
(2013) 01 RAJ CK 0100
In the Rajasthan High Court
Case No : IT Appeal No. 90 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Jitendra Singh Rathore

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 260A, 269SS, 271D, 275

Citation : (2013) 257 CTR 18 : (2013) 352 ITR 327

Hon'ble Judges : Dinesh Maheshwari, J;Arun Bhansali, J

Bench : Division Bench

Advocate : K.K. Bissa, for the Appellant;

Judgement

Arun Bhansali, J.—This appeal under s. 260A of the IT Act, 1961 (the Act) has been preferred by the Revenue against the judgment dt. 22nd Sept., 2006 passed by the income tax Appellate Tribunal, Jodhpur Bench, Jodhpur ("the Tribunal") relating to the asst. yr. 2001-02. The appeal was admitted on the following question of law:

Whether on the facts and in the circumstances of the case as well as in the law, the learned Tribunal was justified in deleting the penalty under s. 271D holding that the penalty was not imposed within the prescribed period under s. 275(1)(c) from the date of initiation by the AO ignoring the legal provision that the authority competent to impose penalty under s. 271D was Jt. CIT and hence the period of limitation should be reckoned from the issue of first show cause by the Jt. CIT?

2. Briefly stated the facts are that the assessee, an individual, derives income from his two proprietary concerns. The assessment proceedings under s. 143(3) of the Act were completed on 25th March, 2003. The AO noticed that the assessee had accepted cash loans exceeding the limit specified under s. 269SS to the tune of Rs. 4,00,000, and the same being in contravention of s. 269SS, initiated the penalty proceedings under s. 271D of the Act. The show-cause

notice in this regard was served on the assessee on 27th March, 2003. Thereafter, the matter was referred to the Jt. CIT, Range-2, Udaipur on 22nd March, 2004, who was the competent authority under s. 271D to impose such penalty. The Jt. CIT came to the conclusion, by his order dt. 28th May, 2004, that the assessee was liable for penalty under s. 271D of the Act and imposed a penalty of Rs. 4,00,000 being the sum equal to the loan/deposit accepted in contravention of the provisions of s. 269SS of the Act.

3. Feeling aggrieved, the assessee preferred an appeal before the Commissioner of income tax (Appeals), Udaipur ["the CIT(A)"] who, by the order dt. 29th March, 2005, allowed the appeal while holding that the penalty proceedings were barred by limitation. The CIT(A) came to the conclusion that for penalty proceedings under s. 271D of the Act, the period of limitation prescribed under s. 275(1)(c) was applicable and not the limitation prescribed under s. 275(1)(a) because the penalty proceedings were not dependent on the assessment and, therefore, the penalty proceedings stood barred by limitation on 30th Sept., 2003.

4. Dissatisfied with the order dt. 29th March, 2005 so passed by the CIT(A). the Revenue preferred an appeal before the Tribunal, who came to the conclusion that the matter called for no interference and hence, dismissed the appeal by the impugned order dt. 22nd Sept., 2006.

5. Assailing the order impugned, it has been contended on behalf of the appellant that the penalty proceedings under s. 271D of the Act could not have been taken as barred by limitation because the authority competent to impose such penalty was the Jt. CIT and the period of limitation would be reckoned only from the date of issue of show-cause notice by the Jt. CIT. It is submitted that in the present case, the Jt. CIT issued the notice for the penalty proceedings after the matter was referred to him on 22nd March, 2004, and hence, the order passed by him on 28th May, 2004 could not have been considered barred by limitation. Nobody has appeared for the respondent despite service.

6. After having given thoughtful consideration to the submissions made on behalf of the appellant and having examined the record, we are clearly of the view that this appeal remains meritless and the formulated question deserves to be answered against the appellant particularly for the view already taken by this Court in the case of Commissioner of Income Tax Vs. Hissaria Bros., wherein, this Court has specifically held as under:

38. We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under ss. 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under ss. 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, cl. (a) of sub-

s. (1) of s. 275 cannot be attracted to such proceedings. If that were not so cl. (c) of s. 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if cl. (a) was to be invoked, no necessity of cl. (c) would arise.

7. In the present case, the notice for issuance of the penalty proceedings under s. 271D of the Act for the alleged contravention of provisions of s. 269SS was issued to the assessee, of course by the AO, on 25th March, 2003, Even if the matter had otherwise been in appeal before the CIT(A) against the original assessment order and the appeal was decided on 13th Feb., 2004, the same was hardly of relevance so far the penalty proceedings under s. 271D were concerned. As held by this Court in Hissaria Bros. (supra), completion of appellate proceedings arising out of assessment proceedings has no relevance over sustaining such penalty proceedings. As held clearly by this Court, in such a matter, cl. (c) of s. 275(1) would be applicable. Sec, 275(1)(c) could be noticed as under:

275. Bar of limitation for imposing penalties.-- (1) No order imposing a penalty under this chapter shall be 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.

8. In the present case, the first show-cause notice for initiation of proceedings was issued by the AO on 25th March, 2003 and was served on the assessee on 27th March, 2003. Obviously, the later period also expired on 30th Sept., 2003 when six months expired from the end of the month in which the action for imposing the penalty was initiated. The order as passed by the Jt. CIT for the penalty under s. 271D on 28th May, 2004 was clearly hit by the bar of limitation and has rightly been set aside in the orders impugned. In view of the above, our answer to the formulated question of law is that even when the authority competent to impose penalty under s. 271D was the Jt. CIT, the period of limitation for the purpose of such penalty proceedings was not to be reckoned from the issue of first show cause by the Jt. CIT, but the period of limitation was to be reckoned from the date of issue of first show cause for initiation of such penalty proceedings. For the purpose of present case, as observed hereinabove, for the proceedings having been initiated on 25th March, 2003, the order passed by the Jt. CIT under s. 271D on 28th May, 2004 was hit by the bar of limitation. The CIT(A) and the Tribunal have, thus, not committed any error in setting aside

the order of penalty.

Consequently, the appeal fails and is, therefore, dismissed.