* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th September, 2011

% Date of decision: 30th September, 2011

+ ITA NO.511/2011

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Sanjeev Sabharwal, Advocate.

-versus-

MOHAIR INVESTMENT AND TRADING CO. P. LTD.
.....Respondent
Through: Mr. Ajay Vohra, Ms. Kavita Jha and Mr. Somnath Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the Judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the Judgment should be reported in the Digest? Yes.

SIDDHARTH MRIDUL, J.

1. The present Appeal was admitted on the following substantial question of law:-

> "Whether learned ITAT erred in holding that penalty has been levied after expiry of limitation period as laid down under Section 275(1)(a) of the Income-Tax Act?"

2. The facts leading up to the filing of the present Appeal are as follows:

(a) The Assessee, which is a Company, operates in the business of shares and securities. The present Appeal deals with the Assessment year 2001-02.

(b) On 29th October, 2001 the Assessee filed its return of income declaring income to the tune of ₹3,84,75,860/- for the year under consideration and the same was assessed under the provisions of the Income Tax Act, 1961(hereinafter referred to as 'the Act').

(c) During the relevant assessment year the Assessee had received dividend income of ₹3,11,85,522/- from various other companies.

(d) While dealing with the tax assessment of the Assessee, the Assessing Officer noticed that the Assessee had claimed exemption of an expenditure of ₹4,15,86,591/- being interest on loans raised for acquiring shares of various companies.

(e) The Assessing Officer vide assessment order dated 28th February, 2003 came to the conclusion that as per Section 14A and Section 115-O(5) of the Act, no deduction was allowable with respect to the expenditure incurred in relation to dividend income which was exempted from tax.

(f) On the basis of the relevant calculations, the Assessing Officer made a disallowance of ₹3,07,77,285/- and as a consequence penalty proceedings were initiated against the Assessee under Section 271(1)(c) of the Act. The Assessee was duly informed about the initiation of penalty proceedings.

(g) Aggrieved by the assessment order dated 28th February, 2003 the Assessee approached the Commissioner of Income Tax (Appeals)[CIT(A)]. The CIT(A) confirmed the stand of the Assessing Officer vide order dated 23rd December, 2005.

(h) Thereafter the Appeal filed by the Assessee before the Income Tax Appellate Tribunal (ITAT) also came to be dismissed by order dated 11th August, 2008.

(i) On 26th September, 2009 the Assessing Officer levied penalty in the sum of ₹1,49,38,148/- on the Assessee under Section 271(1)(c) of the Act on the ground that the Assessee had furnished incorrect particulars of his income. The penalty order was confirmed by the CIT(A) vide order dated 12th October, 2009. Consequently the Assessee approached the ITAT which allowed the Appeal of the Assessee vide order dated 30th April, 2010 which is impugned before us by the Revenue. The ITAT quashed the penalty order imposed on the Assessee only on the ground that it was imposed beyond the period of limitation as prescribed under Section 275(1)(a) of the Act.

3. Before adverting to the rival submissions made on behalf of the parties it would be relevant to extract the necessary provisions as below:

"**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 Appellant Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later:

Provided that 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, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before 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 within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Chief Commissioner or Commissioner, which is later;"

4. On behalf of the Revenue the following submissions were made by the Counsel. Firstly that the proviso to Section

275(1)(a) has been introduced by way of an amendment and that while amending the Section it could not be the intention of the Legislature to obliterate the main provision. Consequently, the proviso cannot be interpreted so as to render the main provision nugatory. Secondly, it was argued that the proviso has to be interpreted giving due regard to the scheme of the Act which provides for three stages of appeal, namely, appeal from the assessment order before the CIT(A), appeal from the order of the CIT(A) to the ITAT and a further appeal to the High Court from the order of the ITAT. Therefore, it is logical to interpret that the period of six months provided for imposition of penalties starts running after the successive appeals from an assessment order has been finally decided by the CIT(A) or, as the case may be, the ITAT. Thirdly, it was argued that the proviso extends the period of imposing penalty from six months to one year within the receipt of the order by the Commissioner if the CIT(A) has passed the order after 1st June, 2003. Consequently, the said proviso only deals with the orders passed by the CIT(A) and does not provide for an order passed by the ITAT deciding the appeal from the order of the CIT(A) and therefore the Assessing Officer has choice either to implement

penalty after the order of the CIT(A) or ITAT as the case may be. Resultantly, in case the Assessing Officer imposes penalty after the CIT's order passed after 1st June, 2003 then period of one year as to be reckoned from the date of receipt of the order by the Commissioner and in case the Assessing Officer imposes penalty after order passed by the ITAT then the period of six months is provided for by the main Section. Mr. Sanjeev Sabharwal, learned Counsel, arguing on behalf of the Revenue relied on the decision of the Madras High Court in ***Rayala Corporation P. Ltd.*** v. ***Union of India***, (2007) 288 ITR 452 (Mad).

5. On the contrary, the submission on behalf of the Assessee was that the provision had been amended and the proviso introduced to carve out a new set of cases which dealt with the order passed by the CIT(A) after 1st June, 2003. It was next argued that the objective behind the introduction of the proviso was to accelerate the proceedings in which punishment is imposed by the Assessing Officer. Lastly, it was argued that Section 275(1)(a) has to be read in consonance with Section 275(1A).

6. Before proceeding further it would be beneficial to consider the decision of the Madras High Court in *Rayala Corporation (supra)*. In that case the contention of the petitioner was that the proviso was not applicable to the cases where further appeal had been preferred to ITAT against the orders of the CIT(A) and that therefore the limitation period for the levy of penalty will be as provided for in Section 275(1)(a) i.e. six months from the end of the month in which the order of the ITAT is received by the Commissioner. The Madras High Court whilst considering the said issue came to the following conclusion:-

> "A reading of the abovesaid provision makes it clear that the interpretation placed by learned counsel for the petitioner on the said provision is acceptable. There is no dispute in this case that the petitioner has filed an appeal before the Tribunal and the same is pending. In such a case, the limitation period for the levy of penalty will be as provided for under section 275(1)(a), i.e., six months from the end of the month in which the order of the Appellate Tribunal is received by the Chief Commissioner. There cannot be any doubt on this aspect. Accordingly, this court is of the view that the proviso to section 275(1)(a) of the Act, does not nullify the availability to the third respondent of the period of limitation of six months from the end of the month when the order of the Income-tax Appellate Tribunal, Chennai, is received by the third respondent herein."

7. In this behalf it is relevant to point out that the Counsel for the Assessee submitted that the said decision was rendered on a concession made by the Revenue and as such could not constitute a binding precedent.

8. The Supreme Court in considering the function of a proviso in ***Commissioner of Income Tax*** v. ***Ajax Products Ltd.***, 55 ITR 741(SC), approved the dictum in *Commissioner of Income Tax* v. *Indo-Mercantile Bank Ltd.*, (1959) 361 ITR I, and summarized it thus:

> ""The proper function of a proviso is that it qualified the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. 'It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.' Therefore, it is to be construed harmoniously with the main enactment."
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> There may be cases in which the language of the statute may be so clear that a proviso may be construed as a substantive clause. But whether a proviso is construed as restricting the main provision or as a substantive clause, it cannot be divorced from the provision to which it stands as a proviso. It must be construed harmoniously with the main enactment. So construed, we have already stated earlier the result that flows from such a construction."

9. Also in ***S.C. Cambatta and Co. Ltd.*** v. ***Commissioner of Income Tax***, (1952) 21 ITR 121 (Bombay), the proper construction and interpretation of a proviso was summarized thus:

> "But it must not be forgotten that a proviso is subsidiary to the main section and it must be construed in the light of the section itself. The object of the proviso, as it has so often been stated, is to carve out from the main section a class or category to which the main section does not apply. But in carving out from the main section one must always bear in mind what is the class referred to in the main section and must also remember that the carving out intended by the proviso is from the particular class dealt with by the main section and from no other class."

10. From a plain reading of the relevant Sections it is clear that the period of six months provided for imposition of penalty under Section 275(1)(a) starts running after the successive appeals from an assessment order has been finally decided by the CIT(A) or the ITAT as the case may be whichever period expires later. The proviso to section 275(1)(a) has only had the effect of extending the period of imposing penalty from six months to one year within the receipt of the order of the Commissioner after 1st June, 2003. The proviso thus carves out an exception from the main Section inasmuch as in cases where

no appeal is filed before the ITAT the Assessing Officer must impose penalty within a period of one year to be reckoned from the date of receipt of the order by the Commissioner. To read this provision as suggested by the Counsel for the Assessee would obliterate the main provision itself. In this behalf it is necessary to remember that a proviso is merely a subsidiary to main Section and must be construed in the light of the Section itself. It has to be construed harmoniously with the main provision. This conclusion is fortified by the decision of the learned Judge in *Rayala Corporation (supra)*, where it was held that in case where an appeal is pending before the Tribunal the limitation period for levy of penalty can only be as provided for under Section 275(1)(a), i.e., six months from the end of the month in which the order of the Tribunal is received by the Commissioner. Insofar as the submission with regard to the Section being read in consonance with Section 275(1A) is concerned, we are of the opinion that the latter Section which was introduced later on does not dilute or in any manner render nugatory the main provision, which can only be read to mean that the limitation period for levy of penalty, only in the case of

order of the Tribunal, to be as provided under the main Section and not otherwise.

11. Thus we are of the view that the proviso to Section 275(1)(a) of the Act does not nullify the availability to the Assessing Officer of the period of limitation of six months from the end of the month when the order of the ITAT is received by the Assessing Officer. In the present case the order of the ITAT was rendered on 11th August, 2008 and the order passed by the Assessing Officer levying penalty was passed on 26th February, 2009, i.e., within a period of six months from the order of the ITAT.

12. The substantial question of law as framed is therefore decided in favour of the Revenue and against the Assessee. In the circumstances the impugned order is set aside and the matter is remitted back to the ITAT for a decision on the merits of the Appeal in accordance with law. No costs.

SIDDHARTH MRIDUL, J.

SEPTEMBER 30, 2011/*mk* **A.K. SIKRI, J.**