IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JANUARY, 2025

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

INCOME TAX APPEAL NO. 165 OF 2020

BETWEEN:

1 . THE PR. COMMISSIONER OF INCOME TAX
5TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORAMANGALA,
BENGALURU-560 095.

2 . THE INCOME-TAX OFFICER,
WARD-3(2)(4) PRESENT ADDRESS,
WARD 3(2)(2), 2ND FLOOR,
BMTC BUILDING, 80 FEET ROAD,
KORAMANGALA, BENGALURU-560 095.

...APPELLANTS

(BY SRI. Y V RAVIRAJ., ADVOCATE AND
SRI. SUSHAL TIWARI N, ADVOCATE)

Digitally signed by SHARADA VANI B
Location: HIGH COURT OF KARNATAKA

AND:

SHRI. K UMESH SHETTY
NO.1441, KAMADHENU,
II CROSS, II PHASE, CHANDRA LAYOUT,
VIJAYANAGAR, BENGALURU-560 040.
PAN AUGPS 2714M.

…RESPONDENT

(BY SRI. SANDEEP HUILGOL., ADVOCATE)

THIS ITA/INCOME TAX APPEAL UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 20/09/2019 PASSED IN ITA NO. 2544/BANG/2018, FOR THE ASSESSMENT YEAR 2012-2013, PRAYING TO 1. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ETC.,

THIS ITA HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This appeal filed under Sec.260A of the Income Tax Act, 1961 seeks to call in question the order dated 20.09.2019 passed by the Income Tax Appellate Tribunal, Bengaluru in Revenue's ITA No.2544/Bang/2018.

2. The Revenue has formulated the following substantial question of law:

> *"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in setting aside penalty order passed under section 271D by the Range Head on 22/8/2018 by holding that same is barred limitation without appreciating that in the instant case, the Additional Commissioner has initiated the penalty proceedings by issuance of notice under section 271D of the Act on 10/11/2017, thereby the time limit for computation of penalty proceedings as stipulated in section 275(1)(c) of the Act expires on 31/5/2018, which is within six months from 10/11/2017 and not 31/5/2017 as held by Tribunal"?.*

A Co-ordinate Bench of this court vide order dated 14.12.2020 had admitted the appeal on the above substantial question of law, of course, which has not been well articulated. Be that as it may.

3. After service of notice, Respondent-Assessee having entered appearance through his counsel resisted the appeal, making submission in justification of the impugned orders and the reasons on which they have been constructed.

4. BRIEF FACTS OF THE CASE EMERGING FROM THE RECORD:

4.1 Assessee is a businessman *inter alia* doing digital printing. He had filed IT Return for the Assessment Year 2012-13. That was picked up for Scrutiny Assessment u/s.143(3) of the 1961 Act and that eventually resulted into passing of Assessment Order on 26.02.2015 by the 2nd respondent- ITO, whereby two additions were made to the declared income.

4.2 In the light of said Assessment Order, the 2nd appellant made a reference to the Addl. Commissioner of Income Tax vide letter dated 16.11.2016 for the

imposition of penalty u/s.271-D alleging violation of Sec.269-SS. Pursuant to this, the Addl. CIT issued Notice dated 10.11.2017 calling upon the Assessee to show cause as to why Penalty Order should not be made u/s.271-D. The Assessee filed his objections to the same, principally contending *delay & laches.* The said objections having been overruled the order dated 22.02.2018 came to be passed under the said provision.

4.3 Assessee's Appeal against the above order came to be negatived by the Commissioner of Income Tax (Appeals), vide order dated 10.07.2018. Unfazed, he took the matter for a further challenge in Appeal before the ITAT which agreed with his contention and granted the relief vide order dated 20.09.2019. The same has been impugned in the Revenue's Appeal now at our hands.

5. Though this Appeal was admitted by the Coordinate Bench on the substantial question of law reproduced above, we have reframed the same with the assistance at the Bar, as under:

> *"i) Whether the order levying penalty u/s 271-D of the 1961 Act is liable to be set at naught, since initiation of penalty proceedings itself was barred by delay & laches…?*

ii) When are the penalty proceedings u/s 271-D of the Act said to have been initiated…?"

(In a way, the second question is inbuilt in the first).

Both the sides have made their elaborate submissions and pressed into service certain Rulings in support of their rival contentions.

6. Having heard the learned counsel for the parties and having perused the Appeal papers as also the written submissions, we decline indulgence in the matter, for the following reasons:

6.1 Both the sides in all fairness agreed that the period of limitation within which the proceedings u/s 271-C of the 1961 Act that are to be completed is covered u/s 275(1)(c) and therefore, the same is reproduced:

"275.*Bar of limitation for imposing penalties – (i) 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."

Learned Panel Counsel submitted that the Law Maker's intent is as clear as Gangetic Waters; the above provision prescribes a specific limitation period for accomplishing the penalty proceedings, once initiated; apparently, no limitation period is prescribed for initiation of such proceedings; penalty proceedings are initiated once the competent authority issues notice to the Assessee to show cause against the proposed levy of penalty; in the instant case, admittedly the initiation is unfettered by any statutorily imposed limitation and the order imposing penalty is well within the prescribed time and therefore, the ITAT grossly erred in relieving the Assessee from the penalty. Per contra, learned counsel appearing for the Assessee contended that: the intent of the Law Makers is to ensure that penalty proceedings cannot be taken up whimsically whenever the authorities want; when the ITO makes reference to the competent authority, that itself is the triggering point of initiation; reckoned from such

reference, the order imposing penalty is time barred and therefore, unsustainable.

6.2 Textually speaking, Parliament has prescribed the limitation period for imposing penalties by accomplishing penalty proceedings and obviously, no limitation period is fixed for the initiation of such proceedings. Linguistically, there is a certain difference between initiation of proceedings and accomplishment of proceedings. The former precedes the latter. This aspect of the matter is discussed by a Division Bench of Hon'ble Delhi High Court in ***COMMISSIONER OF INCOME TAX (TDS)-2, DELHI v. TURNER GENERAL ENTERTAINMENT NETWORKS INDIA PVT. LTD.***[1], The discussion at Paragraph Nos. 14 to 19 as under:

> *"The expression initiated is not defined under the Act and must be construed in its normal sense.*
> *The word 'initiated' is a past tense of the word 'initiate'. The Shorter Oxford English Dictionary defines the word 'initiate' as under: "to begin, commence, enter upon, to introduce, set going, originate." In Webster's Third New International Dictionary, the word 'initiate' has, inter alia,*

[1] 2024 SCC OnLine Del 7760

been defined thus: "to begin or set going: make a beginning of: perform or facilitate the first actions, steps, or stages of:" The Words and Phrases (Permanent Edition) defines 'initiate' to mean: "an introductory step or action, a first move; beginning; start, and to initiate as meaning - to commence." In Om Prakash Jaiswal v. D.K. Mittal & Anr.: (2000) 3 SCC 171, the Supreme Court had considered the meaning of the expression 'initiate any proceedings for contempt' by referring to the dictionary meaning of the said word. It is relevant to refer to paragraph 10 of the said decision, which is set out below: The expression--"initiate any proceedings for contempt" is not defined in the Act. Words and Phrases (Permanent Edition) defines "initiate" to mean - an introductory step or action, a first move; beginning; start, and "to initiate" as meaning to commence. Black's Law Dictionary (6th Edn.) defines "initiate" to mean commence; start; originate; introduce; inchoate. In section 20, the word "initiate" qualifies "any proceedings for contempt". It is not the initiation of just any proceedings; the proceedings initiated have to be proceedings for contempt." The expression 'action for imposition of penalty is initiated' must, thus, clearly refers to the date on which the first introductory step for such action is taken, it must necessarily mean the start of such action. It must mean the commencement of action for imposition of penalty. As noted above, the AO had found that it was the admitted case that the assessee had defaulted in deduction of TDS, which it was obliged to do. It had, accordingly, made a reference to the learned JCIT. This was obviously for the purposes of imposition of penalty. The reference, thus, clearly marked the first step for initiation of action for imposition of

> *penalty. The Show Cause Notice issued subsequently was to provide the assessee an opportunity to show cause why penalty not be imposed."*

6.3 Another Division Bench of Delhi High Court in ***CLIX CAPITAL SERVICES PVT. LTD., v. JOINT COMMISSIONER OF INCOME TAX***[2], having scanned the text of Section 275(1)(c) of the 1961 Act has at Paragraph Nos.15, 16, 17 & 20 has observed as under:

> *"It is, therefore, Mr Maratha's submission, that since the legislature has not provided a trigger point for completion of proceedings under Section 271C, the date of commencement can only be that date when the SCN is issued under Section 274 of the Act…According to us, at the heart of the matter, is the interpretation that is required to be given to the provisions contained under Section 275(1)(c) of the Act…As would be evident, the aforementioned provision has two limbs. The first limb concerns fixation of period of limitation when penalty is sought to be imposed as fallout of action taken in another proceeding. On the other hand, the second limb of clause (c) of Sub-section (1) of Section 275 of the Act fixes the period of limitation, where initiation of action of imposition of penalty is taken on a stand-alone basis i.e., not as a consequence of action taken in another proceeding. [17.1] For the second limb, the legislature has provided a limitation of six months from the end of the month in which action for imposition of penalty is initiated.*

[2] (2023) 459 ITR 470 (Delhi)

> *[17.2] It is apparent, that while a timeframe has been provided for the conclusion of penalty proceedings once initiated, there is no indication, as to when the period of six months ought to commence. In other words, can initiation of penalty proceeding be left to the whims and fancies of the revenue or it should be hitched to the dicta of "reasonable period" adopted by Courts in such situations, in the absence of a statutory provision?...However, we are inclined to agree with the submission made on behalf of the petitioner i.e., the assessee, and the reason for that is quite simple. If we were to accept the respondent/revenue's stand, then it could end up [as it has in this case] in a situation, where the revenue could decide the date when it could trigger a SCN to fulfil, as a mere formality, the principles of natural justice, which are engrafted under Section 274 of the Act. Section 274 of the Act, inter alia, mandates that no order imposing a penalty under the Chapter i.e., Chapter XXI shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard."*

This decision adopts the doctrine of delay & laches as contradistinguished from any specific limitation period for initiating the Penalty Proceedings.

6.4 After all, law of limitation, in whichever statutes it be enacted, is of repose & peace, vide *DallasC.J*. in ***TOLSON*** v. ***KAYE***[3]*,* It cannot be treated as a matter of technicality.

[3] 3 Br. & Bp.223

It is a matter of State Policy that the potential or possibility of dispute/litigation in matters like this should not be kept alive beyond a particular point of time. Halsburys Laws of England (Fifth Edition, Volume 68, Para 905) summarises the view of English courts on the State policy of limitation as follows:

> *"The Courts have expressed three differing reasons supporting the existence of statutes of limitation, namely (1) that long dormant claims have more cruelty than justice to them, (2) that the defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of action who are able to enforce them should pursue with reasonable diligence."*

The Law Commission of India in its 89th report made in 1983 had *suo moto* examined the law of limitation. It concised its view as under:

> *"1.5 The policies underlying the law of limitation are ultimately based on justice and convenience. An individual should not live under the threat of a possible action for an indeterminate period, since it would be unjust. Again the defendant should be saved the task of defending stale causes of action as it is often inconvenient. Further, vigilance in the pursuit of rightful cases should be encouraged so that these are the ethical or rational justifications for the law of limitation. All that has been said*

> *can be summarised by stating that the law of limitation rests upon three main foundations, justice, convenience, and the need to encourage diligence."*

6.5 The Parliament in its accumulated wisdom has enacted a limitation period in the subject provision of the 1961 Act. What is conspicuous is the absence of any provision for condoning delay or extending the limitation period. In jurisdictions built on the bedrock of Separation of Powers, ordinarily, a judge is authorized to interpret an existing text of a statute, but not to create a new one. Power to alter a statutory text belongs to the domain of its author, not of its interpreter. It hardly needs to be stated that in their non-interpretive capacities, Courts do go beyond just interpreting the text of a statute. Justice Felix Frankfurter of U.S. Supreme Court in his article, 'Some Reflections on the Reading of Statutes'[4] wrote:

> "*Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy, is not drawn like nitrogen, out of the air; it is evinced in the language of the statute, as read in the light of other external manifestations of purpose. That is*

[4] 47 Colum.L.Rev 527, 543 (1947)

> *what the judge must seek and effectuate, and he ought not to be led off the trail by rests that have overtones of subjective design.*"

6.6. Acceding to the contention of the Revenue Parliament has prescribed the limitation period for accomplishing penalty proceedings and that no such period is prescribed for initiating them and therefore they can be initiated at any time, would defeat the very purpose of such a prescription. One cannot justifiably assume that the Parliament intended unfettered discretion to initiate such a proceeding at any point of time, ie., even after a decade or more.

There is, in a system founded on the Rule of Law, nothing like absolute or unfettered discretion. The basic principles in this regard are explained by Prof. Sir William Wade[5] as under:

> *"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely—that is to say, it can validly be used*

[5] Administrative Law (9th Edn.) in the chapter entitled "Abuse of discretion"

> *only in the right and proper way which Parliament when conferring it is presumed to have intended."*

We have already discussed the policy objective or the purpose of limitation enactments or provisions relating to limitation in other enactments. In matters like this, the doctrine of *purposive interpretation in law* has to be resorted to. In Cabell vs Markham (1945) 148 F2d 737 Learned Hand J explained the merits of purposive interpretation as under:

> *"Of course it is true that the words used, even in their literal sense are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing; be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."*
> (emphasis supplied)

Looked at in this background, the twin purposes that have to guide our interpretation are the following (i) the policy underlying the law of limitation rather than the black letter has to be implemented and (ii) unfettered discretion in the

hands of Additional Commissioner on the timing of issuance of a show cause notice cannot be countenanced.

6.7 In the facts of this case, these twin purposes can be achieved by treating the reference by the ITO to the Additional Commissioner as the triggering point or initiation of penalty proceedings. The ITO vide letter dated 16.11.2016 had admittedly made the reference. The Additional Commissioner of Income Tax issued the Show Cause Notice only on 10.11.2017 (nearly a year later) proposing the levy of penalty u/s 271D of the Act. The Penalty Order was made on 22.02.2018. If the reckoning point is 16.11.2016, it is clear that the proceedings were completed beyond the period of limitation, as rightly contended by the learned counsel appearing for the Assessee. Even otherwise , the concept of delay & latches would crop in; no explanation whatsoever has been offered by the Revenue for the laxity shown in belatedly issuing the show cause notice / proposition notice which they claim, amounted to initiation of penalty proceedings.

This view has animated the reasoning of the impugned order of the Tribunal, may be a bit inarticulately .

6.8. The reliance of Panel Counsel for the Revenue on the Coordinate Bench decision in ***COMMISSIONER OF INCOME TAX vs. TAM TAM PEDDA GURUVA REDDY***[6]does not come to his aid since the same has been rendered largely fact-specific. The other decision namely ***GRIHALAKSHMI VISION vs. ADDITIONAL COMMISSIONER OF INCOME TAX***[7]at para 10 observed as under:

> *"Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty…"*

These observations arguably support the view of Revenue, is true. However, we respectfully disagree with the said

[6] (2006) 287 ITR 72 (Kar)
[7] (2015) 379 ITR 100 (Ker)

view. That apart, a perusal of the said judgment does not show that there was any reference made by the ITO to the competent authority, unlike in the case at hand. Further the following observations in para 10 in ***D M Manasvi vs Commissioner of Income Tax*** (1973) 3 SCC 207 would cast some doubt on the correctness of Grihalakshmi *supra*.

> *"We are also not impressed by the argument advanced on behalf of the appellant that the proceedings for the imposition of penalty were initiated not by the Income Tax Officer but by the Inspecting Assistant Commissioner when the matter had been referred to him under section 274(2) of the Act. The proceedings for the imposition of penalty in terms of sub- section (1) of section 271 have necessarily to be initiated either by the Income Tax Officer or by the Appellate Assistant Commissioner. The fact that the Income Tax Officer has to refer the case to the Inspecting Assistant Commissioner if the minimum imposable penalty exceeds the sum of rupees one thousand in a case falling under clause (c) of sub-section (1) of section 271 would not show that the proceedings in such a case cannot be initiated by the Income Tax Officer. The Income Tax Officer in such an event can refer the case to the Inspecting Assistant Commissioner after initiating the proceedings. It would, indeed, be the satisfaction of the Income Tax Officer in the course of the assessment proceedings regarding the concealment of income which would constitute*

> *the basis and foundation of the proceedings for levy of penalty".*

6.9 The reliance of the Panel Counsel on CBDT Circular No.9/DV/2016 dated 26.04.2016 has been issued in terms of *GRIHALAKSHMI supra.* Para 4 of the Circular states: *The above judgment reflects the "Departmental View".* However, para 5 in a way suggests to follow the decision of a High Court, within whose territorial jurisdictional limits the penalty proceedings are taken up. The same reads as under:

> "*Where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee. The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.*"

Therefore, much reliance cannot be placed on this Circular.

In the above circumstances, the questions of law framed by us have to be answered in favour of the

respondent assessee and as a consequence, appeal is liable to be and accordingly dismissed, costs having been made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

Snb, Bsv, cbc
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