

HC set-aside sec. 271(1)(c) notice issued after expiry of prescribed limitation period

Summary – The High Court of Madras in a recent case of J. Srinivasan, (the Assessee) held that where pursuant to search proceedings, assessment was completed on 30-12-2016, in terms of first limb of section 275(1)(a), limitation for initiation of penalty was on or before 31-3-2017 and, therepre, impugned notice issued under sec. 271(1)(c) on 14-9-2017 being barred by limitation, was to be set aside

Facts

- During relevant year, a search was conducted in personal and business premises of assessee. Thereupon assessment was completed under section 143(3), read with section 153A on 30-12-2016.
- The assessee filed an appeal against the assessment order. During pendency of said appeal, the assessee received a notice under section 271(1)(c) on 14-9-2017.
- The assessee filed instant petition contending that impugned notice was issued in violation of the limitation prescribed under section 275.

Held

- The issue, which falls for consideration, is as to whether the impugned notice issued by the respondent is time barred and whether the respondent could have issued the impugned notices at this juncture or not.
- Section 275 deals with bar of limitation for imposing penalties. Sub-section (1) of section 275 commences with the word 'no order imposing a penalty under the said Chapter (Chapter XXI) shall be passed' 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, 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) is passed.
- Thus, it is seen that they are two limbs to clause (a) of section 275 (1). The section makes it clear that, no order imposing a penalty shall be passed alter the expiry of one of the two periods which have been mentioned therein, which expire later than the other. The first time limit is until the expiry of the Financial year, in which, the assessment proceedings during which, penalty proceedings were initiated are completed. The period stipulated in the second time limit is until the expiry of six months from the end of the month, in which, the order of the C1T (A), in respect of appeals received by the Commissioner or Principal Commissioner.
- Thus, the time limit as per the second limb is six months from the end of the month, in which order of Commissioner (Appeals) is received. So far as the assessee is concerned. the relevant assessment

year is 2011-12 and the order of assessment under section 143(3) was passed on 30.12.2016. Therefore, the limitation for initiation of penalty under Section 275(1)(a) of the Act is on or before 31.03.2017, as per the first limb of the said. provision. According to the second limb of the provision, though it is six months from the end of the month, in which, the Commissioner (Appeals) has received the appeal, in the instant case, the proviso to section 275 (1)(a) would be attracted and the period would be one year from the date on which, the order is passed by the Commissioner (Appeals).

- The assessee has preferred the appeals before the Commissioner (Appeals) on 1-2-2017, and at that time, when the impugned penalty notices were issued, the appeals were pending. Therefore, it is clear that the respondent has lost out on the limitation aspect with regard to first limb of section 275(1)(a), as the impugned penalty notices have been issued on 11-9-2017 and 14-9-2017, which are after 31-3-2017, which would be the period of limitation for initiating penalty proceedings under section 275(1).
- Thus, the impugned penalty notice having issued well beyond the period of limitation fixed in the first limb of section 275(1)(a) is held to be barred by limitation. However, the respondent is at liberty to initiate penalty proceedings after the order is passed by the Commissioner (Appeals) before whom the matters are pending.
- In the result, the writ petition is allowed, the impugned notice is directed to be kept in abeyance with liberty to the respondent to initiate fresh proceedings after the disposal of the appeal by the Commissioner (Appeals), which has been preferred against the order of assessment passed by the respondent.