(1998) 12 MP CK 0026

In the Madhya Pradesh High Court

Case No : MP No. 1272 of 1989

BHARAT CONSTRUCTION COMPANY APPELLANT

Vs

INCOME TAX OFFICER RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:
Income Tax Act, 1961 — Section 271A, 271B, 274, 275, 44AB

Citation : (1999) 153 CTR 414 : (1999) 106 TAXMAN 460

Hon'ble Judges : B.A. Khan, J;B.A. Iman, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Petitioner and VK Dubey, for the Appellant;

Judgement

B.A. IMAN, J.

Appellant firm is engaged in contract of building construction. It declared its income on estimate basis as it had not maintained any account books and was assessed by respondent ITO, vide assessment order dt. 30th May, 1986. While doing so respondent also stated in the order "penalty proceedings have also been initiated". He, thereafter, issued fresh notice under s. 271A of IT Act on 11th Nov., 1987, proposing levy of penalty on the assessee for not maintaining account books. He eventually passed order dt. 28th Dec., 1988, imposing a penalty of Rs. 2,500 on this head. He, however, later issued second notice dt. 11th Sept., 1989 to assessee under s. 271B of the Act for its failure to have its accounts audited.

2. The assessee has challenged this notice in the present petition on the ground that it was barred by limitation prescribed under s. 275(b) of un amended IT Act.

The case set up is that under this provision no penalty proceedings could be commenced nor penalty order passed after the expiry of two years from the end of financial year in which proceedings, in the course of which action for imposition of penalty had been initiated were completed.

3. In short, it is submitted that respondent, having initiated penalty proceedings vide assessment order dt. 30th May, 1986, was required to pass penalty orders within two years after the expiry of the assessment year i.e., 30th March, 1987 and could not have issued the impugned notice, if that was taken to be the initiation of the penalty proceedings after expiry of two years which would be on 30th March, 1989.

4. This is repelled and specified by the respondent by placing reliance on the provisions of s. 275(b). According to him this provision prescribes a time limitation within which penalty proceedings must be concluded and not the stage after which penalty proceedings cannot be commenced. It is accordingly submitted that s. 275(b) does not prescribe any limitation requirement for commencement of penalty proceedings which are distinct from the assessment proceedings. It is explained that under s. 271B, the assessee''s failure to get his accounts audited under s. 44AB renders such assessee liable for penalty.

5. The relevant section on which both sides are placing their interpretation is extracted hereunder for proper appreciation:

No order imposing a penalty under this chapter shall be passed:

(b) in any other case, after the expiration of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed."

6. A perusal of the provision would show that it laid down bar of limitation in two respects-one explicitly and the other by necessary implication. The explicit bar was that the order of penalty was to be passed within two years from the expiry of financial year in which proceedings in course of which penalty proceedings were initiated were completed. The period of limitation was thus to run from the end of the financial year in which such proceedings were completed. Similarly the implied bar was that penalty proceedings were also required to be commenced and completed within such prescribed period of limitation because s. 275 provided limitation period for both commencement a and completion of such proceedings. These proceedings are commenced when AO directs the issuance of notice under s. 274(1) (before its deletion), and where such direction is given, requirement of s. 275 is satisfied, although the penalty notice may be actually issued after the completion of assessment. The commencement of such proceedings was thus traceable from the date of direction by AO and was not necessarily dependent on issuance of notice proposing penalty.

7. Applying all this to the present case it emerges that AO had initiated penalty proceedings in his assessment order dt. 30th May, 1986, only for non maintenance of account books by the assessee and not for its failure to have its accounts audited under s. 44AB. That is why he firstly issued notice dt. 11th Nov., 1987, under s. 271A and passed the final penalty order on 28th Dec., 1988. He did not record default of non-audit of accounts in his order and consequently his direction for initiation of penalty proceedings contained in his assessment

order would not cover his second notice dt. 11th Sept., 1989 issued under s. 271B. The second notice accordingly can''t be held time-barred by reckoning the limitation period from 30th March, 1987, and expirable on 30th March, 1989.

8. It remains to be seen whether proceedings under s. 271B were necessarily required to be initiated in the assessment proceedings of the relevant assessment year. But as it is, the default contemplated by s. 271A and s. 271B are separate and distinct. Under the latter provision if the assessee fails to get his accounts audited under s. 44AB, he is liable to penalty as laid down in this section. The object is to get a clear picture of assessee''s accounts whose turnover exceeds the prescribed limit. The rates envisaged two types of defaults are also different. Therefore without dilating on the issue further we find no difficulty in holding that impugned, second notice dt. 11th Sept., 1989 cannot be ascribed to the direction of AO for initiation of penalty proceedings in his assessment order dt. 30th May, 1986. Since it is not covered by that order, it should be treated initiating penalty proceedings under s. 271B from the date it was issued and this was not barred by time under s. 275(b). This shall not, however, be construed to validate this impugned notice for all purposes, should it be suffering from some other infirmity. But it surely is not barred by time under s. 275(b) of the Act.

The petition accordingly fails and is dismissed.

