

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.6614, 6615, 6616 & 6617/MUM/2016
(A.Y: 2007-08, 2007-08, 2011-12 & 2011-12)**

&

**ITA.No. 597, 614/MUM/2017
(A. Ys: 2012-13, 2012-13)**

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020	v.	M/s. Lodha Builders (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road Worli, Mumbai – 400 018 PAN: AAACL1722F
(Appellant)		(Respondent)

CO.NO. 159 & 160/MUM/2018

[Arising out of ITA NO.6614 & 6615/MUM/2016 (A.Y: 2007-08 2007-08)]

M/s. Lodha Builders (P.) Ltd. 412, 17G, Vardhman Chamber Caswasjee Patel Street Fort, Mumbai – 400 001 PAN: AAACL1722F	v.	D.C.I.T, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		(Respondent)

ITA NO.6610/MUM/2016 (A.Y: 2009-10)

D.C.I.T, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Adinath Builders (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AAFCA9028E
(Appellant)		(Respondent)

CO. NO. 155/MUM/2018

[Arising out of ITA NO.6610/MUM/2016 (A.Y: 2009-10)]

M/s. Adinath Builders (P.) Ltd. 412, 17G, Vardhman Chamber, Cawasjee Patel Street, Fort, Mumbai – 400 001 PAN: AAFCA9028E	v.	D.C.I.T, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		(Respondent)

**ITA NO.3145 & 3152/MUM/2017
 (A.Y: 2007-08 & 2007-08)**

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Adinath Builders (P.) Ltd. 412, 4 th Floor, 17G, Vardhman Chamber, Cawasjee Patel Street, Horniman Circle, Fort, Mumbai – 400 001 PAN: AAFCA9028E
(Appellant)		(Respondent)

ITA NO.6611/MUM/2016 (A.Y: 2009-10)

D.C.I.T, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Ajinath Hitech Builders (P.) Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AAGCA1122Q
(Appellant)		(Respondent)

CO No. 156/MUM/2018

[Arising out of ITA NO.6611/MUM/2016 (A.Y: 2009-10)]

M/s. Ajinath Hitech Builders (P.) Ltd., 412, 4 th Floor, 17G, Vardhman Chamber, Cawasjee Patel Street, Horniman Circle, Fort, Mumbai – 400 001 PAN: AAGCA1122Q	v.	D.C.I.T, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		(Respondent)

ITA NO.6613/MUM/2016 (A.Y: 2009-10)

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Properties Development (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AABCL2222K
(Appellant)		(Respondent)

CO NO.158/MUM/2018
[Arising out of ITA NO.6613/MUM/2016 (A.Y: 2009-10)]

M/s. Lodha Properties Development (P.) Ltd. 412, 17G, Vardhman chamber Caswasjee Patel Street Fort, Mumbai – 400 001 PAN: AABCL2222K	v.	DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(Appellant)		(Respondent)

ITA NOs. 136, 137 & 138/MUM/2017
(A.Ys: 2008-09, 2009-10 & -2009-10)

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Building & Construction (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AABCL2571K
(Appellant)		(Respondent)

ITA NO.601, 608, 609 & 610/MUM/2017
(A.Ys: 2007-08, 2007-08, 2008-09 & 2008-09)

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Estate (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AAACL1723E
(Appellant)		(Respondent)

ITA NO.603/MUM/2017 (A.Y: 2009-10)

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Aasthavinayak Estate Company (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AAGCA 2863 C
(Appellant)		(Respondent)

**ITA NO.604, 607 & 617/MUM/2017
 (A.Y: 2009-10, 2008-09 & 2009-10)**

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Home Developers (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AABCL2209G
(Appellant)		(Respondent)

ITA NO.605/MUM/2017 (A.Y: 2012-13)

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Palazzo 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AACFL6609G
(Appellant)		(Respondent)

**ITA NO.611, 612 & 613 /MUM/2017
 (A.Y: 2008-09, 2009-10 & 2009-10)**

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Designer Construction (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AABCL2681G
(Appellant)		(Respondent)

ITA NO.616/MUM/2017 (A.Y: 2009-10)

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Anantnath Construction & Farms (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AAGCA5132J
(Appellant)		(Respondent)

**ITA NO.2577, 2578 & 2579/MUM/2017
 (A.Ys: 2008-09, 2009-10 & 2009-10)**

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Finstock (P.) Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 PAN: AABCL3094R
(Appellant)		(Respondent)

**ITA NOs. 3140, 3141, 3142 & 3146/MUM/2017
 (A.Ys: 2007-08, 2007-08, 2009-10 & 2009-10)**

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Land Developers (P.) Ltd. 412, 4 th Floor, 17G, Vardhman Chamber, Cawasjee Patel Street, Horniman Circle, Fort, Mumbai – 400 001 PAN: AABCL2223J
(Appellant)		(Respondent)

ITA NO.3151/MUM/2017 (A.Y: 2012-13)

DCIT, Central Circle – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Lodha Hi-Rise Builders (P.) Ltd. 412, 4 th Floor, 17G, Vardhman Chamber, Cawasjee Patel Street, Horniman Circle, Fort, Mumbai – 400 001 PAN: AABCL2637A
(Appellant)		(Respondent)

Assessee by : Shri Vijay Mehta

Department by : Shri P.C. Chhotary

**Date of Hearing : 20.02.2019, 18.10.2019
 & 22.11.2019**

Date of Pronouncement : 31.01.2020

ORDER

PER BENCH

1. All these appeals are filed by the Revenue and cross objection by assessee against different orders of the Learned Commissioner of Income Tax (Appeals), Mumbai [hereinafter in short "Ld.CIT(A)"] for various assessment years in deleting the penalty levied u/s. 271D/271E of the Act.

2. Briefly stated the facts are that, the Assessing Officer in the course of the assessment proceedings noticed that assessee recorded journal entries in its books of accounts accepting and repaying loans/deposits otherwise than account payee cheque or draft more than ₹.20,000/- from various group concerns of the assessee.. The Assessing Officer was of the view that there is contravention of provisions of section 269SS/269T of the Act since assessee received and repaid loan/deposit over and above ₹.20,000/- otherwise than by Account Payee Cheque or draft and accordingly an order u/s. 271D/271E was passed levying penalty.

3. On appeal the Ld. CIT(A) deleted the penalties observing as under:

"5.3.4 Respectfully, following the above decision, the contention of the appellant that the journal entries are not covered within the violation of Section 269T is rejected. However, the transactions covered by the journal entries are made in regular course of business with the sister concerns by the appellant. Even in the present case, there is no adverse finding of the AO either in the penalty order u/s 271E of the Act or in the remand report dated 09,08.2016 that any of the impugned transactions is aimed at non commercial reasons and outside the normal business operation. Therefore, though the

appellant has violated the provisions of section 269T of the Act in respect of Journal entries, it has shown reasonable cause and therefore the penalty under section 271E is not leviable.”

Against deletion of penalties u/s. 271D/271E of the Act by the Ld. CIT(A) the revenue filed these appeals for various assessment years. The assessee also filed cross objection for assessment years 2007-08 and 2009-10 on the ground that the penalty orders passed u/s. 271D/271E of the Act is barred by limitation provided in clause (c) of section 275(1) of the Act.

4. The Learned Senior Standing Counsel Shri P.C. Chhotaray appearing for the revenue submitted that, the issue in all these appeals is whether penalty u/s. 271D/271E of the Act is attracted for contravening the provisions of section 269SS/269T of the Act when journal entries were passed in the Books of Accounts for the loans/deposits received and repaid by the assessee with its group concerns and whether there is reasonable cause within the meaning of the provisions of section 273B of the Act for not levying the penalties u/s. 271D/271E of the Act. Ld. Sr. Standing Counsel submitted that the assessee has not demonstrated any reasonable cause for making journal entries for the loans/deposits received and repaid by the assessee and therefore the provisions of section 269SS/269T are violated thereby attracting the penalties

u/s.271D/271E of the Act. Ld. Sr. Standing Counsel submitted that Assessee has not explained each and every entry as to why there is a reasonable cause within the meaning of provisions of section 273B of the Act for not attracting the penalties u/s. 271D/271E of the Act. The Learned Sr. Standing Counsel for the department referring to the decision of the Mumbai Coordinate Bench in the case of M/s. V.N. Parekh Securities Pvt Ltd v. ACIT in ITA.No. 6082 & 6083/Mum/2009 dated 16.08.2013 submits that the observation of the Coordinate Bench was that each and every entry should be explained and therefore, since the assessee failed to explain each and entry, these appeals should go back to the file of the Assessing Officer. Learned Senior Standing Counsel submitted that, if this bench is not agreeing with the view expressed by the Division Bench in the case of M/s. V.N. Parekh Securities Pvt Ltd v. ACIT (supra) the matter be referred to the Special Bench for adjudication.

5. Learned Counsel Shri Vijay Mehta appearing for the assessee, at the outset submitted that the issue in all these appeals is squarely covered by the decision of the Coordinate Benches in various assessee group cases wherein on identical facts the penalties levied u/s. 271D/271E of the Act were deleted. Ld. Counsel for the assessee placed reliance on the decision of the Coordinate Bench in the case of the DCIT v. Lodha

Constructions and others in ITA.No. 110, 111, 139 to 142/Mum/2017 dated 30.07.2018 and a copy of the order was placed on record. Referring to this order Ld. Counsel for the assessee submitted that the Coordinate Bench following the decision of the Hon'ble Bombay High Court in the case of the CIT v. Ajinath Hitech Builders Private Ltd and Others in ITA.Nos. 171, 172, 202, 203, 218 & 219 of 2015 dated 06.02.2018 and decision of the Coordinate Bench in assessee's group case in the case of Aashthavinayak Estate Company Ltd., in ITA.No. 602/Mum/2017 dated 31.05.2018 and also considering the decision in the case of the Triumph International Finance (I) Ltd dated 12.06.2012, deleted the penalty levied u/s.271(D)/271(E) of the Act holding that there was a reasonable cause for the assessee to receive loans/deposits and repaying such loans/deposits through journal entries.

6. Learned Counsel for the assessee further submitted that the Hon'ble Bombay High Court in assessee's group case in CIT v. Ajinath Hitech Builders Private Ltd and Others in ITA.Nos. 171, 172, 202, 203, 218 & 219 of 2015 dated 06.02.2018 dismissed the appeal of the Revenue filed against the order of the Tribunal in deleting the penalty levied u/s.271E/271D of the Act. Learned Counsel for the assessee submitted that, their Lordships have held that prior to the decision of the Court in

Triumph International Finance (I) Ltd [22 taxmann.com 138 (Bom.)] rendered on 12.06.2012, there was a reasonable cause for respondents/assessee to receive deposit/loan through journal entries and this non-compliance with section 269SS/269T of the Act would certainly be reasonable cause u/s. 273B of the Act for non-imposition of penalty u/s.271D/271E of the Act.

7. The Ld. Counsel for the assessee further referring to the decisions of the SLP filed by the Department against the order of the Hon'ble Bombay High Court in the case of the Lodha Properties Development Pvt. Ltd., in SLP (Civil) No. 42791/2018 dated 10.12.2018, CIT v. Lodha Crown Buildmart Pvt. Ltd., in SLP (Civil) No. 44666/2018 dated 03.01.2019 and CIT v. Lodha Properties Development Pvt. Ltd., in SLP (Civil) No. 42738/2018 dated 21.01.2019, submitted that the SLPs filed by the Department against the Judgments of the Hon'ble Bombay High Court in affirming the order of the Tribunal in deleting the penalties was dismissed by the Hon'ble Supreme Court.

8. Ld. Counsel for the assessee further submits that all the journal entries passed by the assessee's in all these cases are prior to the decision rendered in the case of Triumph International Finance (I) Ltd (supra) on 12.06.2012 and therefore it constitutes reasonable cause as

held by the Hon'ble Bombay High Court in the case of CIT v. Ajinath Hitech Builders Private Ltd and Others (supra) therefore no penalty u/s.271E/271D is attracted for the journal entries passed on the loans/deposits taken and repaid within the group concerns of the assessee. Thus, the Ld. Counsel for the assessee submitted that, the issue in all these appeals relates to the journal entries passed by the assessee for the loans/deposits taken and repaid within the group concerns of the assessee is squarely covered by the above decisions.

9. We have heard the rival submissions, perused the orders of the authorities below and the decisions relied on. The only issue in all these appeals is as to whether there is a reasonable cause within the meaning of the provisions of section 273B of the Act on the loans/deposits taken and repaid through journal entries by the assessee within its group concerns. On a perusal of the orders passed by different Benches of this Tribunal and the decision of the Hon'ble Jurisdictional High Court and also the dismissal of SLPs filed by the revenue, we notice that identical issue has been decided by the Tribunal in various cases in assessee's group concerns and which were travelled to Hon'ble Bombay High Court and also the Hon'ble Supreme Court wherein the Special Leave Petitions filed by the Revenue were dismissed.

10. The Hon'ble Bombay High Court in the case of CIT v. Ajinath Hitech Builders Private Ltd and Others (supra) it was held that prior to the decision in the case of the Triumph International Finance (I) Ltd (supra) there was a reasonable cause for the assessee to receive deposits/loans through journal entries. It is not in dispute that in all these cases the journal entries were passed prior to the decision of the Triumph International Finance (I) Ltd (supra) rendered on 12.06.2012. Therefore, the ratio of the decision in the case of the CIT v. Ajinath Hitech Builders Private Ltd and Others (supra) squarely applies to the facts of the assessee case. We also observe that in the assessee's group case in the case of DCIT v. M/s. Lodha construction in ITA.Nos. 110, 111, 139 to 142/Mum/2017 dated 30.07.2018 held as under:

“6. We have considered the rival submission of the parties and have gone through the orders of authorities below. The ACIT levied penalty u/s.271D as well as u/s.271E on his observation that the assessee has accepted loan/deposit from sister concern through journal entries i.e., otherwise then account payee cheque /draft thereby violated provisions of section 269SS and/ or 269T. The Assessing Officer further held that the assessee has not made out any reasonable cause as prescribed 273B of the Act.

7. Before Id. CIT(A) the assessee urged that journal entries is not loan or deposit of money neither there is any unaccounted cash flow money of the group entities. The assessee further contented that Section 269SS was introduced by the Finance Act, 1984. The Circular, gave the purpose of introduction of Section 269SS. The broad purpose of insertion of section 269SS was with the view to counter the device, which enables the tax payer to explain away unaccounted cash or unaccounted deposits, the new section 269SS debars person from taking or accepting after 30/6/1984 from any person loan or deposit otherwise by an account payee cheque or account payee bank draft if the amount of loan or deposit or

aggregating amount of such loan is Rs.10,000/- or more. The object of insertion of section 269SS was to ensure that tax payer is not allowed to give false explanation for his unaccounted money or if he has given some false entries in his accounts, he should not escape by giving some false entries in his account, he shall not escape by giving false explanation for the same. The assessee further contended that there is no receipt of any loan/deposit or repayment in any other mode other than the account payee cheque. It is merely a case of assignment of debt by one group entity to another group entity and journal entries have been passed to record such assigned transactions. The provision of section 269SS and 269T are not applicable on such genuine transactions. The Assessing officer in the assessment order has not made any observation that transactions in question are not out of business exigency or was done with a motive to evade tax. Penalties cannot be levied in a mechanical manner. The provisions of section 269SS and section 269T are not applicable where transaction is between sister concerns. The Id. CIT(A) after considering the contention of the assessee concluded that the assessee has violated the provisions of section 269SS and 269T of the Act. However, the Id CIT(A) concluded that the assessee has given sufficient explanation within the meaning of section 273B , particularly in the facts that there is no finding that such transactions were undertaken to evade the tax. The Id CIT(A) also followed the decision of Tribunal in Lodha Builder Pvt Ltd Vs ACIT in (ITA No. 476/M/2014 and 481/M/2014 dated 27.06.2014 for AY 2009-10.

8. The Hon'ble Bombay High Court in assessee's group case in CIT Vs. Ajinath Hitech Builders Private and Others (supra), on similar Grounds on the question whether the Tribunal is justified in deleting the penalty u/s. 271 held that here was reasonable cause u/s. 273B and held as under:-

“3. Regarding Question No.(i) :- (a) The common impugned order of the Tribunal arises from the orders passed by the Addl. Commissioner of Income Tax imposing penalty upon the respondents under Section 271D of the Act for breach of Section 269SS of the Act. This penalty was imposed inasmuch as during the previous year relevant to the subject assessment year, the respondents had accepted loans / deposits by way of passing journal entries in its books of accounts, in breach of Section 269SS of the Act. In terms Section 269SS of the Act prohibits a person from taking / accepting any loan / deposit or specified sum, otherwise by an account payee cheque or by an account payee bank draft or by use of electronic clearing system of a bank if the amount involved is in

excess of Rs.20,000/-. This imposition of penalty under Section 271D of the Act, was upheld by a common order dated 31st December, 2013 passed by the Commissioner of Income Tax (Appeals). On further appeal, the impugned order dated 27th June, 2014 of the Tribunal, *inter alia* held that penalty under Section 271D of the Act is not imposable in view of Section 273B of the Act. This for the reason that there was a reasonable cause for the failure to comply with Section 269SS of the Act.

(b) On merits of the issue, the parties before us are agreed that the Tribunal was correct in holding that receipt of any advance / loan by way of journal entries is in breach of Section 269SS of the Act as the decision of this Court in Commissioner of Income Tax Vs. Triumph International Finance (I) Ltd. 345 ITR 270 is binding upon it. However, the Revenue's grievance is with the impugned order dated 27th June, 2014 of the Tribunal further holding no penalty under Section 271D of the Act is imposable in view of Section 273B of the Act in the present facts. This is so as the Tribunal holds that the failure to comply with Section 269SS of the Act was on account of reasonable cause on the part of the respondents. This finding of reasonable cause was on the application of parameters laid down by this Court in Triumph International Finance (*supra*) to determine reasonable cause for not complying with the provisions of Section 269SS of the Act.

(c) Mr. Mohanty, the learned Counsel for the Revenue seeks to challenge the impugned order of the Tribunal on the ground that Section 273B of the Act will have no application as the test of reasonable cause is not satisfied :in the present facts for the following reasons :-

(i) the decision of this Court in Triumph International Finance (*supra*) will have no application as that was of the case of only one transaction while in this case, there are numerous transactions reflected through the passing of journal entries;

(ii) the reasons set out for taking advances / deposits by way of journal entry would not satisfy the test of reasonable cause; and

(iii) *the non-satisfaction of showing reasonable cause as required under Section 273B of the Act gives rise to a question of law as it is a legal inference to be drawn from primary facts as held by the Apex Court in Premier Breweries Ltd. Vs. Commissioner of Income Tax 372 ITR 180. Thus, it is submitted this question requires admission as it gives rise to a substantial question of law;*

(d) *We find that the impugned order of the Tribunal has on application of the test laid down for establishment of reasonable cause, for breach of Section 269SS of the Act by this Court in Triumph International Finance (supra) found that there is a reasonable cause in the present facts to have made journal entries reflecting deposits. The Tribunal while relying upon the order of this Court in Triumph International Finance (supra) has held that in the present facts, neither the genuineness of receipt of loans / deposits by way of an adjustment through journal entries carried out in the ordinary course of business has been doubted in the regular assessment proceedings. It held in the present facts the transaction by way of journal entries was undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc. Further, the Tribunal records that as observed by this Court in Triumph International Finance (supra) that journal entries constituted a recognized modes of recording of transactions and in the absence of any adverse finding by the authorities that the journal entries were made with a view to achieve purposes outside the normal business operations or there was any involvement of money, then, in these facts there was a reasonable cause for not complying with Section 269SS of the Act.*

(e) *Mr. Mohanty's submission that the test laid down in Triumph International Finance (supra) will have no application in the present facts in view of the large number of entries in this case as compared to only one entry in the case before this Court. The test of reasonable cause can not, in the present facts be determined on the basis of the number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference. Besides, on facts, the Tribunal was satisfied with the reasons given by the Assessee for*

reasonable cause and this finding is not shown to be perverse. Finally, the issue of there being a reasonable cause or not is an issue of fact. No inference of law and / or issue of interpretation is to be made. The decision relied upon by the Revenue in case of Premier Breweries Ltd.(supra) concerned itself with the issue of a claim for deduction under Section 37 of the Act on the basis of the Agreements entered into between the parties. The inference of law in that case was whether on the facts, it could be inferred that the claim for deduction is in respect of expenditure incurred wholly and exclusively for the purposes of the business. Thus, it would involve a question of interpretation of the agreements etc. from which an inference is to be drawn. Further, it also involves application of principles of law to the facts for the purposes of deductions and, therefore, it would lead to a question of law. Therefore, the Court held in the facts of that case that a question of law does arise.

(f) In this case, the issue of reasonable cause is an inference of fact from facts and, therefore, a question of fact. The Supreme Court decision in Sree Meenakshi Mills Ltd. Vs. Commissioner of Income Tax, 31 ITR 28 had laid down the tests to determine a question of law and / or fact. In the above context, the Court observed that when the finding is one of fact, the fact that it itself is an inference from other basic facts, will not alter its character as one of fact. Therefore, the issue of there being reasonable cause or not, is a question of fact and unless it is shown to be perverse, we would normally not interfere.

(g) In the above circumstances, the view taken by the Tribunal on the facts before it, is a possible view and does not give rise to any substantial question of law.

(h) In any event, as rightly pointed out by Mr. Sridharan, learned Senior Counsel for the respondents assesses, the order of this Court in Triumph International Finance (supra) was rendered on 12th June, 2012. This, was in an appeal filed by the Revenue from the order of the Tribunal dated 29th January, 2008, which had held that deposits / loans received through journal entries do not fall with the mischief of Section 269SS of the Act, so as to invite penalty under Section 271D of the Act. This, the

Tribunal did by following its earlier orders in the case of V.N. Parekh Ltd. and Ketan Parekh as indicated in the order of this Court in Triumph International Finance (supra). Our attention was also invited to numerous reported decisions of the Tribunal in the cases of Sunflower Builders Vs. Dy.CIT, 1997 (61) ITD (Pune) 227, Asst.CIT Vs. Ruchika Chemicals & Investment (P) Ltd. 2004 (88) TTJ (Delhi) 85 and Asst.CIT Vs. Lala Murari Lal & Sons, 2004(2) SOT (Luck) 543 wherein it has been held journal entries in the book of accounts indicating deposit / loans will not fall foul of Section 269SS of the Act. Besides, the Delhi High Court in Commissioner of Income Tax Vs. Noida Toll Bridge Co. Ltd. 262 ITR 260 inter alia held that payment of Rs.4.85 crores made by the assesses by a journal entry in its books of account by crediting the account of ILFS, would not fall foul of Section 269SS of the Act. This particularly in the absence of any payment being made in cash.

(i) In the present facts, the period during which the journal entries were made by the respondents was in the previous year relevant to the Assessment Year 2009-10 i.e. Financial Year 2008-09. At that time, the decisions of the Tribunal in the cases of Triumph International (Supra) and decision of V.H. Parekh (P) Ltd., Ketan V Parekh, Sunflower Builders (supra), Ruchika Chemicals (supra), Lala Murari Lal (supra) and the decision of the Delhi High Court in Noida Toll Bridge Co. Ltd. (supra) were holding the field. Thus, not in breach of Section 269SS of the Act. In the above view, while agreeing with the submission of Mr. Mohanty, learned Counsel for the appellant that the decision of this Court in Triumph International Finance (supra) has only clarified / stated the position as always existing in law, the receiving of deposits / loans through journal entries would certainly be hit by Section 269SS of the Act. Nevertheless, prior to the decision of this Court in Triumph International Finance (supra), there was reasonable cause for respondents to receive deposit / loan through journal entries. This non-compliance with Section 269SS of the Act would certainly be a reasonable cause under Section 273B of the Act for non-imposition of penalty under Section 271D of the Act.

(j) In the above circumstances, the view taken by the Tribunal in the impugned order holding that no

penalty can be imposed upon the respondents as there was a reasonable cause in terms of Section 271B of the Act for having received loans / deposits through journal entries is at the very least is a possible view in the facts of the case.

(k) Therefore, the question as posed does not give rise to any substantial question of law. Thus, not entertained.”

9. *Further co-ordinate Bench of the Tribunal in Assessee's group case in DCIT vs. Aashthavinayak Estate Company Ltd. (supra), while dealing with identical Ground of appeal held as under:-*

“5. We have considered rival contentions and carefully gone through the orders of the authorities below. We have deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. We had also carefully gone through the orders of the Tribunal in the group cases of the assessee which was upheld by the Hon'ble Jurisdictional High Court as stated above.

6. From the record we found that AO has levied penalty u/s.271D for accepting loan by way of Journal entries. The Assessing Officer had placed reliance on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Triumph International Finance (I) Ltd. (345 ITR 270) rendered on 12.06.2012. It is not disputed that in this judgment it was held that there was violation of the provisions of S. 269T of the Act in a case where the loan was repaid by way of a journal entry entailing levy of penalty u/s. 271E of the Act. However, at the same time it was also held that levy of penalty could be avoided on showing reasonable cause. In the premises, levy of penalty u/ss. 271D of the Act is not automatic, but the genuineness or otherwise of the reasons due to which repayment was made by journal entry has to be considered judiciously.

7. In the order reported as Lodha Builders (P) Ltd. v. ACIT [2014] 163 TTJ 778 (Mum), a bunch of appeals belonging to Lodha group (to which the present assessee belongs) involving identical issue, was disposed of by the coordinate Bench in which levy of similar penalties was held to be not sustainable as

there was a reasonable cause, copies of which have been placed on record. In deciding the dispute in favour of the assessee, the Hon'ble Tribunal had considered and applied the ratio laid down by the Hon'ble jurisdictional High Court in the case of CIT v. Triumph International Finance (I) Ltd. (345 ITR 270).

8. The aforesaid order of the Hon'ble Tribunal was approved by the Hon'ble jurisdictional High Court in their judgment and order dated 06.02.2018 in the case of CIT v. Ajinath Hi-Tech Builders Pvt Ltd. and others, copies of which have also been placed on record. In this case, it was also held that prior to the judgment in CIT v. Triumph International Finance (I) Ltd. (345 ITR 270), there were series of orders on this point holding that journal entry would not fall foul of S. 269SS of the Act. Since the judgment in CIT v. Triumph International Finance (I) Ltd. (345 ITR 270) was rendered on 12.06.2012, it was held, that the assessee could have had a bonafide belief prior to that date that there was no violation of S. 269SS of the Act in accepting loan by journal entry.

9. While deciding the issue, the CIT(A) has also followed the decision of Jurisdictional High Court in case of group concern of the case. The facts and circumstances during the year under consideration are same, accordingly, we do not find any infirmity in the order of CIT(A) for deleting the penalty imposed u/s.271D by relying on the decision of Jurisdictional High Court in group case of the assessee.

10. In the result, appeal of the Revenue is dismissed.”

10. Considering the decision of Hon'ble Jurisdictional High Court in assessee group case in Ajinath Hi Tech Builder Pvt Ltd (supra), Triumph International Finance(I) Ltd (supra) dated 12.06.2012 and in Assessee's group case in DCIT vs. Aashthavinayak Estate Company Ltd. (supra) that there was reasonable cause for the assessee to receive deposits of loan or repayment of loans through journal entries. Therefore, in our view the assessee's case is squarely falls under a reasonable cause within the meaning of section 273B. The case is also covered by the decision of Hon'ble Jurisdictional High Court in assessee group case in Ajinath Hi Tech Builder Pvt Ltd (supra), DCIT vs. Aashthavinayak Estate Company Ltd. (supra). Therefore, we do not find any reason to interfere with the finding of Id. CIT(A).”

11. Similarly, in a recent decision in the case of DCIT v. Mahavir Build Estate Pvt. Ltd., in ITA.No. 1480 & 1481/Mum/2017 dated 13.03.2019 the Coordinate Bench held as under: -

"8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. The revenue has sought our indulgence for adjudicating as to whether the CIT(A) is right in law and the facts of the case in vacating the penalty imposed by the Addl. CIT u/ss. 271D and 271E of the I.T Act. As observed by us hereinabove, the CIT(A) had concluded that as the journal entry transactions of the assessee with its „sister concerns“ were for more than the amount of Rs. 20,000/- and the same were not through account payee cheque or bank drafts, therefore, there was a violation of the provisions of Sec. 269SS/269T of the I.T Act. Apart therefrom, the CIT(A) has supported his aforesaid observation by relying on the judgment of Hon“ble High Court of Bombay in the case of CIT Vs. Triumph International Finance (I) Ltd. (2012) 345 ITR 270 (Bom) for A.Y 2003-04 and ITA No. 5745 of 2010, dated 17.08.2012 for A.Y 2000-01, wherein the Hon“ble High Court had observed that receiving loans/deposits through journal entries would be in violation of Sec. 269S of the I.T Act. Insofar the observation of the CIT(A) that the loans or deposits accepted/repaid by the assessee from/to its „sister concerns“ by journal entries was in contravention of the provisions of Sec. 269SS and Sec. 269T is concerned, we are in agreement with the view therein taken that as the said transactions are not through account payee cheque or draft, therefore, the same is in violation of the mode prescribed under the aforesaid statutory provisions. However, we are persuaded to subscribe to the observation of the CIT(A) that there was a reasonable cause for the assessee to have carried out the transactions with its „sister concerns“ by journal entries viz. (i). the journal entries had been made with the group concerns under the bonafide belief that such transactions would not be hit by the provisions of Sec. 269SS in view of various judicial decisions on the issue, including the decision of High Court of Delhi in the case of CIT Vs. Noida Toll Bridge Co. Ltd. (2003) 262 ITR 260 (Del); and (ii). such loans by way of journal entry transactions were undertaken for various commercial reasons like assigning of receivables for operational efficiency, payment on behalf of group concern for squaring up transactions, for ease in consolidation of accounts, rectification entries etc. In our considered view the aforesaid reasons do constitute a „reasonable cause“ within the meaning of Sec. 273B of the Act, particularly in light of the fact that there is no finding that such transactions were undertaken to evade tax. Our aforesaid view is fortified by the orders of the coordinate

benches of the Tribunal in the case of „sister concern“ of the assessee viz. Lodha Builders Pvt. Ltd. vs. ACIT [ITA No. 476 & 481/Mum/2014; dt. 27.06.2014.], wherein it has been held that as the assessee has shown reasonable cause, therefore, penalty imposed u/ss. 271D/271E of the I.T Act cannot be sustained. In fact, a co-ordinate bench of the Tribunal i.e ITAT, “B” bench, Mumbai in the case of a „sister concern“ of the assessee for A.Y 2011-12 viz. DCIT Vs. M/s National Standard India Ltd. [ITA No. 6607/Mum/2016 & 6609; dt. 06.06.2018] wherein identical facts and issue were involved, had upheld the order of the CIT(A) who had deleted the penalty imposed by the A.O under Sec. 271D and 271E for the reason that since the judgment in CIT vs. Triumph International Finance (I) Ltd. (2012) 345 ITR 270 (Bom) was rendered on 12.06.2012, therefore, the assessee could have had a bonafide belief prior to that date that there was no violation of Sec. 269SS of the I.T Act in accepting loan by journal entry. It was observed by the Tribunal in the aforementioned case, as under :

“5. We have considered rival contentions and carefully gone through the orders of the authorities below. We have deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. We had also carefully gone through the orders of the Tribunal in the group case of the assessee exactly on the very same issue, which was upheld by the Hon’ble Jurisdictional High Court as stated above.

6. From the record we found that AO has levied penalty u/s.271D and 271E for accepting and repaying loan by way of Journal entries. The Assessing Officer had placed reliance on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Triumph International Finance (I) Ltd. (345 ITR 270) rendered on 12.06.2012. It is not disputed that in this judgment it was held that there was violation of the provisions of S. 269T of the Act in a case where the loan was repaid by way of a journal entry entailing levy of penalty u/s. 271E of the Act. However, at the same time it was also held that levy of penalty could be avoided on showing reasonable cause. In the premises, levy of penalty u/ss. 271D and 271E of the Act is not automatic, but the genuineness or otherwise of the reasons due to which repayment was made by journal entry has to be considered judiciously.

7. In the order reported as *Lodha Builders (P) Ltd. v. ACIT [2014] 163 TTJ 778 (Mum)*, a bunch of appeals belonging to Lodha group (to which the present assessee belongs) involving identical issue, was disposed of by the coordinate Bench in which levy of similar penalties was held to be not sustainable as there was a reasonable cause, copies of which have been placed on record. In deciding the dispute in favour of the assessee, the Hon'ble Tribunal had considered and applied the ratio laid down by the Hon'ble jurisdictional High Court in the case of *CIT v. Triumph International Finance (I) Ltd. (345 ITR 270)*.

8. The aforesaid order of the Hon'ble Tribunal was approved by the Hon'ble jurisdictions! High Court in their judgment and order dated 06.02.2018 in the case of *CIT v. Ajinath Hi-Tech Builders Pvt Ltd.*, copies of which have also been placed on record. In this case, it was also held that prior to the judgment in *CIT v. Triumph International Finance (I) Ltd. (345 ITR 270)*, there were series of orders on this point holding that journal entry would not fall foul of S. 269SS of the Act. Since the judgment in *CIT v. Triumph International Finance (I) Ltd. (345 ITR 270)* was rendered on 12.06.2012, it was held, that the assessee could have had a bona fide belief prior to that date that there was no violation of S. 269SS of the Act in accepting loan by journal entry. The relevant observations of the Hon'b High Court appearing on pages 8 to 10 of the judgment are as under:

(h) In any event, as rightly pointed out by Mr. Sridharan, learned Senior Counsel for the respondents assesses, the order of this Court in *Triumph International Finance (supra)* was rendered on 12th June, 2012. This, was in an appeal filed by the Revenue from the order of the Tribunal dated 29th January, 2008, which had held that deposits/loans received through journal entries do not fall with the mischief of Section 269SS of the Act, so as to invite penalty under Section 271D of the Act. This, the Tribunal did by following its earlier orders in the case of *V.N. Parekh Ltd. and Ketan Parekh* as indicated in the order of this Court in *Triumph International Finance (supra)*. Our attention was also invited to numerous reported decisions of the Tribunal in the cases of *Sunflower Builders*

Vs. Dy. CIT, 1997 (61) ITD (Pune 227, Asst. CIT Vs. Ruchika Chemicals & Investment P) Ltd. 2004 (88) TTJ (Delhi) 85 and Asst CIT Vs. LalaMurari La I & Sons, 2004(2) SOT (Luck) 543 wherein it has been held journal entries in the book of accounts indicating deposit/ loans will not fall foul of Section 269SS of the Act. Besides, the Delhi High Court in Commissioner of Income Tax Noida Toll Bridge Co. Ltd. 262 ITR 260 inter alia held that payment of Rs.4.85 crores made by the assessee by a journal entry in its books of account by crediting the account of ILFS, would not fall foul of Section 269SS of the Act. This particularly in the absence of any payment being made in cash.

(i) In the present facts, the period during which the journal entries were made by the respondents was in the previous year relevant to the Assessment Year 2009-10 i.e. Financial Year 2008-09. At that time, the decisions of the Tribunal in the cases of Triumph International (Supra) and decision of V.H. Parekh (P) Ltd., Ketan V. Parekh, Sunflower Builders (supra), Ruchika Chemicals (supra). La/a Murari La/ (supra) and the decision of the Delhi High Court In Noida Toll Bridge Co. Ltd, (supra) were holding the field. Thus, not in breach of Section 269SS of the Act In the above view, while agreeing with the submission of Mr. Mohanty, learned Counsel for the appellant that the decision of this Court in Triumph International Finance (supra) has only clarified/stated the position as always existing in law, the receiving of deposits/ loans through journal entries would certainly be hit by Section 269SS of the Act Nevertheless, prior to the decision of this Court in Triumph International Finance (supra), there was reasonable cause for respondents to receive deposit/loan through journal entries. This noncompliance with Section 269SS of the Act would certainly be a reasonable cause under Section 273B of the Act for non-imposition of penalty under Section 271D of the Act"

9. From the record we found that the journal entries in the present case were passed in F.Y. 2010-11.

Therefore, indisputably such journal entries were passed prior to 12.06.2012, the date on which judgment of the Hon'ble Bombay High Court in the case of CIT v. Triumph International Finance (I) Ltd was pronounced. Further more, in addition to the orders of the Hon'ble Tribunal, referred to in the aforesaid judgment, there were also many other orders rendered prior to CIT v. Triumph International Finance (I) Ltd. [345 ITR 270 (Bom)] holding that violation of Ss. 269SS and 269T of the Act could not be imputed in accepting and repaying loan by passing a journal entry. Some of them are:

(i) Order of Cochin Bench of the Hon'ble Tribunal in Muthoot M. George Bankers v. ACIT (46 ITD 10), dated 16.04.1993;

(ii) Order of Ahmedabad Bench of the Hon'ble Tribunal in Bombay Conductors & Electricals Ltd. v. DCIT (90 Taxman 138), dated 30.11.1995;

(iii) Judgment of Hon'ble Delhi High Court in CIT v. Noida Toll Bridge (262 ITR 260), rendered on 28.01.2003; (iv) Order of Agra Bench of the Hon'ble Tribunal in ITO v. Amarnath Shivraj (HUF) (1 SOT 346), dated 28.02.2003;

(v) Order of Ahmedabad Bench of the Hon'ble Tribunal in ACIT v. Gujarat Ambuja Proteins Ltd. (3 SOT 811), dated 28.10.2003;

(vi) Order of Kolkata Bench of the Hon'ble Tribunal in Krishna KR Pathak (HUF) (90 TTJ 940), dated 12.03.2004;

(vii) Judgment of Hon'ble Rajasthan High Court in CIT v. Hissaria Bros (291 ITR 244), rendered on 21.07.2006; off Mumbai Bench of Hon'ble Tribunal in Triumph International Finance (I) Ltd. in FTA No. 542/Mum/2007, dated 29.01.2008;

ix) Judgment of Hon'ble Gujarat High Court in CIT v. Bombay Conductors & Electricals Ltd (301 ITR 328), rendered on 11.02.2008;

(x) Order of Ahmedabad Bench of Hon'ble Tribunal in Jitu Builders (P) Ltd. v. Addl. CIT

[124 ITD 134 (Ahd) (TM)], dated 16.07.2009;
and

(xi) Order of Ahmedabad Bench of Hon'ble
Tribunal in ACIT v. Western India Ceramics (P.)
Ltd (20 taxmann. Com 317), dated 12.10.2010.

10. It was argued by learned DR that the Hon'ble High Court declares the law as it was always and, hence, there was clearly violation of the provisions of the Act. He further argued that the assessee has not explained reasonable cause in respect of each and every entry and, hence, the penalties were correctly levied.

11. As regards the first argument of the Id. DR, we observe that the identical argument was raised before the Hon'ble High Court in the case of Ajinath Hi-Tech Builders Pvt. Ltd. (and other group companies of the assessee) (supra). However, finding no merit in the plea canvassed, it was rejected as per observations in sub-para (i) of para 3 on page No. 10 of their judgment which read as under:

(i) In the above view, while agreeing with the submission of Mr. Mohanty, learned Counsel for the appellant that the decision of this Court in Triumph International Finance (supra) has only clarified/ stated the position as always existing in law, the receiving of deposits/loans through journal entries would certainly be hit by Section 269SS of the Act Nevertheless, prior to the decision of this Court in Triumph International Finance (supra), there was reasonable cause for respondents to receive deposit/loan through journal entries. " (Emphasis supplied).

12. So far as the second argument of the Id. DR is concerned, we observe that as per the above decision of the Hon'ble High Court, the assessee could not be visited with penalty in respect of the period prior to 12.06.2012, the day on which the decision in CIT v. Triumph International Finance (I) Ltd. was pronounced. In light of this, it can safely be concluded that the assessee being under a bona fide belief, could not be visited with penalties u/ss. 271D requirement to establish reasonable cause in respect of each and every entry as canvassed by the Id. DR. The

reasonable cause in respect of all the entries is the bona fide belief of the assessee that there was no violation of any provision of the Act.

13. In view of the above, we observe that the case of the assessee is squarely covered by the exception carved out in the judgment of the Hon'ble Bombay High Court in CIT v. Triumph International Finance (I) Ltd. [345 ITR 270 (Bom)]. Accordingly, both the penalties were not exigible in the present case as the assessee was under a bona fide belief and there was no contravention as per the law prevailing as on the date of passing the journal entries. The orders of the CIT (A), therefore, do not call for any interference.

14 During the course of hearing, learned AR submitted that a ground regarding limitation aspect of the penalty order under Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963. It was submitted that the issue regarding limitation period was raised first before the Addl. CIT, and thereafter before the CIT (A); and both the authorities have discussed this plea but rejected the claim of the assessee. In light of the above fact, although the assessee had not filed any appeal or cross objection, it is entitled to raise the said issue before the Hon'ble Tribunal. In support of this plea, attention of bench was invited to Rule 27 of the IT(AT) Rules which reads as under:

"The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him. "

15. Hence, reliance was placed on the judgment of the Hon'ble Gujarat High Court in the case of Pr. CIT v. Sun Pharmaceuticals Industries Ltd., (2017) 86 taxmann.com 148) and also on the judgment of the Hon'ble Kerala High Court in the case of CIT v. Commonwealth Trust (India) Ltd. (221ITR 474).

16. We have considered rival contentions and gone through the orders of the authorities below. Since, we have already decided the issue on merit by following the order of the jurisdictional High Court in the group cases of the assessee, we do not consider the plea taken by the assessee under Rule 27 of the ITAT Rules.

17. In the result, appeals filed by the Revenue are dismissed.

9. We have given a thoughtful consideration to the facts of the case and have perused the aforesaid order of the coordinate bench of the Tribunal i.e. ITAT "B" bench, Mumbai in the case of the „sister concern“ of the assessee viz. DCIT CC-7(3), Mumbai vs. M/s. National Standard India Ltd. (ITA no. 6607/Mum/2016) for AY 2011-12, and are persuaded to subscribe to the view therein taken. In the backdrop of our aforesaid deliberations, as observed by us at length hereinabove, as the assessee had remained under a bonafide belief that the acceptance and repayment of loans by journal entries did not involve any contravention of the provisions of Sec. 269SS and Sec. 269T of the I.T Act, therefore, we are in agreement with the view taken by the CIT(A) that in the backdrop of the said „reasonable cause“ within the meaning of Sec. 273B of the I.T Act, no penalty under Sec. 271D and Sec. 271E could have been imposed on the assessee. We thus finding no infirmity in the order of the CIT(A) who had in terms of his aforesaid observations vacated the penalty of Rs. 38,09,55,274/- and Rs. 35,52,90,732/- imposed by the Additional CIT u/s. 271D and 271E of the I.T Act, respectively, uphold his order.”

12. Similarly, in the case of DCIT v. M/s. Sahajanand Hi-Tech Construction Pvt. Ltd., in ITA.No. 127 & 128/Mum/2017 dated 26.06.2019 the Coordinate Bench held as under: -

“10. Considering the decision of Hon’ble Jurisdictional High Court in assessee group case in *Ajinath Hi Tech Builder Pvt Ltd (supra)*, *Triumph International Finance(I) Ltd (supra)* dated 12.06.2012 and in Assessee’s group case in *DCIT vs. Aashthavinayak Estate Company Ltd. (supra)* that there was reasonable cause for the assessee to receive deposits of loan or repayment of loans through journal entries. Therefore, in our view the assessee’s case is squarely falls under a reasonable cause within the meaning of section 273B. The case is also covered by the decision of Hon’ble Jurisdictional High Court in assessee group case in *Ajinath Hi Tech Builder Pvt Ltd (supra)*, *DCIT vs. Aashthavinayak Estate Company Ltd. (supra)*. Therefore, we do not find any reason to interfere with the finding of Id. CIT(A).”

13. Facts being identical, respectfully following the above said decisions, we hold that there is a reasonable cause within the meaning of the provisions of section 273B of the Act in passing the journal entries for the loans/deposits taken and repaid by the assessee, as all these entries were made prior to 12.06.2012 and the ratio of the decision of the Hon'ble Bombay High Court in the case of CIT v. Ajinath Hitech Builders Private Ltd and Others (supra) is squarely applicable. Thus, we do not see any infirmity in the order passed by the Ld.CIT(A) in deleting the penalty.

14. In so far as the request of the Ld. Senior Standing counsel to refer the matter to the Special Bench is concerned, this Bench is of the view that, since the issue in all these appeals is decided by the Hon'ble Jurisdictional High Court and SLPs were also dismissed by the Hon'ble Supreme Court no purpose would be served even if the issue is referred for Special Bench, as we are bound by the decision of the Hon'ble Jurisdictional High Court particularly when the issue was decided in assessee's own case by the Hon'ble Jurisdictional High Court. Thus, the request made by the Ld. Senior standing counsel for referring the matter to the Special Bench has no merit and accordingly rejected.

15. Coming to the cross objections filed by the assessee, the assessee raised the following ground in its cross objections: -

“The Ld. CIT(A) ought to have held that the order u/s. 271D/271E of the Act was illegal and bad in law as it was passed beyond the period of limitation provided in clause(c) of section 275(1) of the Income-tax Act, 1961.”

16. Ld. Counsel for the assessee, at the outset submits that in all these cases the Addl. CIT passed penalty orders u/s. 271D/271E of the Act beyond a period of six months from the end of the month in which action for the imposition of penalty is initiated as specified in clause (c) of section 275(1) of the Act and therefore, the orders passed u/s. 271D/271E of the Act are barred by limitation. Ld. Counsel for the assessee submits that on identical facts the Coordinate Bench in ITA.No. 475 to 481/Mum/2014 dated 27.06.2014 in assessee own case and associate company's cases held that the penalty orders passed u/s. 271D/271E were time barred.

17. On the other hand, Ld. Senior Standing Counsel strongly placed reliance on the orders of the Ld. CIT(A) who rejected the ground raised by the assessee on limitation.

18. We have heard the rival submissions, perused the orders of the authorities below and case laws relied on. We observed that the tribunal in assessee's own case and group cases after considering various

decisions on the issue held that the discussion by the Assessing Officer in the Assessment Order and making referral to the Addl. CIT for imposition of penalty constitutes initiation for “action for imposition of the penalty” and that is the date which should be reckoned for the purpose of limitation as specified in clause(c) of section 275(1) of the Act. While holding so the Tribunal held as under:

“16. We have heard both the parties on the legal issues raised in the Additional Ground i.e., applicability of the provisions of clause (c) to section 275(1) of the Act to the impugned penalties and the manner of computing the limitation of time provided in the said clause. To decide the above issues, in our opinion, the provisions of section 275 of the Act are required to analysed. The same read as under:

“275(1)[(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 Appellate 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, whichever is later;]

(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.”

17. *The said provisions are explained by various Honble High courts and Tribunal. To start with, Honble High Court of Rajasthan in the case of CIT vs. Hissaria Bros (supra) explained the said provisions vide the para 21 to 27 of the said judgment and the same are produced as under:*

“21. By substituting section 275(1) which became operative from 01.04.1989, the provision of divided cases for the purpose of prescribing limitation for completing penalty proceedings into three categories:

(i) Category I covers cases where the assessment to which the proceedings for imposition of penalty relate is the subject - matter of an appeal to the Dy. CIT(A) or the CIT(A) under section 246 or with effect from 1 - 6 - 2000, section 246A or an appeal to the Tribunal under section 253;

(ii) Category II covers cases where the relevant assessment is the subject matter of revision under section 263; and

(iii) Category III covers all other cases not falling within category I and category II which is governed by clause (c).

By dividing into three categories the period of limitation for cases falling under category (i), i.e., clause (1)(a) is 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 Dy. CIT(A) or the CIT(A) or, as the case may be, the Tribunal is received by the Chief CIT or CIT, whichever period expires later.

22. *The period of limitation for the cases falling under category II is six months from the end of the month in which such order on revision is passed and the period of limitation for the cases falling under the above category III is 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. In the last category, filling of appeal in respect of order*

passed in proceedings during which penalty proceedings were initiated is not relevant.

To this effect a Circular No. 551, dated 23-1-1990 [(1990) 82 CTR (St.) 325] and another Circular No. 554, dated 13-2-1990 [(1990) 82 CTR (St.) 280] were issued by the CBDT

23. A close scrutiny of section 275 which is reproduced hereinabove shows that clause (1)(a) covers those cases where the penalty proceedings are in respect of a default related to principal assessment for a particular assessment year and the penalty proceedings are required to be initiated in the course of that proceedings only. In such cases where the relevant assessment order or other orders are the subject - matter of an appeal to the CIT(A) under section 246 or an appeal to the 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 CIT(A) or, as the case may be, of the Tribunal is received by the Chief CIT or CIT, whichever period expires later.

Apparently, clause (a) governs the categories which are integrally related to the assessment proceedings and are not independent of it.

24. We have also noticed that this provision was brought into effect in 1970 with effect from 01.04.1971-, so that proceedings may not require rectification or modification depending on the outcome of the appeal against the orders passed in the relevant assessment proceedings or the other proceedings in the course of which the penalty proceedings are required to be initiated.

25. We have also noticed that section 271 and 273 were the two original penalty provisions, which require the penalty proceedings to be initiated during the course of relevant assessment proceedings or the other relevant proceedings, as the case may be. The penalty proceedings could also be initiated during the appellate proceedings arising out of the relevant assessment proceedings. It is only where the assessment proceedings are independent and not directly linked to the assessment proceedings that the result of such proceedings in the course of which the penalty proceedings were initiated does not affect the levy of penalty. On such penalty proceedings, independent of the assessment proceedings, clause (c) has been made applicable. In this

category, the period of limitation for completing the penalty proceedings is linked with the initiation of the penalty proceedings itself.

In such cases, the penalty proceedings can be initiated independent of any proceedings but obviously, the penalty proceedings can be initiated only when the default is brought to the notice of the concerned authority which may be during the course of any proceedings and, therefore, for this type of cases where the penalty proceedings have been initiated in connection with the defaults for which no statutory mandate is there about any particular proceedings during the course of which only such penalty proceedings can be initiated, a different period of limitation has been prescribed under clause (c) as a separate category. In cases falling under clause (c), penalty proceedings are to be completed within six months from the end of the month in which the proceedings during which the action for imposition of penalty is 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. There is no provision under clause (c) for the extended period of limitation commensuration with completion of the appellate proceedings, if any, arising from the proceedings during the course of which such penalty proceedings are initiated as in the case where the penalty proceedings are linked with the assessment proceedings or the other relevant proceedings.

26. The expression "other relevant thing" used in section 275(1)(a) and clause (b) of sub - section (1) of section 275 is significantly missing from clause(c) of section 275(1) to make out this distinction very clear.

27. We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under sections 269SS and 269T are not related to the assessment proceedings but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under sections 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and therefore, clause(a) of sub-section(1) of

section 275 cannot be attracted to such proceedings. If that were not so, clause (c) of section 275(1) would be redundant because otherwise, as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default, e.g., penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if clause (a) was to be invoked, no necessity of clause (c) would arise.”

18. *Similar interpretations were taken by the ITAT, Rajkot Bench (Third Member) in the case of ACIT vs. Dipak Kantilal Takvani [2013] 39 taxmann.com 53 (Rajkot – Trib.) (TM) and the penalty orders u/s 271D and 271E of the Act, being unconnected to the income of the assessee, are to be considered as per the provisions of clause (c) of section 275(1) of the Act. The said Rajkot Bench of ITAT has followed the judgment of the Rajasthan High Court in the case of Jitendra Singh Rathore (supra). In this case, the Hon’ble High Court also observed that the first show cause notice for levy of penalty was issued by the AO though the authority obtained to initiate penalty proceedings has also subsequently issued a show cause notice as well. Hon’ble High Court held that the penalty proceedings were initiated by issue of first notice from the AO and not from the date of issue of notice by the JCIT and thus, the penalty order passed after expiry of 6 months from the end of the month in which the action for imposition of penalty initiated was barred by limitation. The said decision of the ITAT in the case of Dewan Chand Amit Lal (supra) deferred at the relevant point of time that the order of the Tribunal in the case of Hissaria Bros (supra). However, it is a fact that the said decision of the Tribunal in the case of Hissaria Bros (supra) was subsequently upheld by the Hon’ble Rajasthan High Court. Therefore, considering the principle of precedence, it is necessary for the Tribunal to follow the order of the High Court where there is no contrary judgment from the jurisdictional High Court. As stated earlier, the said judgment from the Rajasthan High Court was also followed in the case of Jitendra Singh Rathore (supra). Therefore, in a case where the AO made a reference in the assessment order about the requirement of initiating the penalty proceedings and acted*

by making a reference to the JCIT, who is actually empowered by the statute to impose the penalty u/s 271D and 271E of the Act, the limitation should be counted right from the date of such reference in the assessment order / issue of show cause notice by the AO.

19. Further, the judgment of Honble Delhi High Court in the case of M/s Noida Toll Bridge Co. Ltd [262 ITR 260] (Del) is relevant. We have also come across another judgment of the same High court in the case of CIT vs. Worldwide Township Projects Ltd vide ITA No.232/2014, where Honble Delhi High Court explained the above said provisions in the context of penalty levied u/s 271D of the Act. Para 8 of the said judgment of the High Court is relevant here and the same reads as under:

“8. A plain reading of the aforesaid section indicates that (the import of the above provisions is limited) it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries. The object of the section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to section 269SS of the Act which defines loan or deposit to mean “loan or deposit of money” The liability recorded in the books of accounts by way of journal entries, i.e., crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of section 269SS of the Act, because passing such entries does not involve acceptance of any loan or deposit of money. In the present case, admittedly no money was transacted other than through banking channels M/s. PACL India Ltd made certain payments through banking channels to land owners. This payment made on behalf of the assessee was recorded by the assessee in its books by crediting the account of M/s. PACL India Ltd. In view of this admitted position, no infringement of section 269SS of the Act is made out. This court, in the case of Noida Toll Bridge Co. Ltd (supra), considered a similar case where a company had paid money to the Government of Delhi for acquisition of a land on behalf of the assessee therein.

The Assessing officer levied a penalty under section 271D of the Act for alleged violation of the provisions of section 269SS of the Act since the books of the assessee reflected the liability on account of the lands acquired on its behalf. On appeal, the CIT (A) affirmed the penalty. The order of the CIT was successfully impugned by the assessee before the ITAT. On appeal, this Court held as under:

“While holding that the provisions of section 269SS of the Act were not attracted, the Tribunal has noticed that (i) in the instant case, the transaction was by an account payee cheque; (ii) no payment on account was made in cash either by the assessed or on its behalf; (iii) no loan was accepted by the assessee in cash, and (iv) the payment of Rs. 4.85 crores made by the assessee IL & FS, which holds more than 30 per cent of the paid - up capital of the assessee, by journal entry in the books of account of the assessed by crediting the account of IL & FS.

Having regard to the aforementioned findings, which are essentially findings of fact, we are in complete agreement with the Tribunal that the provisions of section 269SS were not attracted on the facts of the case. Admittedly, neither the assessee nor IL & FS had made any payment in cash. The order of the Tribunal does not give rise to any question of law, much less a substantial question of law.

20. Thus, the judgment in the case of M/s Worldwide Township Projects Ltd vide ITA No.232/2014 is relevant for the proposition that the provisions of section 275(1)(a) of the Act would not be applicable to the penalties u/s 271D of the Act and the provisions of section 275(1)(c) would only be attracted. This is also relevant for another ratio that the period will be counted from the date of assessment order where the Assessing Officer decided to make a referral to the Addl. CIT.

21. On this aspect, following the said judgment, the Delhi Bench of the Tribunal in the case of Dinesh Jain ITA no 3794/Del/2013 held that it is the AO who applies mind during the assessment proceedings to the issues relating to the violation of section 269SS or 269T of the Act and therefore, the limitation should commence from the date of the Assessment Order. On the facts of squiring up

of the loans with the wife by way of „journal entries“, Tribunal held that such “journal entries” are outside the scope of the relevant penal provisions. Thus, it is the decision of the High Court/Tribunals that the provisions of clause (a) of section 275(1) of the Act would not apply and in alternative, the provisions of section 275(1)(c) only be attracted in the matters of penalties levied u/s 271D/271E of the Act. Further, it is also held that the limitation period would be counted from the date of assessment order with the AO’s decision to make referral to his Addl CIT, who is authorized to impose penalty.

22. *In the instant case, it is an undisputed fact that the Assessing Officer discussed the details as to the violation of the provisions of section 269SS and 269T of the Act in the assessment order. It also contains a reference to the requirement of making a reference to the Addl. CIT, CR-6, Mumbai for necessary action. Para 6 of the assessment order, which is already extracted above paras, bears witness to the above findings. Further, to give effect to his findings in the assessment order, the AO wrote a letter to the Addl. CIT on 11.1.2012, intimating to him about the violation to the said provisions of the Act. On receipt of the said reference from the AO, Addl. CIT issued a show cause notice on 15.2.2012 calling for explanation of the assessee as to why the penalty u/s 271D should not be imposed in the case of the assessee. Eventually, Addl. CIT passed a penalty order u/s 271D of the Income Tax Act on 28.9.2012. Considering the fact that the assessment order is dated 5.12.2011 and as per the provisions of clause © to section 275(1) of the Act, 6 months from the end of the month in which the action was initiated expires on 30.6.2012. After considering the explanation of limitation u/s 275(2), Explanation 1 read with section 129 of the Act, extended limitation expires on 30.7.2012 against the above due dates, the penalty order passed by the Addl. CIT on 28.9.2012, which is barred by the limitation. Thus, the orders of the penalty of this kind have to be explained considering the provisions of clause (c) of section 275(1) of the Act. Further, it is the summary of the decision cited above that any case where AO made a reference in the assessment order, after discussing the same with the assessee during the regular assessment proceedings or made a referral to the Addl. CIT for imposition of the penalty. In our opinion, these preliminary acts constitute “action for the imposition of penalty”. An action for imposition of penalty is always anterior in time to the “actual” imposition of penalty. In our opinion, the AO’s discussion given in para 6 of the assessment order and AO’s letter dated 6 to the Addl.*

CIT constitutes “action for imposition of penalty”. Therefore, we are of the opinion, the assessee should succeed on the legal issue. Accordingly, ground raised by the assessee is allowed.”

19. The basic facts pertaining to initiation/reference and passing of penalty orders in these cases are as under: -

S. No	Entity Name	Date of A.O Order U/s 143(3)	Date of Ref. to Addl. CIT	Penalty u/s	Date of penalty SCN by Addl. CIT	End of F.Y. in which proceedings are initiated	Six months from end of month in which penalty was initiated (Asst. Order)	Six months from the end of Months in which penalty was initiated (SCN)	Limitation for levy of Penalty from assessment order	limitation for levy of penalty from SCN Addl. CIT	Date of Penalty order
1	M/s. Lodha Builders Pvt. Ltd	29.05.13	26.06.2013	271D	27.03.14	31.03.14	30.11.13	30.09.14	31.03.14	30.09.14	10.09.14
2	M/s. Lodha Builders Pvt. Ltd	29.05.13	26.06.2013	271E	27.03.14	31.03.14	30.11.13	30.09.14	31.03.14	30.09.14	10.09.14
3.	M/s. Lodha Properties Development Pvt Ltd.,	07.12.11	11.12.2012	271E	04.12.13	31.03.12	30.06.12	30.06.14	30.06.12	30.06.14	24.06.14
4.	M/s. Ajinath Hitech Builders Pvt Ltd.,	05.12.11	11.12.2012	271E	04.12.13	31.03.12	30.06.12	30.06.14	30.06.12	30.06.14	24.06.14
5.	M/s. Adinath Builders Pvt Ltd.	15.12.11	11.12.2012	271E	04.12.13	31.03.12	30.06.12	30.06.14	30.06.12	30.06.14	24.06.14

20. In all the above cases, facts are identical as the Assessing Officer in the course of the assessment proceedings made reference in the Assessment Order to the loans accepted and repaid other than by way of Account Payee Cheque/Drafts. We also observed that the assessee was asked to explain why the loans were accepted other than by Account Payee Cheque and in response to the query raised by the Assessing Officer in the course of assessment assessee submitted its reply. The Assessing Officer records a finding that the contentions of the assessee

are not accepted as it is not falling under any exemption categories where loan/deposit can be accepted other than by Account Payee Cheque/draft. Therefore, the Assessing Officer concluded that the assessee by not accepting the loan/deposit by Account Payee Cheque or bank drafts violated the provisions of section 269SS/269T of the Act and accordingly reference for initiation of penalty proceedings u/s. 271D/271E of the Act was made to Addl. CIT, Circle-6, Mumbai in the Assessment Order. After completion of assessments the Assessing Officer by letters dated 11.12.2012 and 26.06.2013 made a reference to the Addl. CIT for initiation of penalty proceedings. Therefore, the facts of the assessee's case in all these cases are identical to the facts as mentioned by the Tribunal in its order in ITA.No. 475 to 481/Mum/2014 dated 27.06.2014 in assessee's own case and associated companies' cases. Thus, respectfully following the said decision of the Coordinate Bench in assessee's own case, we hold that, as the Assessing Officer in the course of the assessment proceedings called for explanation of the assessee in respect of loans accepted and repaid otherwise than by way of Account payee cheque/drafts, considered the reply of the Assessee and rejected the reply by the Assessing Officer holding that the assessee has violated the provisions of section 269SS/269T and also made a reference to the Addl. CIT for initiation of penalty proceedings in the assessment order, these

preliminary acts constitute “action for imposition of the penalty” as contemplated in the provisions of section clause (c) of section 275(1) of the Act. Thus, the penalty orders passed u/s. 271D/271E of the Act by the Addl. CIT beyond a period of six months from the initiation of penalty proceedings from the date of Assessment Order and the date of reference mad to Addl. CIT in these cases, are barred by limitation and accordingly the said penalty orders are quashed.

21. Since we have allowed the cross objections of the assessee, the revenue’s appeals corresponding to these cross objections and arising out of the Ld.CIT(A) orders on merits becomes infructuous.

22. In the result, all the appeals filed by the Revenue are dismissed and cross objections filed by the assessee are allowed.

Order pronounced in the open court on the 31st January, 2020

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 31/01/2020
Giridhar, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum