Initiation of Penalty under Sec. 275- A of Income-tax Act: Only if Proceedings are Pending?

Penalty provisions are by nature Penal proceedings. They are quasi judicial proceedings. Hence strict interpretation of law is necessary. When two meanings can be attributed to any provision, such meaning which is more beneficial to the Assessee shall be adopted. This is more so in the case of penalty provisions because of their Penal nature. This article discusses Levy of Penalty in cases where there has been no proceedings with respect to which penalty proceedings are initiated with reference to Sec. 275(1)(c) of Income tax Act 1961. Read on to know more.....

Section 275 provides for the time limitation for Penalty proceedings to conclude and the order being passed there on . Sec. 275 (1)(a) provides that no penalty can be imposed in a case where Appeal is preferred before the Commissioner of Income tax (Appeal) u/s246 or 246A after 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, or six months from the end of the month in which the order of the Commissioner of Income tax (Appeal)is received by the Chief Commissioner which ever period expires later. Where the relevant Assessment or other order is appealed against before the Appellate Tribunal u/s 250, after the expiry of the financial year in which the relevant Assessment or other 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 order of the Appellate Tribunal is received by the Commissioner which ever period expires later.

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It is clear from the above that the date of completion of the Proceedings in the course of which action for imposition of Penalty is initiated is the starting point for Penalty proceedings. The end of the financial year or six months from the end of the month in which the order of the Commissioner of Income tax (Appeal) or the Appellate Tribunal is received by the Chief Commissioner or Commissioner as the case may be, whichever period expires later is the end point for the Penalty proceedings. So, the existence of relevant proceedings as a consequence of which penalty proceedings get initiated is necessary

Sec. 275 (1)(b) says that no Penalty can be imposed in a case where the relevant Assessment or other order is the subject matter of revision u/s 263 or Sec.264 after

the expiry of six months from the end of the month in which such order of revision is passed. Thus, it is clear that here also the existence of relevant Assessment or other proceedings which can be connected to Penalty proceedings is absolutely necessary. Here also, the passing of the relevant order by the Commissioner is the starting point and six months from the end of the month in which such order is passed is the end point for the Penalty Proceedings.

Sec. 275(1)(c) says that in all cases other than the above two, no penalty can be imposed after expiry of the financial year in which 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, which ever period expires later. The question to be answered in this regard is whether any proceedings has to be conducted before initiating Penalty proceedings? There is difference of opinion in this regard. Some people feel that as the word "or" appears between the conditions, conducting any proceedings before the Penalty Proceeding is not necessary. In such cases, the second condition namely the six months from the end of the month of initiating Penalty proceedings can be resorted to. But a few others feel that both the conditions shall be fulfilled before the Penalty can be levied. They feel that some proceedings should precede Penalty Proceedings.

The Judgement of Ahmedabad Tribunal in *H. Ajitbai & Co. vs.. Assistant Commissioner of Income tax {(1998)47 TTJ (AHD-TRIB) 22}* supports this view. It says that " …..It is true that the Sec. 271 B or any other Provision of Income-tax Act 1961, nowhere expressly provides a period of limitation of penalty proceedings U/S271 B. But it is also clear from the plain reading of the language of Sec. 275 as well as it is implied in the scheme of the provision that such Penalty Proceedings should necessarily be initiated while the Assessing officer is in session of Assessment Proceedings and not afterwards. The use of the expression in the course of which action for imposition of Penalty has been initiated are completed … " in Sec. 275 implicitly contains a limitation that the Penalty proceedings u/s 271 B should necessarily be commenced before the completion of Assessment Proceedings. The said provisions provides an explicit limitation namely, that the order imposing penalty has to be passed within the period prescribed u/s 275.That period of limitation starts running with reference to the date of completion of proceedings in the course of which action for imposition of penalty has been initiated. It may not be necessary for the assessing officer to issue show cause notice u/s 271B prior to completion of Assessment, but there has to be some materials on record to indicate that such penalty Proceedings have been initiated before Completion of Assessment in Question.

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In the case of CIT vs. M. A. Prestressed Works reported in (1996) 220 ITR 226) High Court of Rajasthan has held that"…Sec.275, of the Income-tax Act 1961 divides cases into two categories. The first Category of Cases is where the Assessment order to which proceedings for imposition of penalty relates was the subject matter of Appeal under Section.246 or Sec.253. The limitation for the Sec. 246 or Sec. 253 falling under this category is two years from the end of the year in which the proceedings in the course of which the action for imposition of penalty has been initiated were completed, or six months from the end of the month in which the order of the appellate authority was received by the Chief Commissioner of Income tax or Commissioner of Income tax, as the case may, be whichever period expires later. The second category covers all other cases not falling within the first category and limitation, provided for these cases is 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. The words "in which the proceedings, in the course of which action for imposition of penalty has been initiated are completed…" used in Section 275 indicates the proceedings in which the Income Tax Authority is satisfied about the default which attracts Penalty and not any other order. It is the Assessment order or any other order passed in the proceedings in course of which it is found that the Assessee has brought himself within the mischief of the Penalty proceedings.

It will not be out of place to consider here the judgement of the High Court of New Delhi in the case of *Subodh Kumar Bhargava vs. Commissioner of Income tax*. The facts of the case are by virtue of Section 44 AB of Income-tax Act 1961, the assessee was liable to get his accounts audited and also file the report of such audit in the prescribed form duly signed. It is also admitted position that the assessee neither got his accounts audited nor did he file the audit report as stipulated u/s. 44 AB. He filed the

return of Income on 22/06/2000 which was processed u/s 143(1) on 14/03/2002. Subsequently, on 31/07/2003 the Assistant Commissioner of Income tax, circle 23(1), New Delhi issued a show cause notice under section 274 read with Sec. 271 B of Income-tax Act 1961. The assessee replied for the same on 19/01/2004. Being not satisfied the assessing officer levied Penalty of ₹27,835/- *vide* his order dt. 17/02/2004. Aggrieved by this order, the assessee preferred appeal before the Commissioner of Income tax (appeals) contending that when the show cause notice was issued on 31/07/2003 the Penalty order should have been made on or before 31/01/2004 being the end of 6 months from the end of the month in which the Penalty notice was issued. But the Commissioner of Income tax (Appeals) rejected the Assessee's contention, holding that the proceedings were initiated on 31/07/2003 and therefore, the penalty order could be made within the period of 6 months from the end of the month of issuing notice or the end of the financial year in which such proceedings got initiated, whichever period expired later. Hence, there was time up to 31/03/2004 for Levy of Penalty. So the Penalty was levied within the time. The assessee preferred appeal to the Appellatte Tribunal which also supported the view of the Commissioner of Income tax (Appeal) and dismissed the appeal. Aggrieved by this order of the Tribunal, the Assessee preferred appeal before the New Delhi High Court. Before the High Court, the Assessee contended that if one of the set of circumstances in Sec. 275 (1)(c) did not exist, then the time limit prescribed for that set of circumstances is to be ignored as being not applicable. In such a situation, the time limit prescribed for the other circumstance which exists alone has to be applied which in this case is 6 months from the end of the month in which action for imposition of penalty is initiated. The Revenue contended that the Commissioner of Income tax (Appeals) had correctly held that the Penalty order was not barred by Limitation. It also at this stage advanced a New argument that Sec. 275(1)(c) prescribes two limitations and it stipulates that the one that expires later would be the relevant period before which penalty order can be passed. In this case Penalty u/s 271B were initiated and they were not initiated with reference to any other Proceeding. Consequently, the first period as stipulated u/s 275(1)(c) which pertains to initiation of penalty proceeding in the course of some other proceeding would not be applicable. Since only one of the two conditions of the Sec. 275(1)(c) are satisfied, and the word used therein is whichever period expires later, it ought to be construed as there is no period of limitation prescribed and general principles for levy of Penalty ought to be followed which entail that the penalty order can be passed within a reasonable period of time.

No penalty can be imposed after expiry of the financial year in which 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.

The Delhi High Court while analysing the argument of the revenue said that the arguments advanced by the revenue can easily be countered by an example. If the assessment proceedings were completed on 11/11/2007 and the action for the imposition of penalty was initiated on 15/09/2007, the end point of limitation under both the conditions would be 31/03/2008. If the argument of the revenue were to be carried further, this case would be out of Sec. 275(1)(c) as there is only one end point and whichever period expires later cannot be applied here. Hence, the contention of the revenue is rejected.

Here. it must be noted that the Contention of the Revenue till the point that it is out of the scope of Sec. 275(1)(c) was correct. The argument that since this is out of scope of Sec. 275(1)(c), general principles for levy of penalty would be applicable cannot be accepted. With due respect to the judiciary, the New Delhi High Court too did not analyse the contention of revenue properly. While the revenue contended that if only one condition of Sec. 275(1)(c) were satisfied, then it would be outside the scope of Sec. 275(1)(c), in the example given by the New Delhi High Court, both the conditions are satisfied though the end date under both the conditions is the same. What the revenue said was that in order to attract Sec. 275(1)(c), the end date under both the conditions should be compared and whichever expires later would be considered as the date before which Penalty proceeding should be completed. If the end date under both the conditions is the same, it would be the date before which the penalty proceeding should be completed. In the present case, only one of the conditions of Sec. 275(1)(c) is satisfied. Hence, there is only one date to compare and determine whichever expires later. Hence, this case ought to be outside the scope of Sec. 275(1)(c).

The assessee too did not argue his case properly by accepting that if one of the conditions of Sec. 275(1)(c) is satisfied, the end date according to that condition alone should be taken as the last date for completion of

the penalty proceeding. Fortunately for him, in this case even accepting that contention the Penalty order was time barred. Hence, the order of the New Delhi High Court allowing the appeal did not affect him adversely. If the Commissioner of Income tax had passed order before 31/01/2004 instead of 17/02/2004, taking the assessee's argument could he have escaped penalty?

Thus, it is amply clear that there must exist some proceedings from which Penalty proceedings get initiated, before the initiation of Penalty Proceedings. It must be noted here in that during the period for which the above dispute relates, only two categories were found. The third category being reference to Commission of Income Tax u/s 263 were introduced later.

It is to be noted here that Sec. 275(1)(c) before the amendment had only one condition which was 2 years from the end of the financial year in which the proceedings with respect to which penalty proceedings got initiated were completed. It started with the word " in other cases " which means that in all cases not covered by Sec. 275(1)(a) and Sec. 275(1)(b). There was no distinction between cases where some proceedings were conducted before initiating penalty proceedings and cases where there were no such proceedings. Later w.e.f 01.04.1989, second condition was introduced to provide six months time from the end of the month in which the penalty proceedings got initiated. While inserting the above amendment no amendment was done to the word "other cases", which clearly means that the scope of the word other cases remained the same as before the insertion of the amendment. If the legislature desired so, it could have created another class of cases as where no proceedings were conducted before the initiation of penalty proceedings. As no such action was taken, it can be safely concluded that the legislature wanted some proceedings to be conducted before the initiation of penalty proceedings.

At the time of inserting the above amendment the limit of 2 years from the end of the financial year in which the proceedings with respect to which the penalty proceedings got initiated were reduced to the end of the financial year. So in order to allow some time for the Assessing officer to conduct Penalty proceedings when the Proceedings with respect to

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which the Penalty proceedings got initiated were completed at the fag end of the financial year time limit of 6 months from the end of the month of initiating Penalty proceeding was inserted. The reason behind the inserting the amendment was to allow reasonable time for the Assessing officer to conclude the penalty proceedings within a reasonable time, when the relevant proceedings from which the penalty proceedings get initiated were concluded at the fag end of the year. In the absence of second condition, the Assessing officer would be left with very little time if the Assessment proceedings were to be completed at the fag end of the financial year. In such cases, the Assessee may escape the Penalty proceedings. So the purpose of introducing second condition in sub Sec (1)(c) was only to enable the Assessing officer to complete Penalty proceedings in a reasonable time. This cannot be used to argue that this would cover cases where no assessment or other proceedings were done.

Again, if only the second condition is fulfilled, Penalty proceedings can be initiated at any time without restriction of any time limit. This time limit in those cases will apply only after such penalty proceedings are initiated. This will be against the spirit of Circular No: 551 dt: 23-01-1990, which explains the spirit behind the introduction of second condition. One of the main intentions of amending the Sec.275 as set out by the para 16.18 of the above circular was to complete the penalty proceedings as soon as possible and not after a long period after the completion of Assessment proceedings. Penalty proceedings will have some meaning only if such penalty proceedings are disposed off expeditiously.

The word used between the two conditions is "or". This means that both the conditions must be satisfied and the condition giving maximum time limit should be considered. If the intention of legislature was that satisfaction of any one of the conditions is enough for levy of penalty, then it could have used the word "either" before the first condition. Hence, proper interpretation of the provision of Sec. 275(1)(c) also requires that both the conditions should be satisfied. Hence, conducting any Assessment or other Proceedings during the course of which penalty proceedings got initiated is necessary. ■