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

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Date of Decision: 16.02.2023

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W.P.(C) 7326/2018

CLIX CAPITAL SERVICES PRIVATE LIMITED (FORMERLY
KNOWN AS GE MONEY FINANCIALSERVICES PRIVATE
LTD.)Petitioner

Through: Mr Sachit Jolly, Mr Rohit Garg, Ms
Soumya Singh, Ms Disha Jham and
Mr Sohun Dua, Advs.

versus

JOINT COMMISSIONER OF INCOME
TAX, RANGE- 74

.....Respondent

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the order dated 14.06.2018 passed by the respondent/revenue disposing of the petitioner's representation for initiation of penalty imposed under Section 271C of the Income Tax Act, 1961 [in short "Act"].
2. Besides this, challenge is also laid to the show-cause notice [in short "SCN"] issued on 09.11.2017 and 27.06.2018.
3. As would be evident, the second SCN i.e., issued on 27.06.2018 had

been issued after the impugned order was passed, whereby, as noticed above, the petitioner's representation was rejected.

4. It is relevant to note, that this is the second round of litigation by the petitioner. In the first round, the petitioner had approached this Court by way of a writ action i.e., W.P.(C) 883/2018. The grievance articulated in the writ petition was that the respondent/revenue has wrongly assumed jurisdiction in the matter. The said writ petition was disposed of on 09.05.2018.

4.1 The Court remitted the matter to the respondent/revenue, with a direction to dispose of the petitioner's representation, which *inter alia*, concerned wrongful assumption of jurisdiction by the respondent/revenue. It is this direction, which led to the issuance of the order dated 14.06.2018.

4.2 However, in the interregnum, the petitioner had moved an application for seeking modification of the order dated 09.05.2018, passed in W.P.(C) 883/2018 was disposed of. The Court, vide order dated 23.05.2018 clarified that the respondent/revenue would deal with all the contentions that the petitioner may like to urge, including the contention that no penalty could have been imposed without declaring it as an assessee-in-default.

5. Before we proceed further, it may be relevant to set out the broad facts, which would be necessary to adjudicate the issue raised in the present petition.

6. On 31.10.2007, the petitioner had filed its return for Assessment Year (AY) 2007-08. In the said return, the petitioner declared, initially, its taxable income as Rs.47,39,42,143/-.

6.1 However, on 31.03.2009, the petitioner filed a revised return, and pegged its taxable income at Rs.47,14,28,736/-. Pertinently, the petitioner in

the revised return added back certain expenses, amounting to Rs.84,62,03,987/- by way of abundant caution, having regard to the provisions of Section 40(a)(ia) of the Act.

7. In the succeeding AY i.e., AY 2008-09, the petitioner, while filing its return, claimed the very same expense which it had added back as deduction, as the said amount had actually been expended. Thus, Rs.84,62,03,987/-, which had been added back in AY 2007-08 was claimed as deduction in AY 2008-09. The return for AY 2008-09 was filed on 30.09.2008. The petitioner, as per the record, declared in this AY, a loss amounting to Rs.21,00,37,579/-.

8. The record shows, that the petitioner's return for AY 2007-08 was subjected to scrutiny, and an assessment order under Section 143(3) of the Act was framed on 28.10.2011. The Assessing Officer (AO) quantified the petitioner's total taxable income as Rs.102,06,71,340/-.

8.1 The record also discloses, that nearly four years later, the AO, in an internal communication dated 09.09.2013 addressed to the Additional Commissioner of Income Tax, Range-50, New Delhi, wrote that penalty should be imposed on the petitioner for failure to deduct tax at source *qua* AY 2007-08.

9. Since there was no movement in the matter, the AO sent a reminder on 11.07.2014. It appears, that thereafter, the respondent/revenue became somnambulant, and the SCN was issued only on 09.11.2017, as per the mandate of Section 274 of the Act. Accordingly, the petitioner was called upon to show cause, as to why penalty ought not to be imposed under Section 271C of the Act, *qua* AY 2007-08.

10. Concededly, the petitioner filed a response on 19.12.2017. *Inter alia*,

the petitioner raised a preliminary objection with regard to the assumption of jurisdiction by the respondent/revenue. The assertion made in this regard by the petitioner was, that the proceedings triggered *via* the said SCN were barred by limitation.

10.1 In view of the fact that there was no movement in the matter, the petitioner dispatched another letter dated 22.01.2018, wherein the assertions, similar to the ones which had been raised in the petitioner's reply dated 19.12.2017 were sought to be placed before the respondent/revenue for consideration. Apparently, the respondent/revenue, without dealing with the preliminary objection that the petitioner had articulated in its reply dated 19.12.2017 and the subsequent communication dated 22.01.2018, proceeded to fix the matter for hearing. Accordingly, it was communicated to the petitioner, that the matter concerning the aforementioned SCN would be heard on 02.02.2018. It is this, which impelled the petitioner to approach the Court by way of a writ action, in the very first instance.

11. As noticed above, a writ petition [i.e., W.P.(C) 883/2018] was filed, wherein, *inter alia*, a prayer had been made to quash the SCN dated 09.11.2017. This writ petition was instituted on 29.01.2018.

11.1 The Court, as observed hereinabove, disposed of the writ petition on 09.05.2018. This order was clarified, at the behest of the petitioner, on 23.05.2018. This led to the respondent/revenue passing the impugned order dated 14.06.2018. The impugned order was followed by a second SCN dated 27.06.2018, which as alluded to hereinabove, has also been assailed. It is in this backdrop, that the petitioner has approached the Court, once again, by way of the instant writ petition.

12. Counsel for both sides have advanced their submissions in the matter.

13. In support of the petitioner's case, Mr Sachit Jolly, learned counsel has argued, that the issuance of the impugned SCN i.e., 09.11.2017 [which forms the foundation of the impugned order dated 14.06.2018] was woefully delayed.

13.1 Mr Jolly points out, that the said SCN was issued nine years after the end of the AY in issue, and ten years from the date of the relevant FY.

13.2 Mr Jolly further submits, that once the respondent/revenue had taken, in principle, a decision to initiate penalty proceedings, the issuance of the SCN, as mandated under Section 274 of the Act, could not have been delayed interminably, as was the approach adopted by the respondent/revenue in this case. The argument advanced is, that there are several provisions in the Act, where although a limitation period is prescribed for completion of proceedings, nothing is stated as to when the proceedings would commence i.e., be considered as having been initiated. In this context, Mr Jolly has drawn our attention to Section 275(1)(c) of the Act. In particular, he has drawn our attention to the second limb of clause (c) of sub-section (1) of Section 271 of the Act.

13.3 In support of his plea, that Courts have read in the concept of "reasonable period" for commencing proceedings when there is no such indication given in statute, Mr Jolly has relied upon the following judgments:

- (i) ***Bharti Airtel Ltd. vs. Union of India***, (2016) 76 taxmann.com 256 (Del); and
- (ii) Judgment dated 17.11.2022 passed in a bunch of matters, the lead being ITA 577/2018, titled: ***Principal Commissioner of Income Tax-7 vs. Rishikesh Buildcon Pvt. Ltd.***

14. Mr Jolly also submits, that if the stand taken by the respondent/revenue is accepted, which is that the period for completion of proceedings under Section 271C of the Act will only commence when the SCN under Section 274 of the Act is issued, it will lead to a situation where the proceedings could be delayed endlessly, causing grave prejudice to the assessee [in this case, the petitioner].

15. On the other hand, Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondent/revenue, submits that the penalty proceedings initiated in the instant case were separate and distinct, and were not related to any other proceedings.

15.1 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. In support of the plea, that penalty proceedings contemplated in the second limb of Section 271(1)(c) of the Act are separate and distinct, reliance was placed on the judgments of this Court in *Commissioner of Income Tax (TDS) v. IKEA Trading Hong Kong Ltd.*, [2011] 333 ITR 565(Del) and *Subodh Kumar Bhargava vs. Commissioner of Income-Tax*, [2008] 175 Taxman 520 (Delhi).

16. We have heard the counsel for the parties. 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. For the sake of convenience, the said provision is extracted hereafter:

Section 275 Bar of limitation for imposing penalties.

(1) No order imposing a penalty under this Chapter shall be passed-

(a) xxx xxx xxx

(b) xxx xxx xxx

(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...”

[Emphasis is ours]

17. 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.

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?

18. We may also note, that it is common ground between the parties, that what the Court is called upon to construe is the second limb of clause (c) of sub-section (1) of Section 275 of the Act.

19. Counsel for the parties have taken diametrically opposite stands on this aspect of the matter.

20. 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.

21. In this case, as noted hereinabove by us while narrating the facts, the initial return qua the AY in issue i.e., AY 2007-08 was filed on 31.03.2007, and the revised return was filed on 31.03.2009. The scrutiny assessment under Section 143(3), concerning AY 2007-08, was framed on 28.10.2011. Despite the fact that the issue concerning limitation got flagged as far back as on 09.09.2013, and then again in an internal communication dated 11.07.2014, no steps were taken for the issuance of a SCN. The SCN was issued only on 09.11.2017.

22. In our view, the delay in issuing the impugned SCN dated 09.11.2017 was inexcusable. There is no explanation, whatsoever, available on the record, as to why the SCN under Section 274 of the Act was not issued in 2013-14, if not earlier. As a matter of fact, there is no explanation, even with regard to the period falling between the time when the scrutiny assessment was framed [i.e., on 28.10.2011] and the communication dated 09.09.2013.

23. Thus, even if we were to take an indulgent view of the matter, and give leeway to the respondent/revenue, that the period for commencement of limitation prescribed in terms of the second limb of clause (c) of sub-section

(1) of Section 275 of the Act would commence either from 2013 or 2014, there is a period of unexplained substantial delay, as the SCN, concededly, was issued only on 09.11.2017.

24. Therefore, for the foregoing reasons, we are inclined to agree with the petitioner i.e., the assessee, that the SCN dated 09.11.2017 is woefully delayed, and hence deserves to be quashed. Consequentially, the impugned order dated 14.06.2018 would collapse, which would also be the fate of the second SCN dated 27.06.2018.

25. Thus, the impugned order and SCN are quashed.

26. The writ petition is disposed of in the aforesaid terms.

27. Parties will, however, bear their own costs.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 16, 2023/pmc