

Assistant Commissioner of Vs. Birkmyre Export Co. (P.) Ltd.

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Jan-29-2002

Reported in : (2002)255ITR72(Kol.)

Judge : R Garg, Vice-, B Mittal

Appellant : Assistant Commissioner of

Respondent : Birkmyre Export Co. (P.) Ltd.

Judgement :

1. These four appeals are by the Revenue against the orders deleting the penalties levied by the Assessing Officer under Sections 271(1)(c), 273(2)(b), 271B and 271(1)(a) of the Act on the ground that the orders of penalty were barred by limitation. Last date for imposition of penalty 31-1-1992 Belated appeal against quantum filed on 22-3-1993 Appeal not admitted and dismissed as barred by limitation 22-5-1996 3. The assessee's contention is that the time limit for passing order of penalty has expired on January 31, 1992, being six months from the end of the month in which the proceedings were initiated on July 2, 1991. The extended period of limitation in the case of filing of the appeal, it is submitted was not available to the Department as the first time of six months had already expired on January 31, 1992, and the appeal was filed belatedly much after the date on March 22, 1993, and that too was not admitted and dismissed as barred limitation by the Commissioner of Income-tax (Appeals) on May 22, 1996. Learned counsel for the assessee submitted that the time limit having already expired could not be revived by the subsequent act of filing an appeal by the assessee under Section

246 and a reference to the two Calcutta High Court decisions in the cases of Bhagirath Kanoria v. CIT [1980] 122 ITR 728 and the Patna High Court in the case of CIT v. Jankidas Mohan Lal [1987] 163 ITR 756 was made.

4. The time limit for imposing penalty is prescribed in Section 275 of the Act, which is material to decide the issue under consideration, and is reproduced as under: "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 Chief Commissioner or Commissioner, whichever period expires later ; (b) in a case where the relevant assessment or other order is the subject-matter of revision under Section 263, 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." 5. Learned Departmental Representative contended that since the assessment was the subject matter of appeal under Section 246 of the Act, the time limit as prescribed under Clause (a) would apply and, therefore, the order having been passed on May 22, 1996, the period of limitation of six months from the end of the month in which the order was passed, expired on September 30, 1996 and, therefore, the penalties imposed on September 30, 1996, were within time. It is further submitted that the provisions of Section 275 would not be applicable for levy of penalty under Section 271B because this proceeding requires not to be initiated in the course of any other proceedings.

6. Even otherwise, it was submitted that the appeals filed by the assessee were not admitted and dismissed as time barred and, therefore, they could not be said to be the subject matter of appeal in view of the decisions in the cases of

Chiranjilal Daga v. CIT [1978] 113 ITR 363 (Mad); Radhey Shyam v. CIT [1984] 146 ITR 374 (All) ; jagmohandas Gokaldas v. CWT [1963] 50 ITR 578 (Bom) and Krishna Flour Mills Ltd. v. CIT [1965] 50 ITR 259 (Mys) and the Central Board of Direct Taxes Circular No. 367, dated July 26, 1983 (see [1983] 144 ITR (St.) 19), and also to the aforesaid order of the Commissioner of Income-tax (Appeals). He further submitted that the distinction laid down by the learned Departmental Representative for the penalty under Section 271B is not supported, inasmuch as, the provisions of Section 275 apply for imposition of penalty under this Chapter, viz., Chapter XX, and Section 271B also falls thereunder.

7. We have heard the parties and considered the rival submissions. The provisions of Section 275(1)(a) comes into play where the relevant assessment order was the subject-matter of appeal under Section 246 and where the appeal against assessment order has been dismissed as barred by limitation, the said order cannot be said to be the subject-matter of appeal in view of the decisions of the Madras and Allahabad High Courts and the Board Circular referred to above. Clause (a), therefore, would not come into play. It is Clause (c) which would come into play in the present case and that provides that no penalty can be levied after 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 six months from the end of the month in which the action for imposition of penalty was initiated, whichever period expired later. Penalty proceedings were initiated on or before July 2, 1991, when the assessment was completed and, therefore, the last date for imposition of penalty would be January 31, 1992, being the later of the two termini, i.e., March 31, 1992, being the end of the financial year and January 31, 1992, the expiry of six months from the end of the assessment made on July 2, 1991. This is so far as the penalty under Sections 271(1)(c), 273(2)(b) and 271(1)(a) are concerned.

8. As regards the levy of penalty under Section 271B, in our opinion, the provision of Section 275 would also be applicable because of the opening words "no order imposing a penalty under this Chapter" cover Section 271B also and the time limit would be governed by Clause (c) of the Act. As stated by the Assessing Officer in the order for penalty under Section 271B, the proceedings were initiated during the

course of assessment proceedings, i.e., on July 2, 1991, by issuing notice under Section 271B on that very date, i.e., July 2, 1991. The claim by the Revenue that these proceedings are not to be initiated in the course of any other proceedings and, therefore, Section 275 would not be applicable, has no force, because of the specific provision contained in Clause (c) of Section 275(1) of the Act. This contention of the Revenue would have been valid in so far as the applicability of Clause (a) or (b) of Section 275(1) is concerned but not where Clause (c) applies and as we have held above, in the present case itself Clause (c) applies speaks the levy of penalty on September 30, 1996, under Section 271B is also barred by limitation. In the result, the appeals are dismissed.

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