

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 3171/Del /2010
Asstt. Year: 2006-07**

ITO, Ward 15(4), Room No. 223, C.R. Building, New Delhi. (Appellant)	vs	Rupa Promoters Pvt. Ltd., H-54, 2 nd Floor, DDA Flats, Ashok Vihar-1, New Delhi-110052 (PAN: AADCR0877Q) (Respondent)
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**ITA No. 3178/Del /2010
Asstt. Year: 2006-07**

ITO, Ward 15(4), Room No. 223, C.R. Building, New Delhi. (Appellant)	vs	M/s Rishikesh Buildcon Pvt. Ltd., H-54, 2 nd Floor, DDA Flats, Ashok Vihar-1, New Delhi-52 (AADCR0660D) (Respondent)
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**ITA No. 3150/Del /2010
Asstt. Year: 2006-07**

ITO, Ward 15(4), Room No. 223, C.R. Building, New Delhi. (Appellant)	vs	Rishikesh Properties Pvt. Ltd., H-54, 2 nd Floor, DDA Flats, Ashok Vihar-1, New Delhi-52 (PAN: AADCR0527R) (Respondent)
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Appellant by : Smt. Pramita Tripathy, CIT(DR)
Respondent by: Shri Rajeev Saxena, Mrs. Sumangala Saxena, Advs.

**Date of Hearing : 26.07.2017
Date of Pronouncement: 24.10.2017**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

These three appeals have been filed by the Department challenging the deletion of penalty imposed under section 271D of the Income Tax Act, 1961 (hereinafter called “the Act”). All the three appeals pertain to assessment year 2000 607 and since they involve identical issues they were heard together and are being disposed of through this common order.

2. The brief facts of the appeals are as under –

2.1 ITA No. 3171/Del/2010 – Rupa Promoters Private Limited –

The company is engaged in the work of carrying out of land development. During the assessment proceedings, the AO observed that the assessee had received cash from three parties aggregating to Rs. 5,02,03,000/-. Since the assessee company was in receipt of cash in excess of Rs. 20,000/-, the AO held that there was a violation of the provisions of section 269SS of the Act. The assessment was completed on 17th of December 2008 under section 144 of the Act wherein penalty proceedings under section 271D of the Act were also initiated. Show cause notice

under section 271D of the Act was issued dated 24/03/2009. Subsequently, after considering the replies of the assessee, penalty of Rs. 3,90,61,000 was imposed vide order dated 29/09/2009. Aggrieved, the assessee approached the Ld. CIT (Appeals) who deleted the penalty on merits. Now the Department has approached the ITAT and has challenged the deletion of penalty by the Ld. CIT (Appeals).

2.2 ITA No. 3178/Del/2010 – Rishikesh Buildcon (P) Ltd-

This company is also engaged in the work of carrying out land development. During the course of assessment proceedings, the AO observed that the assessee had received cash aggregating to Rs. 5,43,66,000/- from three companies. The AO proceeded to hold that there was a violation of section 269SS of the Act as the company had received cash in excess of Rs. 20,000/-. The assessment was completed on 17th of December 2008 wherein penalty proceedings under section 271D of the Act were also initiated. Notice under section 271D of the Act was issued on 24/03/2009 and a penalty of Rs. 3,93,08,000/- was imposed for violation of provision of section 269SS vide order dated 29/09/2009. On the assessee approaching the Ld. CIT (Appeals), the assessee's appeal was allowed and the penalty was deleted on

merits. Now the Department has approached the ITAT and has challenged the deletion of penalty by the Ld. CIT (Appeals).

2.3 ITA 3150/Del/2010 – M/s Rishikesh Properties Pvt Limited-

This company is also engaged in the work of carrying out of land development. During the course of assessment proceedings, the AO noticed that the assessee had received cash aggregating to Rs. 6,35,15,000/- from three companies and he held that there was a violation of the provisions of section 269SS of the Act as the company had received cash in excess of Rs. 20,000/-. The assessment was completed on 18th of December 2008 wherein penalty proceedings under section 271D of the Act were also initiated. Subsequently, notice under section 271D of the Act was issued on 24/03/2009 and after considering the replies of the assessee, the order under section 271D was passed on 29/09/2009 imposing of penalty of Rs. 4,23,10,000/-. On appeal, the penalty was deleted by the Ld. CIT (Appeals) and now the Department has approached the ITAT and has challenged the deletion of penalty by the Ld. CIT (Appeals).

3. At the outset, the Ld. Authorised Representative for the assessee sought to raise a legal ground and submitted that the adjudication of the legal ground goes to the very root of the

matter. It was prayed that the Bench should first hear both the parties on the legal ground being raised. The Ld. CIT DR had no objection to the request of the Ld. AR. Therefore, we permit the Ld. AR to argue on the legal ground. The Ld. AR submitted that all the three orders of the AO imposing penalty under section 271D of the Act were barred by limitation. It was submitted that as per the provisions of section 275 of the Act, there were two distinct periods of limitation for passing the penalty order, one which is within the financial year in which the penalty is initiated and the other is within six months from the end of the month when the penalty is initiated. It was submitted that in all the three appeals before the ITAT, the quantum proceedings were completed in the month of December 2008 and the penalty proceedings had been initiated at the time of completion of assessment. It was further submitted that going by the date of assessment, as per the first period as provided in section 275, the penalty orders could not have been passed later than 31/03/2009. It was further submitted that the second possible date was within six months from the end of the month in which the penalty proceedings were initiated. It was submitted that since the penalty proceedings were initiated in December 2008,

the last date by which the penalty orders should have been passed was 30th of June 2009. It was submitted that it is undisputed that in all the three cases the penalty orders were passed on 29/09/2009 whereas the limitation had already expired on 30/06/2009. It was submitted that in view of the legal provisions, all the three penalty orders were void *ab initio* and hence the appeals of the revenue deserved to be dismissed.

3.1 The Ld. Authorised Representative placed reliance on the judgment of the Hon'ble High Court of Delhi in Principal Commissioner of Income Tax *versus* JKD Capital and Finlease Ltd in ITA 780/2015 wherein a penalty under section 271E of the Act was deleted by the Ld. CIT (Appeals) by holding that the penalty order was passed beyond the period of limitation. The deletion was upheld by the ITAT and on the Department approaching the Hon'ble High Court of Delhi, the Hon'ble High Court refused to interfere with the adjudication of the ITAT wherein the ITAT had confirmed the order of the Ld. CIT (Appeals) by referring to a judgment of the Hon'ble Delhi High Court in the case of CIT *versus* Worldwide Township Projects Ltd reported in 269 CTR 444. The Ld. Authorised Representative also placed reliance on another decision of the Hon'ble Delhi High Court in

the case of Principal Commissioner of Income Tax *versus* Mahesh Food Products Private Limited reported in 394 ITR 312 for the proposition that as per the scheme of section 275 (1) (c), limitation begins to run from the date on which the penalty proceedings were initiated. The Ld. Authorised Representative reiterated that since the penalty orders were passed beyond the limitation period, the same were void *ab initio*.

4. In response, the Ld. CIT DR submitted that the notice initiating penalty under section 271D was issued on 24th of March 2009 and, therefore, the limitation should be calculated from the date of issuance of notice and not from the date on which the penalty proceedings were initiated in the assessment order. It was submitted that going by the date on which the penalty notices were issued, the limitation period would expire on 30/09/2009 whereas the impugned orders were passed on 29/09/2009 and, therefore, the penalty orders were within the limitation period. It was also submitted that the case laws relied upon by the assessee were distinguishable on facts. It was prayed that the penalty had been wrongly deleted by the Ld. CIT (Appeals) and that the orders of the Ld. CIT (Appeals) should be set-aside and the penalties imposed by the AO be restored.

5. We have heard the rival submissions and have perused the relevant material on record. The facts of the cases are undisputed that in all the three cases, the assessments were completed in December 2008 wherein the penalty proceedings under section 271D had been initiated. It is also undisputed that the notices under section 271D were issued on 24th of March 2009 and the penalty orders were passed on 29/09/2009. Thus, the only question that remains to be adjudicated is as to whether the limitation period has to be calculated from the date on which the penalty proceedings were first initiated, that is the date of the assessment order or from the date on which the show cause notices under section 271D were issued, that is March 2009. The Hon'ble Delhi High Court in the case of JKD Capital and Finlease Ltd (supra) had held that the starting point would be the initiation of penalty proceedings. In that case the AO had written a letter to the ACIT recommending the issuance of show cause notice. The Hon'ble Delhi High Court noted that while it was true that the ACIT had the discretion whether or not to issue the show cause notice, if he did decide to issue a show cause notice, the limitation would begin to run from the date of the letter of the AO recommending initiation of the penalty proceedings. Similarly, in

the case of Mahesh Food Products Private Limited (supra), although there was no initiation of penalty proceedings in the assessment order, the AO made a reference to the ACIT on 23/07/2012, which was after more than six months of passing of the assessment order, on the basis of which a notice was issued on 28/08/2012 by the ACIT asking the assessee to show cause as to why penalty be not levied under section 271D and 271E of the Act. The assessee challenged the initiation of penalty proceedings on the ground of limitation which was negated by the ACIT and penalties were imposed which were confirmed by the Ld. CIT (Appeals). On appeal before the ITAT, the ITAT held that the penalty orders were barred by limitation. On further appeal by the Department, the Hon'ble Delhi High Court held that the limitation would begin to run from 23/07/2012, which was the date on which a reference was made to the ACIT by the AO for issue of show cause notice. The Hon'ble Delhi High Court held that since the impugned penalty order was passed on 26/02/2013, the same was beyond the period of limitation which expired on 31st of January 2013. Thus, in this case also the limitation period was to be calculated from the date on which a reference was made by the AO to the ACIT and not from the date

on which the show cause notice was issued. In the present appeals before us, the penalty proceedings were initiated in the assessment orders itself and, therefore, the limitation period will begin to run from December 2008 itself and not from March 2009 when the penalty notices were issued. Therefore, respectfully following the ratio laid down by the Hon'ble Delhi High Court in the above mentioned cases we have no hesitation in holding that all the three penalty orders were barred by limitation and were void *ab initio*. Accordingly, without going into the merits of the cases, we dismiss all the three appeals of the Department as the penalty orders itself were void *ab initio* being barred by limitation.

6. In the final result all the three appeals of the Department's stand dismissed.

Order is pronounced in the open court on 24th October, 2017.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 24th OCTOBER, 2017
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

ASSISTANT REGISTRAR