Bombay High Court Commissioner Of Income Tax vs Chhajer Packaging And Plastics ... on 28 September, 2007 Equivalent citations: (2008) 214 CTR Bom 389, 2008 300 ITR 180 Bom Author: N Dabholkar Bench: N Dabholkar, M Gaikwad JUDGMENT N.V. Dabholkar, J. 1. This is an appeal under Section 260A of the Income-tax Act 1961 ("The Act" for brevity's sake), challenging the judgment and order passed by the Income-tax Appellate Tribunal, Pune Bench, Pune ("ITAT" for brevity's sake) in ITA No. 1343/Pn/2001, on 22nd March, 2004. reported as Chhajer Packaging & Plastics (P) Ltd. v. Addl. CAT (2005) 97 TTJ (Pune) 153–Ed. 2. The following factual details are necessary for the purpose of decision of present appeal. Assessment of taxable income of respondent for the asst. yr. 1996-97 (financial year 1995-96) was carried out by the Departmental authorities and concluded with assessment order dt. 30th March, 1999. The AO–Dy. CIT (Investigation), Circle-II, Jalgaon, during the course of assessment, noticed that the assessee had accepted loans/deposits exceeding Rs. 20,000, by modes otherwise than account payee cheques/demand drafts and had thus contravened Section 269SS of the Act. By his letter dt. 30th March, 1999, he referred the matter to Addl. CIT, Range-II, Jalgaon, for levy of penalty under Section 271D of the Act. The assessee had contested the penalty proceedings before the Addl. CIT, Range-II, Jalgaon and the contentions raised by the assessee were rejected. In the appeal before the CIT(A)-I, Nagpur, the assessee raised issue of limitation, by relying upon Section 275(1)(c) of the Act and the said contention was not upheld by the learned CIT, with following observations: I find that some of the pleadings like penalty being time-barred or no deposits having been taken, were not put before the Addl. CIT by the appellant company. I do not agree with the appellant that the action has become time-barred as the proceedings under Section 271D are independent of the assessment and the same could not be taken as commencing along with the assessment order. The assessee approached the Tribunal, Pune and learned Members of the Tribunal have upheld the plea of limitation raised by the assessee and cancelled the order imposing penalty under Section 271D, as on the date on which the said order was passed, the authorities could not have passed such an order, as the action was time-barred. Heard learned Counsel for the respective parties. 3. Learned advocate Shri Tripathi for the Respondent has filed affidavit cum-notes of arguments, wherein he has raised preliminary objections, by relying upon Instruction Circular No. 2 of 2005, dt. 24th Oct., 2005 and has pleaded that since the limit of appeal under Section 260A of the Act to be preferred is raised to Rs. 4 lacs and tax effect of present matter does not exceed Rs. 4 lacs, the Department ought not to pursue the present appeal. This submission was opposed by learned Asstt. Solicitor General, by contending that the instructions are issued on 24th Oct., 2005 and are prospective in nature, whereas present appeal was filed by the Department in August, 2004. According to learned Asstt. Solicitor General, therefore, the appeal does not fall within the clutches of the Instructions dt. 24th Oct., 2005. Advocate Shri Tripathi has advanced his argument further, by relying upon the judgment of other Division Bench of this High Court at Bombay, in CIT v. Pithwa Engg. Works . In this matter, Division Bench of this Court was dealing with the similar Circular dt. 27th

March, 2000, wherein financial limit for preferring appeals under Section 260A of the Act before the High Court, was Rs. 2 lacs. Advocate Shri Tripathi has placed reliance on following observations in penultimate para: In our view, the Board's Circular dt. 27th March, 2000, is very much applicable even to the old references which are still undecided. Advocate Shri Tripathi has relied upon aforesaid observations, to claim that the circular is applicable, to some extent; retrospectively in the sense, it will be applicable to the appeals which are still pending. 4. So far as views recorded by the other Division Bench of this High Court are concerned, those are pertaining to Circular dt. 27th March, 2000. On reference to Instruction No. 2 of 2005, dt. 24th Oct., 2005, para 2 begins thus: In partial modification of the above instruction, it has now been decided by the Board that appeals will henceforth be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder. Taking into consideration the portion underlined (italicized in print) for the purpose of emphasis, we feel that the learned Asstt. Solicitor General is justified in contending that the circular is applicable only prospectively and it makes no reference to pending matters. Considering applicability of the Circular dt. 24th Oct., 2005 on the basis of its text, we would not be inclined to follow the view taken by other Division Bench, regarding earlier circular. Otherwise also, para 3 of this circular itself saves certain appeals from being obstructed due to financial limits. Para 3 reads: The Board has also decided that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar cases, should be separately considered on merits without being hindered by the monetary limits. It is evident that, whenever there is a substantial question of law or question of law which is likely to recur in future, the Department is not prohibited from filing and pursuing appeals. We believe that the saving clause saves present appeal since it involves a question of law regarding interpretation of Section 275(1)(c) of the Act, and more particularly the aspect of manner in which the limitation should be computed in the light of said provisions. We have, therefore, proceeded to hear the Advocates on merits. 5. Section 275(1)(c) of the Act reads thus: 275. Bar of limitation for imposing penalties. (1) No order imposing a penalty under this Chapter shall be passed: (a) ... (b) ... (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. Coming to the first method of computing period of limitation, the last date for imposition of penalty is the last day of the financial year and which is the financial year, is given in parenthetical clause within the first half of Clause (c) itself, i.e. "in the course of which action for imposition of penalty has been initiated." Thus, it is apparent that the law presumes the penalty proceedings to be germinating from some other proceedings already in progress. The date of termination of those proceedings is important and the last date of financial year in which those proceedings were completed, is the outer limit for conclusion of penalty proceedings. In the matter at hands, the penalty proceedings arise out of assessment

of income of the assessee for financial year 1995-96 (asst. yr. 1996-97). It has come in the order of the CIT(A) that the assessment order was dt. 30th March, 1999. Thus, the assessment proceedings are concluded on 30th March, 1999 i.e. within financial year 1998-99, corresponding assessment year being 1999-2000. Consequently, penalty could have been imposed latest by 31st March, 1999, since the assessment proceedings, out of which penalty proceedings took birth, were completed on 30th March, 1999. So far as second mode of computation of limitation is concerned, the later half of the Clause (c) of Section 275(1) of the Act is not that difficult to be understood. The penalty proceedings in the present matter were initiated by notice dt. 6th April, 1999 and the period of limitation of six months is to be computed from the last date of the month in which the penalty proceedings were initiated. Thus, 30th April, 1999 would be starting point of limitation of six months and consequently, 29th Oct., 1999 would the last date of period of limitation, computed in accordance with second half of Clause (c) of Section 275(1) of the Act. Thus, in the case on hands, by computing limitation in both permissible ways, the period of limitation is either 31st March, 1999, or 29th Oct., 1999. 29th Oct., 1999 being later in time, that was the available outer limit for the Department to impose penalty. The order imposing penalty is passed on 13th March, 2000. 6. Coming to the opening part of Sub-section (1), it says, "no order imposing penalty . . . .shall be passed." Thus, once the period of limitation prescribed by either of Clauses (a) to (c) has expired, the Departmental authorities have no powers to impose penalty. The opening part rules out any possibility of taking initiation of the proceedings as "sufficient compliance" or as keeping the proceedings within limitation. Language is so couched that the penalty proceedings are expected to be concluded before expiry of period of limitation. For the reasons discussed hereinabove, we are unable to find any fault with the judgment and order passed by the Tribunal. Tax Appeal is, therefore, dismissed.