

Penalty proceedings to be completed within six months upon receipt of Commissioner's (Appeal) order

March 5, 2018

In brief

In a recent decision,¹ the Delhi High Court (HC) has held that penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 (the Act) should have been completed by the tax officer (TO) within six months from the date of receipt of the order of the Commissioner (Appeal).

In detail

Facts

- The taxpayer was engaged in the manufacture and sale of television sets and their components. The taxpayer filed return of income (RoI) for the financial year (FY) 1998-99 declaring loss, which was assessed by the TO at book profits, resulting in a tax liability.
- The taxpayer preferred an appeal before the Commissioner (Appeal), which was partly decided in its favour in December 1993 and no further appeal was preferred by it before the Income-tax Appellate Tribunal (Tribunal). However, the Revenue preferred an appeal before the Tribunal, which was subsequently withdrawn *vide* order by the Tribunal in March 1997. The taxpayer was not notified

regarding the filing of appeal before the Tribunal and its subsequent withdrawal.

- The TO initiated penalty proceedings under section 271(1)(c) of the Act in August 1997 upon receipt of the Tribunal's order, which was objected to by the taxpayer as time barred; however, the TO disregarded the same and imposed penalty *vide* order passed in November 1997.
- On appeal before the Commissioner (Appeal), the taxpayer contended that TO's order was barred by limitation under section 275 of the Act. The Commissioner (Appeal) decided in favour of the taxpayer.
- On further appeal by the Revenue, the Tribunal decided the issue in favour of Revenue holding that the

period of limitation in this case should have been reckoned from the date on which the tax department received the Tribunal's order permitting the withdrawal.

- Aggrieved by the Tribunal's order, the taxpayer preferred an appeal before the HC.

Issue before the High Court

Whether the Tribunal was right in holding that the TO's order under section 271(1)(c) of the Act was not barred by the period of limitation prescribed under section 275(1)(a) of the Act?

Taxpayer's contention

- The taxpayer contended that mere filing of appeal to the Tribunal and its withdrawal without any intimation to it could not be said to constitute a valid "pending" proceeding.

¹ ITA 799/ 2005 dated 20 February, 2018

Reliance in this regard was placed on a decision of the Supreme Court² (SC).

- The date for passing the penalty order should have been reckoned from the date on which the order of the Commissioner (Appeal) was received by the Revenue. Accordingly, the imposition of penalty was barred by the period of limitation prescribed under section 275(1)(a) of the Act.

Revenue's contention

- The Tribunal's order clearly distinguished the rulings on which reliance was placed by the taxpayer. As a general principle, while withdrawal of appeal resulted in the proceedings never having been initiated the same did not have universal application to defeat the intent of the law for the imposition of penalty.
- Liberal interpretation of the law should have been adopted to avoid mischief and to uphold intent of the law that

required the levy of penalty once an addition was made.

High Court's decision

- The HC noted the fact that the appeal filed by the Revenue was never heard before the Tribunal; accordingly, no effective proceedings were held, nor any order was made. Further, the HC considered the fact that the taxpayer was never being notified by the TO about the filing, pendency or withdrawal of the appeal.
- The HC has held that keeping the intent of section 275(1)(a), the word "order" referred under the section should have been an "adjudicatory order" that determined the rights of the parties involved and brought certainty. The HC further held that the appeal means an effective appeal, which had been effectively pursued after its filing.
- The HC further held that the dependence of the period of limitation upon whether an order becomes final at the

instance of one party (filing or withdrawal of an appeal) would be leaving the legal position unsatisfactory. Reliance in this regard was placed on the precedence of the SC² relied upon by the taxpayer, including certain other precedents³.

- The HC finally held that the TO was required to pass the penalty order within the period of six months from the date of receipt of the order of the Commissioner (Appeals), which has not been followed in the present case, and therefore, decided in taxpayer's favour.

The takeaways

The HC decision is an important one, as it provides for certainty of time to complete penalty proceedings.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

² CIT v. B.N. Bhattacharjee [1979] 10 CTR 354 (SC)

³ A.V. Sreenivasalu Naidu v. CIT [1948] 16 ITR 341 (Mad)

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