respondent failed to satisfy either provision, as stipulated under Section 275 of the Act. In support of such contention, petitioners placed reliance on the decision of the Hon'ble High

Court of Delhi, in **Principal Commissioner of Income-tax (Central)-2 Vs. Mahesh Wood Products (P) Ltd.**, reported in [2017] 82 taxman.com 39 (Delhi) and the decision of the Hon'ble High Court of Rajasthan, in **Commissioner of Income-tax, Udaipur Vs. Jitendra Singh Rathore**, reported in [2013] 352 ITR 327 (Rajasthan).

6. The learned Senior Standing counsel for the respondent, by referring to the counter affidavit, submitted that the assessee has referred to the provisions of Section 275(1)(a) of the Act, in isolation, without considering the last words, “whichever is later”, which only sets out the outer limit of time for levy of penalty, and it does not bar from levying penalty between the period of completion of assessment and disposal of Appeal by CIT(A). In support of such contention, reliance was placed on the order passed by the Court, in **Coromandel Oils Pvt. Ltd., Vs. The Assistant Commissioner of Income Tax Company Circle I (3) and two others** in W.P.No.1311 to 1313 of 2013, dated 28.01.2013.

7. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, the issue, which falls for

consideration, is as to whether the impugned notices issued by the respondent are time barred and whether the respondent could have issued the impugned notices at this juncture or not.

8. Section 275 of the Income Tax Act deals with bar of Limitation for imposing penalties, and the said provision read as follows :-

13[(1)] Bar of Limitation for imposing penalties-

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 16[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 16a, 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 Chief Commissioner or Commissioner, whichever period expires under;

[**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 Chief 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 18[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.]

(1A) 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 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264."

9. Sub Section (1) of Section 275 of the Act commences with the word "no order imposing a penalty under the said chapter (chapter XXI) shall be passed" 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, 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).

10. Thus, it is seen that they are two limbs to Clause (a) of Section 275 (1). The Section makes it clear that, no order imposing a penalty shall be passed after the expiry of one of the two periods, which have been mentioned therein, which expire later than the other. The first time limit is until the expiry of the financial year, in which, the assessment proceedings during which, penalty proceedings were initiated are completed. The period stipulated in the second time limit is until the expiry of six months from the end of the month, in which, the order of the CIT (A), in respect of appeals received by the Commissioner of Income Tax or Principal Commissioner of Income Tax.

11. Thus, the time limit as per the second limb is six months from the end of the month, in which, the order of Commissioner (Appeals) is

received. So far as the petitioner in W.P.No.31217 of 2017 is concerned, the relevant assessment year is 2011-12 and the order of assessment under Section 143(3) was passed on 30.12.2016. Therefore, the limitation for initiation of penalty under Section 275 (1) (a) of the Act, is on or before 31.03.2017, as per the first limb of the said provision. According to the second limb of the provision, though it is six months from the end of the month, in which, the Commissioner (Appeals) has received the Appeal, in the instant case, the proviso to Section 275 (1)(a) would be attracted and the period would be one year from the date on which, the order is passed by the Commissioner (Appeals).

12. The petitioners have preferred the Appeals before the CIT (A) on 01.02.2017, and at that time, when the impugned penalty notices were issued, the Appeals were pending. Therefore, it is clear that the respondent has lost out on the limitation aspect with regard to first limb of Section 275 (1) (a), as the impugned penalty notices have been issued on 11.09.2017 and 14.09.2017, which are after 31.03.2017, which would be the period of limitation for initiating penalty proceedings under Section 275(1) (a) of the Act.

13. In **Coromandel Oils Pvt., Ltd. (supra)**, the Court though considered some what a similar plea, has not taken a decision, as to whether the penalty notices were barred by limitation or in fact, in para No.7 of the order, the Court has made it clear that that, it is not inclined to interfere with the order, which has been challenged on merits, but, permitted that assessee therein to pursue the appeal remedy and the CIT (A) was directed to dispose the appeals filed against the assessment orders as well as against the imposition of penalty together, so as to bring a finality to the issue. Thus, the decision in **Coromandel Oils Pvt., Ltd. (supra)**, does not render any support to the case of the respondent.

14. Thus, the impugned penalty notices having issued well beyond the period of limitation fixed in the first limb of Section 275(1) (a) of the Act, are held to be barred by limitation. However, the respondent is at liberty to initiate penalty proceedings after the order is passed by the CIT (A) before whom the matters are pending.

15. In the result, these Writ Petitions are allowed, the impugned notices are directed to be kept in abeyance with liberty to the respondent to

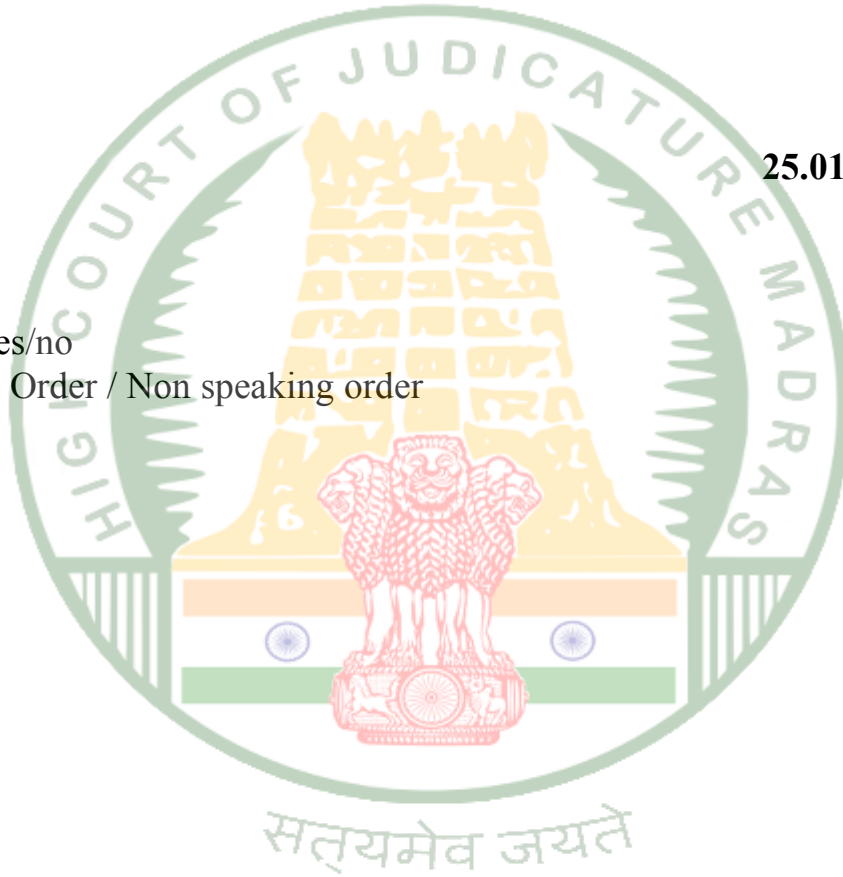
initiate fresh proceedings after the disposal of the Appeals by the Commissioner of Income Tax (Appeals), which have been preferred against the orders of assessment passed by the respondent. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

25.01.2018

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Index : yes/no

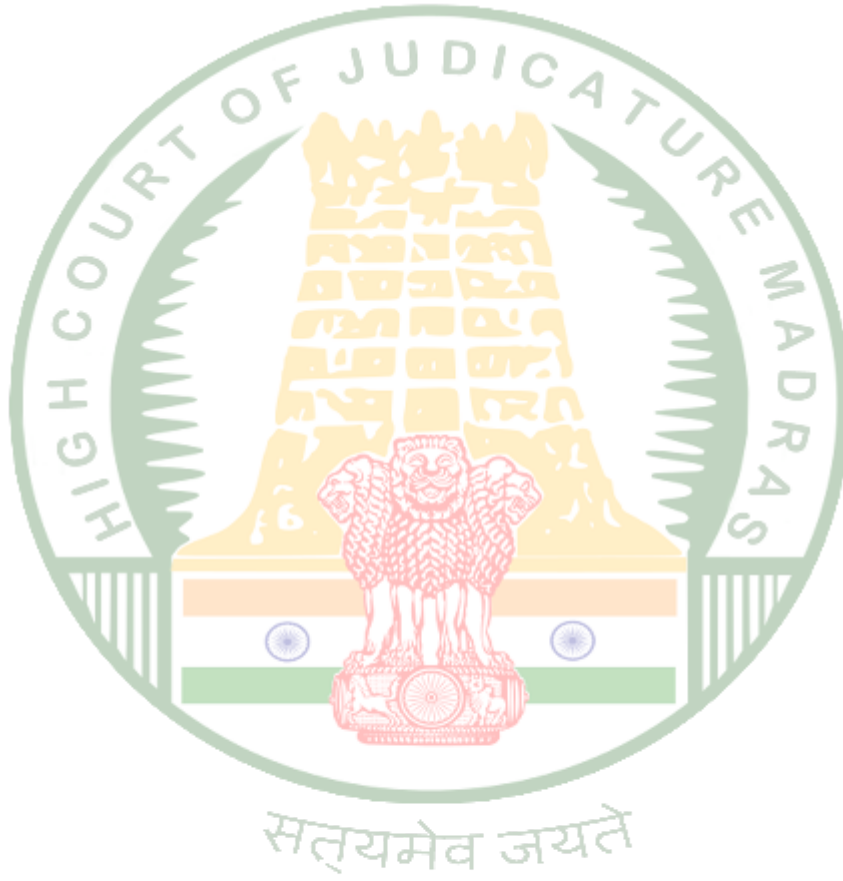
Speaking Order / Non speaking order



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To

The Assistant Commissioner of Income-tax,
Central Circle – 3(2), Chennai,
46, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.



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T.S.Sivagnanam, J.
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